

DELTA PROTECTION COMMISSION

2101 Stone Blvd., Suite 210
 West Sacramento, CA 95691
 Phone (916) 375-4800 / FAX (916) 376-3962
 Home Page: www.delta.ca.gov



Contra Costa County Board of
 Supervisors

DATE: July 16, 2012

Sacramento County Board of
 Supervisors

TO: Delta Protection Commission Members

San Joaquin County Board of
 Supervisors

SUBJECT: The Great California Delta Trail

Solano County Board of
 Supervisors

SUMMARY: This agenda item includes resolutions to support the planning for the Great California Delta Trail which the Delta Protection Commission (Commission) is required to conduct, pursuant to Senate Bill 1556 (Torlakson). These two resolutions were presented at the May 2012 Commission meeting for consideration, but not voted upon due to lack of quorum at the meeting. Language changes have since been made to both resolutions, and redlined and clean versions are attached to this memo. Cover letters have also been developed for submittal of the resolutions to the appropriate entities. Additionally, a letter of support from the Friends of the Sacramento River Parkway is attached. The resolutions are as follows:

Yolo County Board of
 Supervisors

Cities of San Joaquin County

1. 01-12 - Bicycle Lanes in the Delta Along Improved Delta Levees. At the May 2012 Commission meeting, Commission staff was directed to work with California Resources Agency staff on the language for this resolution. Additionally, the Friends of the Sacramento River Parkway have provided language which they would like to see incorporated into this resolution. The attached version of this resolution includes the changes made from discussions with both entities.

Cities of Contra Costa and
 Solano Counties

Cities of Sacramento and
 Yolo Counties

2. 02-12 - Bicycle Lanes in the Delta Along State Routes 4, 12, and 160

Central Delta Reclamation Districts

North Delta Reclamation Districts

South Delta Reclamation Districts

STAFF RECOMMENDATION: Adopt resolutions 01-12 and 02-12.

Business, Transportation and
 Housing

Attachments

Department of Food and
 Agriculture

- 1) Cover letter for Resolution 01-12
- 2) Resolution 01-12 (redlined version)
- 3) Resolution 01-12 (clean version)
- 4) Cover letter for Resolution 02-12
- 5) Resolution 02-12 (redlined version)
- 6) Resolution 02-12 (clean version)
- 7) Letter of support from Friends of the Sacramento River Parkway

Natural Resources Agency

State Lands Commission

DELTA PROTECTION COMMISSION

2101 Stone Blvd., Suite 210
 West Sacramento, CA 95691
 Phone (916) 375-4800 / FAX (916) 376-3962
 Home Page: www.delta.ca.gov



Contra Costa County Board of Supervisors

July 27, 2012

Sacramento County Board of Supervisors

Central Valley Flood Protection Board

Contra Costa County

San Joaquin County Board of Supervisors

Delta Reclamation Districts

Solano County Board of Supervisors

Department of Water Resources

Yolo County Board of Supervisors

Sacramento County

San Joaquin County

Cities of San Joaquin County

Solano County

Cities of Contra Costa and Solano Counties

Yolo County

Cities of Sacramento and Yolo Counties

Subject: Resolution of Support for Bicycle Lanes in the Sacramento-San Joaquin Delta Along Improved Delta Levees

Central Delta Reclamation Districts

To Whom It May Concern:

North Delta Reclamation Districts

Attached is a resolution of support from the Delta Protection Commission for the incorporation of improved bicycle lanes (class II lanes, or class I lanes if feasible) along levees in the Sacramento-San Joaquin Delta; as Delta levees are designed, engineered, and upgraded. Please contact the Commission office if you have any questions. Thank you.

Business, Transportation and Housing

Sincerely,

Department of Food and Agriculture

Natural Resources Agency

Michael Machado
 Executive Director

State Lands Commission

Attachment: Resolution of Support for Bicycle Lanes in the Sacramento-San Joaquin Delta Along Improved Delta Levees

RESOLUTION of Support for Bicycle Lanes in the Sacramento-San Joaquin
Delta Along Improved Delta Levees

01-12

WHEREAS, the California Constitution, Article 10, Section 4, guarantees a public right of access to the navigable waterways of the State, including our treasured Sacramento-San Joaquin Delta.

WHEREAS, SB 1556 (Torlakson) mandates the Delta Protection Commission to prepare a plan for the Great California Delta Trail System which is to be a continuous regional recreation corridor that will extend around the Sacramento-San Joaquin Delta; including, but not limited to, the Delta's shorelines in Contra Costa, Solano, San Joaquin, Sacramento, and Yolo Counties.

WHEREAS, California Water Code section 11910 requires that the Department of Water Resources incorporate recreational features in flood control projects, such as levees, when consistent with other uses of the projects, and section 11910 mandates that the Department coordinate planning for recreation with other state agencies.

WHEREAS, the landscape of the Delta poses challenges for the development of a regional trail system as it is predominantly agricultural land in private ownership surrounded by narrow levee roads.

WHEREAS, as levee improvements are made, improved bicycle lanes (class II or class I if feasible) could be incorporated into a wider surface corridor.

WHEREAS, improved bicycle lanes (class II bicycle lanes, or class I lanes if feasible) along this these levees could be incorporated in into the California Delta Trail system to help fulfill SB 1556.

WHEREAS, such bicycle lanes would also support other plans which focus on the enhancement of Delta recreation to assist with economic sustainability of the region in a way that is consistent with the Delta Reform Act of 2009 and defining the Delta as an evolving place including California State Park's *Recreation Proposal for the Sacramento San Joaquin Delta and Suisun Marsh*, and the Delta Protection Commission's *Economic Sustainability Plan for the Sacramento-San Joaquin Delta*.

NOW, THEREFORE, BE IT RESOLVED that the Delta Protection Commission staff work with the Central Valley Flood Protection Board; the counties of Contra Costa, Sacramento, San Joaquin, Solano, and Yolo; Delta Reclamation Districts; and the Department of Water Resources to encourage hereby supports that the Department of Water Resources considers the incorporation of improved bicycle lanes (class II lanes, or class I lanes if feasible) as Delta levees are designed, engineered and upgraded-; and

BE IT FURTHER RESOLVED that the Delta Protection Commission hereby encourages the Department of Water Resources to revise and amend Department regulations and policies to make them consistent with the public policy of the State to encourage public access to waterways, and to increase opportunities for the public to use levees for nonmotorized recreation and transportation.

PASSED AND ADOPTED, this ~~26th~~^{24th} day of ~~July~~^{May} 2012:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chair, Delta Protection Commission

RESOLUTION of Support for Bicycle Lanes in the Sacramento-San Joaquin
Delta Along Improved Delta Levees

01-12

WHEREAS, the California Constitution, Article 10, Section 4, guarantees a public right of access to the navigable waterways of the State, including our treasured Sacramento-San Joaquin Delta.

WHEREAS, SB 1556 (Torlakson) mandates the Delta Protection Commission to prepare a plan for the Great California Delta Trail System which is to be a continuous regional recreation corridor that will extend around the Sacramento-San Joaquin Delta; including, but not limited to, the delta's shorelines in Contra Costa, Solano, San Joaquin, Sacramento, and Yolo Counties.

WHEREAS, California Water Code section 11910 requires that the Department of Water Resources incorporate recreational features in flood control projects, such as levees, when consistent with other uses of the projects, and section 11910 mandates that the Department coordinate planning for recreation with other state agencies.

WHEREAS, the landscape of the Delta poses challenges for the development of a regional trail system as it is predominantly agricultural land in private ownership surrounded by narrow levee roads.

WHEREAS, as levee improvements are made, improved bicycle lanes (class II or class I if feasible) could be incorporated into a wider surface corridor.

WHEREAS, improved bicycle lanes (class II bicycle lanes, or class I lanes if feasible) along these levees could be incorporated into the California Delta Trail system to help fulfill SB 1556.

WHEREAS, such bicycle lanes would also support other plans which focus on the enhancement of Delta recreation to assist with economic sustainability of the region in a way that is consistent with the Delta Reform Act of 2009 and defining the Delta as an evolving place including California State Park's *Recreation Proposal for the Sacramento San Joaquin Delta and Suisun Marsh*, and the Delta Protection Commission's *Economic Sustainability Plan for the Sacramento-San Joaquin Delta*.

NOW, THEREFORE, BE IT RESOLVED that the Delta Protection Commission staff work with the Central Valley Flood Protection Board; the counties of Contra Costa, Sacramento, San Joaquin, Solano, and Yolo; Delta Reclamation Districts; and the Department of Water Resources to encourage the incorporation of improved bicycle lanes (class II lanes, or class I lanes if feasible) as Delta levees are designed, engineered and upgraded; and

BE IT FURTHER RESOLVED that the Delta Protection Commission hereby encourages the Department of Water Resources to revise and amend Department regulations and policies to make them consistent with the public policy of the State to encourage public access to waterways, and to increase opportunities for the public to use levees for nonmotorized recreation and transportation.

PASSED AND ADOPTED, this 26th day of July 2012:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chair, Delta Protection Commission

DELTA PROTECTION COMMISSION

2101 Stone Blvd., Suite 210
 West Sacramento, CA 95691
 Phone (916) 375-4800 / FAX (916) 376-3962
 Home Page: www.delta.ca.gov



Contra Costa County Board of Supervisors

July 27, 2012

Sacramento County Board of Supervisors

California Transportation Commission
 1120 N Street
 Room 2221 (MS-52)
 Sacramento, CA 95814

San Joaquin County Board of Supervisors

CALTRANS
 P.O. Box 942873
 Sacramento, CA 94273-0001

Solano County Board of Supervisors

Subject: Resolution of Support for Bicycle Lanes in the Sacramento-San Joaquin Delta Along State Routes 4, 12 and 160

Yolo County Board of Supervisors

Cities of San Joaquin County

To Whom It May Concern:

Cities of Contra Costa and Solano Counties

Attached is a resolution of support from the Delta Protection Commission for the California Transportation Commission and/or Caltrans to consider the incorporation of bicycle lanes (class II lanes, or class I lanes if feasible) in current or future improvement planning efforts for State Routes 4, 12, and 160 in the Sacramento-San Joaquin Delta. A letter specifically recommending that plans for bicycle lanes be incorporated into the final *State Route 12 Comprehensive Corridor Evaluation and Management Plan* was sent to Barbara Hempstead of Caltrans District 10 on April 18, 2012. Please contact the Commission office if you have any questions. Thank you.

Cities of Sacramento and Yolo Counties

Central Delta Reclamation Districts

North Delta Reclamation Districts

South Delta Reclamation Districts

Sincerely,

Business, Transportation and Housing

Department of Food and Agriculture

Michael Machado
 Executive Director

Natural Resources Agency

cc: Barbara Hempstead, Caltrans District 10

State Lands Commission

Attachment: Resolution of Support for Bicycle Lanes in the Sacramento-San Joaquin Delta Along State Routes 4, 12 and 160

RESOLUTION of Support for Bicycle Lanes in the Sacramento-San Joaquin Delta
Along State Routes 4, 12 and 160

02-12

WHEREAS, SB 1556 (Torlakson) mandates the Delta Protection Commission to prepare a plan for the Great California Delta Trail System which is to be a continuous regional recreation corridor that will extend around the Sacramento-San Joaquin Delta; including, but not limited to, the Delta's shorelines in Contra Costa, Solano, San Joaquin, Sacramento, and Yolo Counties.

WHEREAS, the landscape of the Delta poses challenges for the development of a regional trail system as it is predominantly agricultural land in private ownership surrounded by narrow levee roads.

WHEREAS, a Corridor Management Plan for State Route 12 is currently being developed by a team that includes representatives from Caltrans, the Metropolitan Transportation Commission, San Joaquin Council of Governments, Sacramento Area Council of Governments, and Solano Transportation Authority. This Plan will encompass the 52 mile stretch of State Route 12 from State Route 29 to 1-5 which bisects the Delta and passes through 3 Delta counties: Solano, Sacramento, and San Joaquin.

WHEREAS, improved bicycle lanes (class II bicycle lanes, or class I lanes if feasible) along this portion of State Route 12 could be incorporated into the California Delta Trail system to help fulfill the mandates of SB 1556.

WHEREAS, such bicycle lanes would also support other plans which focus on the enhancement of Delta recreation to assist with economic sustainability of the region in a way that is consistent with the Delta Reform Act of 2009 and defining the Delta as an evolving place including California State Park's *Recreation Proposal for the Sacramento San Joaquin Delta and Suisun Marsh*, and the Delta Protection Commission's *Economic Sustainability Plan for the Sacramento-San Joaquin Delta*.

NOW, THEREFORE BE IT RESOLVED that the Delta Protection Commission hereby supports that:

- 1) Improved bicycle lanes (class II bicycle lanes, or class I lanes if feasible) are incorporated into the Corridor Management Plan for State Route 12 along the fullest extent of the corridor as possible
- 2) bicycle lanes (class II bicycle lanes, or class I lanes if feasible) are incorporated into future Caltrans [and/or California Transportation Commission](#) planning efforts for the Sacramento-San Joaquin Delta portions of State Routes 4 and 160.

PASSED AND ADOPTED, this ~~24th~~26th day of ~~May~~July 2012:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chair, Delta Protection Commission

RESOLUTION of Support for Bicycle Lanes in the Sacramento-San Joaquin Delta
Along State Routes 4, 12 and 160

02-12

WHEREAS, SB 1556 (Torlakson) mandates the Delta Protection Commission to prepare a plan for the Great California Delta Trail System which is to be a continuous regional recreation corridor that will extend around the Sacramento-San Joaquin Delta; including, but not limited to, the Delta's shorelines in Contra Costa, Solano, San Joaquin, Sacramento, and Yolo Counties.

WHEREAS, the landscape of the Delta poses challenges for the development of a regional trail system as it is predominantly agricultural land in private ownership surrounded by narrow levee roads.

WHEREAS, a Corridor Management Plan for State Route 12 is currently being developed by a team that includes representatives from Caltrans, the Metropolitan Transportation Commission, San Joaquin Council of Governments, Sacramento Area Council of Governments, and Solano Transportation Authority. This Plan will encompass the 52 mile stretch of State Route 12 from State Route 29 to 1-5 which bisects the Delta and passes through 3 Delta counties: Solano, Sacramento, and San Joaquin.

WHEREAS, improved bicycle lanes (class II bicycle lanes, or class I lanes if feasible) along this portion of State Route 12 could be incorporated into the California Delta Trail system to help fulfill the mandates of SB 1556.

WHEREAS, such bicycle lanes would also support other plans which focus on the enhancement of Delta recreation to assist with economic sustainability of the region in a way that is consistent with the Delta Reform Act of 2009 and defining the Delta as an evolving place including California State Park's *Recreation Proposal for the Sacramento San Joaquin Delta and Suisun Marsh*, and the Delta Protection Commission's *Economic Sustainability Plan for the Sacramento-San Joaquin Delta*.

NOW, THEREFORE BE IT RESOLVED that the Delta Protection Commission hereby supports that:

- 1) Improved bicycle lanes (class II bicycle lanes, or class I lanes if feasible) are incorporated into the Corridor Management Plan for State Route 12 along the fullest extent of the corridor as possible
- 2) bicycle lanes (class II bicycle lanes, or class I lanes if feasible) are incorporated into future Caltrans and/or California Transportation Commission planning efforts for the Sacramento-San Joaquin Delta portions of State Routes 4 and 160.

PASSED AND ADOPTED, this 26th day of July 2012:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chair, Delta Protection Commission

Friends of the



Sacramento
River Parkway

(Supporting public access and
recreation along the Sacramento River)

July 11, 2012

VIA E-MAIL (DPC@DELTA.CA.GOV) AND U.S. MAIL

Delta Protection Commission
2101 Stone Blvd., Suite 210
West Sacramento, CA 95691

Dear Executive Director Michael Machado and Honorable Commissioners:

The Friends of the Sacramento River Parkway (“FSRP”) has learned of the Commission’s interest in a resolution to urge the Department of Water Resources to incorporate improved bicycle lanes along levees in the Sacramento-San Joaquin Delta as delta levees are designed, engineered, and upgraded. FSRP applauds your efforts, but we also wish to propose some additions to the Commission’s resolution to provide further legal and factual support for these efforts.

FSRP’S INTEREST

FSRP (formerly Friends of the Sacramento River Greenway) is an unincorporated association of individuals who seek the completion of the Sacramento River Parkway, a plan endorsed by the City of Sacramento 37 years ago and reaffirmed 15 years ago, for a multi-use trail on the Sacramento River levee. More immediately, FSRP is lobbying for and researching the means to complete the Parkway through Sacramento’s Little Pocket and Pocket neighborhoods where two detours through busy city streets, neighborhoods, and confusing passages through greenways and along canals stifle use of the Parkway.

The vision for the Great California Delta Trail is for a continuous recreational corridor linking the San Francisco Bay Trail system to the Sacramento River trails. However, the vision will be seriously shortchanged if the Parkway continues to elude completion. Without the Sacramento River Parkway as a link to the American River Parkway and other regional and municipal trails, much of Sacramento’s populace will lack a bicycle and pedestrian-friendly path to the Great California Delta Trail. This will discourage utilization of the Great California Delta Trail, or encourage users to drive cars to access points, eroding some of the environmental benefits that recreational trails promise.

BASIS FOR REVISIONS TO PROPOSED RESOLUTION 01-12

In addition to the reasons that the Commission cites for the incorporation of “bicycle trails” in levee plans by the Department of Water Resources (“DWR”), additional reasons not only support but mandate DWR’s cooperation. However, we note initially that “bicycle trails” is a misnomer. These are really multi-use trails available to walkers, dog-walkers, joggers, runners, wheelchairs, bicycles, tricycles and other conveyances that do not impede others from using these trails for recreation and non-motorized transportation.

Incorporating multi-use trails in levee plans serves an important public policy enshrined in the California Constitution:

No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

Cal. Const. Art. X, § 4 (public right of access to waterways)). The “public trust doctrine” as embodied in the California Constitution, in statutes, and in the common law binds all state agencies. *See National Audubon Society v. Superior Court*, 33 Cal. 3d 419, 446-47 (1983) (explaining that public trust doctrine imposes “an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible”). In spite of this policy, regulations of the Central Valley Flood Protection Board (“CVFPB”) and DWR permit bicycle trails, but create the presumption that the trail should be off levees. *See* Cal. Code Regs., tit. 23, § 132(a)(1) (“Where feasible, the bicycle trail must be located off of the levee.”). FSRP has submitted comments urging CVFPB to reconsider this and other short-sighted provisions of its regulations (see first attachment).

Not only do current regulations give short shrift to the public’s right of access, they ignore statutory direction to consider recreational uses in the planning of levees, just as your proposed resolution urges:

There shall be incorporated in the planning and construction of each project those features . . . that the department . . . determines necessary or desirable . . . for recreational purposes to the extent that those features are consistent with other uses of the project, if any. It is the intent of the Legislature that there shall be full and close coordination of all planning . . . for recreation in connection with state water projects by and between the Department of Water Resources, the Department of Parks and Recreation, . . . and all appropriate federal and local agencies.

Cal. Water Code § 11910.

Yet one more reason supports the incorporation of recreational elements in levees: flood safety. Multi-use trails atop levees provide a paved, stable surface for levee inspectors and for quick response to emergencies – a trail that is financed by local agencies and private funding sources rather than by the State. As FSRP discussed in comments on the proposed Urban Levee Design Criteria (see second attachment), multi-use trails can ensure that many more eyes are watching for developing problems in a flood fight. As we stated in our comments, “When the public is actively discouraged from using levees, the public cannot assist in these efforts.”

Based on the foregoing, FSRP respectfully recommends some augmentation of the Commission’s proposed resolution 01-12. We have provided in redline and clean copy a revised resolution that incorporates our thoughts. If the Commission also agrees with our comments to the Working Draft of Proposed Technical Amendments to Title 23 of the California Code of Regulations and to the proposed Urban Levee Design Criteria, we urge the Commission to draft letters supporting or expanding upon our comments.

We will endeavor to have one or more of our members at your meeting on July 26 when the Commission is due to consider resolution 01-12, and we would be happy at that time to answer any questions or concerns. Of course, we are also happy to address any such questions or concerns in advance of that meeting. Please address them in the first instance to Jim Houpt, who is the primary author of our comments. You can reach him by phone at 916-396-7239, or by e-mail at [jhaupt@jhauptlaw.com](mailto:jhoupt@jhauptlaw.com).

We sincerely thank you for your consideration of these recommendations.

Very truly yours,



Anne Rudin
Former Mayor, City of Sacramento
And Founding Member, FSRP

Friends of the



Sacramento
River Greenway

(Supporting public access and
recreation along the Sacramento River)

February 23, 2012

Central Valley Flood Protection Board
3310 El Camino Avenue, Room 151
Sacramento, CA 95821

Re: Comments to the Working Draft of Proposed Technical Amendments to
Title 23, May 2011

Dear Mr. President and Honorable Board Members:

We write as members of the Friends of the Sacramento River Greenway (“FSRG”) to provide comments on the Working Draft of Proposed Technical Amendments to Title 23 of the California Code of Regulations (“Working Draft”).

FSRG’S INTEREST

FSRG is an unincorporated association of individuals who seek the completion of the Sacramento River Greenway, a multi-use trail envisioned by the California State Lands Commission for both sides of the Sacramento River. Consistent with that goal, FSRG is pursuing the completion of the Sacramento River Parkway, the plan by the City of Sacramento for a multi-use trail on the Sacramento side of the river. More immediately, FSRG is lobbying for and researching the means to complete the Parkway through the Little Pocket and Pocket neighborhoods.

In addition to our interest in the Greenway and the Parkway, our members are residents of the Land Park, Little Pocket, and Pocket neighborhoods. As such, we have a vital interest in flood protection. Therefore, we fully support the Board’s efforts, and we recognize and appreciate that Board’s paramount concern must be flood protection. However, as explained below, we believe that the Greenway, the Parkway, and similar projects may provide synergies that allow the flood protection system to provide multiple-use benefits and cost-sharing opportunities that promote not just public safety, but also the public’s need for transportation and recreation.

FSRG anticipates that it will submit public comments on the pending draft of the Central Valley Flood Protection Plan, and that our comments here will be fully consistent with and complementary of our comments on the CVFPP. We will also remain involved as the Board continues its consideration of these issues.

PRELIMINARY COMMENTS

The Public Trust Doctrine

We note again that flood prevention must be CVFPB's priority over all other concerns. However, our review of past actions by the Reclamation Board gives us concern that prior Boards may have ignored an important aspect of California law and policy: the public trust doctrine. We respectfully recommend that the Board consider this issue as it reviews our comments and as it discusses the Working Draft.

As embodied in the California Constitution since 1879, the public trust doctrine protects our right to access waterways such as the Sacramento River:

No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

Cal. Const. X, § 4 (public right of access to waterways)). The constitutional provision is an aspect of the public trust doctrine, which dates to the founding of our great country and was embraced by California when the state entered the union in 1850. The legislature designated the California State Lands Commission in 1938 as the primary guardian of public trust lands. Thus, in addition to encroachment permits from the Board, residents along waterways like the Sacramento River need a lease from the Commission for boat docks and similar installations because these installations are on public land.

Though the Commission has the legislative charge to protect public trust lands, all agencies – including this Board – are under the same duty to protect and enforce the public trust doctrine. *See National Audubon Society v. Superior Court*, 33 Cal. 3d 419, 446-47 (1983) (explaining that public trust doctrine imposes “an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible”; actions should not cause “unnecessary and unjustified harm to trust interests”).

Residents of the Pocket and Little Pocket neighborhoods installed some fences down to the river's waterline. To the extent these fences were approved by past Boards, they failed to protect and enforce the public's right. If the Board allows these fences to remain without a plan to phase them out, the Board may well deny a vital right to the public. These fences not only increase flooding risk, as the Board's staff and the Army Corps of Engineers have testified, the fences have given a relative handful of residents – approximately 111 homes – a false belief that they have a privacy and security right that is not subject to compromise. Rather than providing for their own privacy and security, they have used the levees as their backyard. Then they argue that their false right trumps the public's right. Regrettably, by their seeming failure to consider the public trust when granting encroachment permits years ago, past Boards may have been complicit in creating this attitude. When the fences increase flood risk for the thousands of residents in the Pocket and Little Pocket, this Board should not be complicit by allowing the fences to remain without a plan for their ultimate removal.

We urge the Board to coordinate with the Commission in the future to ensure that the public trust is preserved and protected, and to consult with the Commission to ensure that past actions are consistent with the interests protected by the public trust doctrine.

The Risks of Existing Fences and Gates

By allowing the continued existence of fences and gates, and by creating a presumption in favor of new gates, the Working Draft fails to address flooding risks that the Board's staff and others have complained about for a number of years. FSRG does not understand how the Board can allow this risky situation to continue, especially when many of the fences also appear to violate the public's rights as embodied in the public trust doctrine.

Your staff have complained over a long period of time that the fences and gates exacerbate flooding risks. In 2005, your former chief engineer, Steven Bradley, testified against a fence application:

“Staff is recommending denial of this. Like I said, the fence is really – is not for flood control and it does impact. It's just one more fence that's going across the levee. We already have more than we want down there. Every time the inspectors got to go through there they unlock the fence, have to relock it and go on. Have to make sure they have those keys. Have to make sure somebody doesn't put a lock on there that's not one of the state locks or compatible with a state lock, which happens in a lot of our areas, not just the Pocket area. But people do, especially in the ag areas, a lot farmers will slap their own lock on.

“Like I said before, the removable sections of the fence require active management during a flood event. That means somebody has to be there, has to remember to remove those fences so that they don't collect debris and block the flow of water or, worse, redirect the flow towards the levee.”

Transcript, Reclamation Board, June 17, 2005, at 80-81.

“The reason the Board – or staff is recommending denial of this permit is it’s a problem for flood control. It’s one more – out of all the ones we don’t want there to begin with that they have to go through, it is one more fence that has to be addressed during the flood where they have remove it on the water side. These are flood control issues.”

Id. at 113. Your prior secretary and current board member, Bill Edgar, has also expressed concerns about the fences and gates:

“And, as Steve pointed out, from our perspective, when we’re maintaining and operating those levees – and I believe this is in Maintenance Area 9 – the staff goes down there. It’s hard to do that when you have to unlock and lock all of these fences. And there are eight of them in that area.

“And when you get into a flood fight, to be able to say – or to have a situation occur where you’re required to ask the city to remove the fence before you start the flood fight, that’s just a lot of time and effort that you shouldn’t have to expend.”

Id. at 116.

More recently, the U.S. Army Corps of Engineers has expressed its concerns fences and gates, as reflected in the testimony of Meegan Nagy in January 2011:

“During our recent inspections, we have had significant issues with access, especially along the private property in the Sacramento area. Even along this area, if we have a lock on it, it tends to get cutoff, you get to the gate, you can’t get through it, unless you use the universal lock removers on that, and then people get angry. So we’ve had universal issues across the Board with access.

“If you’ve driven down the levee in the Pocket, you’ve heard about the 14 fences. And it might not sound like a lot, but when you drive through there, it is a huge pain to get through that area. And when we bring people out, we want to show them areas of the levee, I mean, we even have the conversation, do you really want to go through the Pocket. It’s such a pain to drive through there. We usually have to send somebody out in advance, go through open all of the gates in advance of us. It becomes a big problem.

“The fence on the – the portion of the fence on the waterside, I don’t think you’re going to see the Corps approve any of those ever again, unless it’s a very unique situation. That catches debris when the water is high. It just causes a problem.

“And we talk about removable fences, but human nature is they’re not going to remove it. By the time they figure out the water is coming up, they’re trying to do other things. They’re not going to remove the removable pieces of the fences. So I don’t think you’ll ever see us approving a portion of the fence on the waterside.

“And we talked about – I don’t know where every property line is where the State owns the levee versus where it’s a private property owner. But if you think about Mr. Murphy’s argument and allowing every private property owner to do a fence similar to him to protect his dogs and his grandchildren, the amount of fences that you would have, not just in the Pocket but in the system, would be unmanageable.

“And so the precedent that it sets, based on protecting the animals and the grandchildren, everybody can have that argument. And we need to have – we need to think about that as we set standards.

“And also it leads to the next question, if the safety hazard is the grandchildren and you have the fences on either end, the bigger hazard is the water. Is the next question to be have a parallel fence on the waterside as well. We need to think about what could lead from this approval as well.

“The other thing that we’ve noticed on our inspections recently is when we see private property owners put a fence that runs perpendicular to the levee, the levee becomes more of their own. And I think I heard that the property owner is actually below the levee. I’m not sure how that easement works. But just human nature, they start to take the levee as their own property and they just start doing other things on the levee. It’s just human nature. And so that’s the other thing that I think it encourages.”

Transcript, Central Valley Flood Protection Board, January 28, 2011, at 131-33. We have seen time and again that Ms. Nagy’s observation is correct: allowing homeowners to construct fences and gates causes the homeowners to claim rights they do not have under the public trust doctrine.

We understand that the Board has not traditionally required proof of liability insurance for fences and gates, but has required homeowners to agree to indemnify the state for loss. Most homeowners are unlikely to have the wherewithal to reimburse the state for serious damage to levees caused by debris buildup and erosion. Most homeowners’ insurance policies, even if the insurer agrees to cover the loss, will be unable to reimburse the state fully. In the case of a major levee failure caused by a fence, the indemnification will not be worth the paper it’s written on.

Given the history and the indemnity issues, we agree that a regulation permitting perpendicular fences across the levee did not satisfy the Board's duty to provide for flood safety. Therefore, we agree with amendments to your regulations that prohibit future fences. However, FSRG believes that the proposed amendments do not go far enough. We cannot support regulations that permit continuation of the status quo without clear guidance for terminating that status. California and other jurisdictions have long recognized that phasing out non-conforming uses as they are damaged or destroyed is permissible without implicating due process concerns. *See, e.g., Sabek, Inc. v. County of Sonoma*, 190 Cal. App. 3d 163, 167 (1987) ("The object of such a provision is the gradual elimination of the nonconforming use by obsolescence or destruction by fire or the elements, and it has been frequently upheld by the courts." (quoting *Rehfeld v. San Francisco*, 218 Cal. 83, 84 (1933))). At the least, regulations should provide clearly and unmistakably for the removal of waterside fences as they are damaged or destroyed.

While the FSRG proposes clearer standards for removal of fences, we also recommend that the Board ask its staff to consider whether the waterside fences, in particular, are a serious enough hazard that they constitute a nuisance. A long line of federal and state cases holds that an injunction requiring the cessation or removal of public nuisance is not an unconstitutional taking of private property, and does not require compensation to the owner. *See, e.g., Mohilief v. Janovici*, 51 Cal. App. 4th 267 (1996). But even if removal required compensation to the owner, we believe that the value of the fences is negligible, particularly when compared to the risks that they pose. Therefore, we respectfully recommend that the Board ask its staff to consider the means to remove all waterside fences from the Sacramento River levee.

On the related matter of gates, FSRG is concerned that the existing and amended regulations give no attention to the risks created by gates, as your staff and the Army Corps of Engineers have described them. At a minimum, the amendment should not create an impression that gates are presumptively allowed. We urge the Board to approve new gates only on a particularized showing of need balanced against the risks and availability of alternatives. Over the longer term, FSRG respectfully recommends that the Board pursue strategies to remove existing gates, except where necessary to limit unauthorized vehicle access to the levee. We note that the Board's support for the Sacramento River Parkway would further this goal.

The Benefits of Bicycle Trails

We note here at the outset that the term, "Bicycle Trails," is a misnomer. The multi-use trail on parts of the Sacramento River levee south of Old Sacramento is used by walkers and runners, in addition to bicyclists, just as a variety of users coexist on the American River Parkway. Because mile-markers line the trails, these multi-use trails are particularly useful to train for long-distance races, or for those who simply wish to track their fitness progress. Thus, the multi-use trails encourage health and fitness. Plans by the Delta Protection Commission for the Great California Delta Trail promise the extension of these benefits over longer distances, and to a much greater population.

The multi-use trails encourage alternatives to the automobile for transportation and, therefore, reduce pressure for the construction of new roads, improvement of existing roads, and repair to roads from overuse. The current situation on the Sacramento River Parkway, where walkers and bicyclists must detour from the levee for long distances, discourage the use of the Parkway for transportation. Bicyclists are at increased risk where they must mix with automobile traffic on busy roads that are ill-suited to bicycle traffic.

As written, the Board's regulations do not recognize these and additional benefits of multi-use trails atop levees. However, the encouragement of the multi-use trail is consistent with the proposed Central Valley Flood Protection Plan ("CVFPP"), which encourages the development of multiple uses and benefits for flood control assets. Uses of levees for transportation, public health, and recreation do not increase flooding risks and, in fact, may enhance surveillance and maintenance.

As currently written, the Board's regulations permit bicycle trails, but create the presumption that the trail should be off the levee "where feasible." FSRG respectfully suggests that this is short-sighted, causing planners to choose off-levee routes when an on-levee route creates distinct advantages for levee maintenance crews. Even though a bicycle trail is not constructed to the higher standards for an on-levee maintenance road, the bicycle trail is far preferable to a gravel surface. Driving on a gravel surface can be difficult and risky. Vehicles can more easily damage the levee and create channels for erosion when a gravel surface alone protects the levee structure. Another goal of the proposed CVFPP is to provide additional all-weather access roads to the levees for maintenance crews. Bicycle trails also require all-weather access roads, serving both the goals of transportation/recreation and flood safety.

Furthermore, users of a bicycle trail can greatly extend and expand the ability of maintenance crews to identify potential risks. "Be Flood Safe" signs can train and encourage users to spot and report problems like burrowing animals and erosion. The hearty souls who venture out during and shortly after storms can spot active erosion and boils. When the public is actively discouraged from using levees, the public cannot assist in these efforts.

Yet another goal of the CVFPP is to encourage cost sharing for the improvement of flood management projects. Bicycle trails create a synergism to advance this goal. Federal and state transportation funds, and even private grants and individual donations are available to construct and maintain bicycle trails and all-weather access roads.

FSRG does not recommend that the regulations create a presumption for placing bicycle trails on levee crowns, but rather the elimination of the presumption that bicycle trails should be off levees "where feasible." The Board and its staff can make case-by-case assessments about the advisability of trails on and off the levee. However, creating the presumption that bicycle trails should be off the levee will cause planners to look for alternatives to trails on the levee crown, and deny possible benefits from bicycle trails on levees.

COMMENTS ON THE WORKING DRAFT¹

§ 107

FSRG PROPOSED REVISION TO PREAMBLE (PAGE 18/75):

The following uses may be permitted in the designated floodway so long as alone or cumulatively, in the judgment of the ~~board~~Board, they will not unduly impede the free flow of water in the floodway or jeopardize public safety, and are otherwise in compliance with all requirements of these regulations:

DISCUSSION: Subsection (b) relating to fences does not capture all restrictions that are contained in section 126 (including the requirements that fences may not “interfere with or preclude legal public access”). *See* § 126, subsec. (e). The proposed revision makes clear that section 107 does not provide an independent basis for fences or other encroachments.

§ 108

FSRG PROPOSED REVISION TO SUBSECTION (a)(2) (PAGE 19/75):

Nonconforming existing encroachments that do not have a major detrimental impact on an adopted plan of flood control or on project facilities shall be allowed to continue under a permit or order until abandoned or until they are destroyed or damaged, by any cause, to the cumulative extent of more than fifty (50) percent of their market value, their replacement cost, or their physical usefulness ~~during any 10-year period.~~

DISCUSSION: FSRG presumes that the added phrase, “a major detrimental impact on an adopted plan of flood control or on project facilities,” will allow the Board to revoke encroachment permits whenever fences or other obstructions create or demonstrate that they have created an increased risk to the structure and stability of a levee. If the phrase does not effect that presumption, FSRG recommends a revision to ensure that the Board retains authority to act quickly when fences or other obstructions increase flooding risk.

FSRG proposes the addition of “replacement cost” as a better measure of damage for fences that arguably have no “market value” except to the homeowner who has the encroachment permit.

¹ Changes proposed by the Working Draft are underscored or have a single strikethrough line. Changes proposed by FSRG are double-underscored or have a double strikethrough line.

FSRG proposes to strike the reference to “any 10-year period” as ambiguous. Does it mean that a damaged fence must remain in place for 10 years before it must be taken down? FSRG believes, if a non-conforming fence is damaged to the extent described by the regulation, the encroachment permit should be revoked automatically.

FSRG PROPOSED REVISION TO SUBSECTION (a)(3) (PAGE 19/75):

Nonconforming existing encroachments that have a major detrimental impact shall on an adopted plan of flood control or on project facilities and which were in existence at the time of adoption of the plan of flood control or new or revised Article 8 standards may shall, at the discretion of the
~~board~~Board, be removed, abandoned, or suitably modified at no cost to the owner, if they have been in existence prior to the adoption or authorization of a project by the United States or prior to the adoption or authorization of a plan of flood control by the state.

DISCUSSION: The word “may” creates ambiguity. The word could be the basis for an owner to resist removal or modification. FSRG also recommends a revision from “board” to “Board” to be consistent with the use of “Board” as a defined term. FSRG does not undertake to highlight other inconsistencies, but we note this inconsistency in the event that it has escaped staff’s attention.

§ 126

FSRG PROPOSED REVISION TO RE-LETTERED SUBSECTION (c) (PAGE 54/75):

Gates crossing the levee crown are allowed by the Board upon a particularized showing of need by the applicant, and findings by the Board that a gate does not appreciably increase flood risk or harm other interests, and that other measures to restrict access are not reasonable. ~~Gates~~ When allowed, gates within a floodway or on a levee must conform to the following requirements:

DISCUSSION: As discussed more fully above, given the past problems with gates on levees, the Board’s regulations should avoid an inference that gates are presumptively allowed. An applicant should satisfy an evidentiary burden to establish that a gate is necessary, and that a less-restrictive means is not available to serve the need for a gate. Staff and the public should also have the opportunity to provide input on potential risks created by an additional gate, and to comment on possible conflict with other interests, such the City of Sacramento’s long term plans to complete the Sacramento River Parkway.

FSRG PROPOSED REVISION TO RE-LETTERED SUBSECTION (e) (PAGE 55/75):

No fence, gate, wall or other barrier may interfere with or preclude legal public access.

DISCUSSION: FSRG believes that the word “gate” should be included to avoid a possible ambiguity that “barrier” would be interpreted to mean only non-movable objects.

§ 132

FSRG PROPOSED REVISION TO SUBSECTION (a) (PAGE 69/75):

(a) It is the ~~board's~~Board's policy to permit the construction of paved and unpaved bicycle trails by public agencies on levees and within floodways under the ~~board's~~Board's jurisdiction, provided that the flood control purpose of the floodway facilities remains primary. Bicycle trails must meet the following general conditions:

~~(1) Where feasible, the bicycle trail must be located off of the levee.~~

DISCUSSION: For reasons discussed more fully above, FSRG believes that the Board should avoid a presumption that bicycle trails are better located off levees. Placing trails on levee crowns helps to satisfy aspirational goals of the CVFPP. The Board can still make a case-by-case analysis of the risks and benefits for an on-levee trail.

FSRG PROPOSED REVISION TO SUBSECTION (e) (PAGE 71/75):

~~(e) The permittee must address and incorporate into the trail design where necessary concerns for privacy issues.~~

DISCUSSION: FSRG proposes the deletion of the added provision. As drafted, the provision places the burden for protecting privacy entirely on the public agency proposing the bicycle trail. In the Pocket and Little Pocket, where the Parkway has been the public policy of the city for 37 years, homeowners bear some responsibility to plan for privacy protection. The provision is also vague and ambiguous as drafted. The Board always has the discretion to consider privacy issues, but it is unnecessary to create a presumption that the public agency-permittee bears all responsibility for protecting privacy. Additionally, as drafted, this provision could be used to challenge existing bicycle trail permits where homeowners bought property adjacent to existing portions of the Parkway.

* * * *

FSRG stands ready to address any questions or concerns by the Board or its staff. If you have any such questions or concerns, please address them in the first instance to Jim Houpt, who is the primary author of our comments. You can reach him by phone at 916-396-7239, or by e-mail at [jhaupt@jhauptlaw.com](mailto:jhoupt@jhauptlaw.com).

We sincerely appreciate your consideration of these comments.

Very truly yours,

/s/

Anne Rudin
Former mayor, City of Sacramento
And Founding Member, FSRG

Friends of the



Sacramento
River Greenway

(Supporting public access and
recreation along the Sacramento River)

May 4, 2012

Rodney Mayer
Department of Water Resources
3310 El Camino Avenue, Suite 120
Sacramento, CA 95821

Central Valley Flood Protection Board
3310 El Camino Avenue, Room 151
Sacramento, CA 95821

Re: Comments to the November 15, 2011, Urban Levee Design Criteria

Dear Mr. Mayer, President Edgar, and Honorable Board Members:

We write as members of the Friends of the Sacramento River Greenway (“FSRG”) to provide comments on the November 15, 2011, Urban Levee Design Criteria (“ULDC”).

FSRG’S INTEREST

FSRG is an unincorporated association of individuals who seek the completion of the Sacramento River Greenway, a multi-use trail envisioned by the California State Lands Commission for both sides of the Sacramento River. Consistent with that goal, FSRG also pursues the completion of the Sacramento River Parkway, the plan by the City of Sacramento for a multi-use trail on the Sacramento side of the river. More immediately, FSRG is lobbying for and researching the means to complete the Parkway through the Little Pocket and Pocket neighborhoods.

In addition to our interest in the Parkway, our members are residents of the Land Park, Little Pocket, and Pocket neighborhoods. As such, we have a vital interest in flood protection. Therefore, we recognize and appreciate that the ULDC’s sole and primary goal must be flood protection. However, as explained below, we believe the Parkway and similar projects provide greater flood protection than the current system that excludes the public entirely (and illegally) from wide swaths of the levee.

PRELIMINARY COMMENTS

We write to comment specifically on Section 7.18 addressing security issues. Initially, we applaud the Department for recognizing that the public can be a vital partner with the State in providing for flood safety:

The levee maintaining agency should establish a coordinated network partnership consisting of the public and community entities or citizens, who have access to the levee, to report suspicious activity/intrusions to the appropriate authorities. One way to achieve this is through a Neighborhood Watch or See Something, Say Something program through the TLO network to enhance community awareness and focus reporting of suspicious behaviors.

ULDC § 7.18.1 at p. 7-35 (“Networked Deterrence”). FSRG has provided comments to the Working Draft of Proposed Technical Amendments to Title 23 of the California Code of Regulations, in which we noted that public access

can greatly extend and expand the ability of maintenance crews to identify potential risks. “Be Flood Safe” signs can train and encourage users to spot and report problems like burrowing animals and erosion. The hearty souls who venture out during and shortly after storms can spot active erosion and boils. When the public is actively discouraged from using levees, the public cannot assist in these efforts.

In addition, the public can report on dangerous or suspicious activity, whether the activity results from malice or negligence.

Despite the similarity of these views, we note with deep concern the failure of the Department to recognize the risk posed by the private gates and fences on the levee in the Pocket and Little Pocket, almost all of which are in serious violation of their encroachment permits from the CVFPB.

Moreover, the denial of all public access to the levees, as some homeowners have accomplished in violation of their encroachment permits, has created a situation far more dangerous to the residents of Sacramento. Not only do the fences and gates exacerbate the flooding risk themselves, as documented in other comments FSRG has submitted to the Board, they exclude the public from participating in the partnership that the Department described in section 7.18.1, above.

The greatest risk to the levees is not public access, but the denial of public access. In the levee’s current state, a terrorist or just a disgruntled, mentally ill individual could stockpile the means to destroy or seriously damage the levee by purchasing or temporarily occupying a home in one of the gated sections. With gated levees, the public has no means to observe and report on this activity. In a time of budgetary constraint and limited staffing, the Department needs the assistance of the public all the more.

The discussion in the security section of the ULDC implies that the Department believes it can or should exclude the public from the levees entirely for security reasons. We respectfully suggest that, if the Department harbors that belief, not only does it ignore the risk discussed above, but it demonstrates its disregard for the public trust doctrine that ensures access for the public to their waterways at least on the land between “ordinary” high and low water marks of the river. As FSRG explained in previous comments to the Board, such exclusion violates the California Constitution:

No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

Cal. Const. X, § 4 (public right of access to waterways); *see also National Audubon Soc’y v. Superior Court*, 33 Cal. 3d 419, 446-47 (1983) (explaining that public trust doctrine imposes “an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible”; actions should not cause “unnecessary and unjustified harm to trust interests”).

By continuing to allow private gates and fences on the levees, especially those that block public trust access, the Department and Board risk public backlash and even legal action. *See, e.g., National Audubon Soc’y*, 33 Cal. 3d at 431 n.11 (affirming that “any member of the general public has standing to raise a claim of harm to the public trust”); *Marks v. Whitney*, 6 Cal. 3d 251, 261-62 (1971). Rather than risking a breach of the public trust doctrine, the Department and Board should welcome the benefit of public assistance.

The Department and Board can reap other benefits from public access. As FSRG stated in comments on the draft Central Valley Flood Protection Plans, paved multi-use trails (“bicycle trails”) provide a solid base for flood patrols that is preferable to a gravel trail – an improvement financed by local governments and agencies that support transportation alternatives and recreational opportunities. In addition, these projects provide all-weather access roads with bollards that prevent vehicular access – all at no cost to the Department or the Board. For present purposes, such projects financed by local agencies will also facilitate public access to provide the benefits that the ULDC recognizes and that FSRG reiterates here.

Finally, one last point deserves your consideration: In the event of a rapid, catastrophic flood in the Pocket and Little Pocket, the levee may be the only safe haven for many residents. Long ago, the Reclamation Board wrote the recipe for disaster by permitting private homeowners to inhibit public access. Though not specifically an issue of “security” for purposes of the ULDC, emergency access to levees should not continue to be an overlooked issue. The Department and Board can address this issue by addressing public access in the ULDC.

RECOMMENDATION

FSRG respectfully recommends that the Department and Board add text to Section 17 of the ULDC to make clear that denial of public access to levee crowns is not a goal of the ULDC, and to expand on the benefit of public access. Without such an explanation, regulations deriving from the ULDC may fail to capitalize on the foundation of a good idea that the ULDC already contains.

FSRG recommends a penultimate paragraph to Section 7.18.1 along the following lines:

Because public access to levees can provide assistance in detecting and reporting dangerous or suspicious activity, and because the denial of public access can allow dangerous or suspicious activity to go undetected, the levee maintaining agency should support and foster appropriate and complementary public use of levees. The levee maintaining agency should also pursue the elimination of private fences and gates or other privately installed obstructions that deny public access unless the agency can make a finding by a clear and convincing standard that denial of access is in the public interest. If the levee maintaining agency believes it can make that finding, the agency should coordinate with the State Lands Commission to ensure that rights under the public trust doctrine are not unduly burdened by the agency's action.

* * * *

FSRG stands ready to address any questions or concerns from the Department, the Board, or their staff. If you have any such questions or concerns, please do not hesitate to contact me by phone at 916-396-7239, or by e-mail at jhaupt@jhauptlaw.com.

We sincerely appreciate your consideration of these comments.

Very truly yours,

/s/

James E. Hought
Member

RESOLUTION of Support for Bicycle Lanes in the Sacramento-San Joaquin Delta Along Improved Delta Levees

01-12

WHEREAS, the California Constitution, Article 10, Section 4, guarantees a public right of access to the navigable waterways of the State, including our treasured Sacramento-San Joaquin Delta.

WHEREAS, SB 1556 (Torlakson) mandates the Delta Protection Commission to prepare a plan for the Great California Delta Trail System which is to be a continuous regional recreation corridor that will extend around the Sacramento-San Joaquin Delta; including, but not limited to, the delta's shorelines in Contra Costa, Solano, San Joaquin, Sacramento, and Yolo Counties.

WHEREAS, California Water Code section 11910 requires that the Department of Water Resources incorporate recreational features in flood control projects, such as levees, when consistent with other uses of the projects, and section 11910 mandates that the Department coordinate planning for recreation with other state agencies.

WHEREAS, the landscape of the Delta poses challenges for the development of a regional trail system as it is predominantly agricultural land in private ownership surrounded by narrow levee roads.

WHEREAS, as levee improvements are made, improved bicycle lanes (class II or class I if feasible) could be incorporated into a wider surface corridor.

WHEREAS, improved bicycle lanes (class II bicycle lanes, or class I lanes if feasible) along ~~this~~ these levees could be incorporated ~~in~~ into the California Delta Trail system to help fulfill SB 1556.

WHEREAS, such bicycle lanes would also support other plans which focus on the enhancement of Delta recreation to assist with economic sustainability of the region in a way that is consistent with the Delta Reform Act of 2009 and defining the Delta as an evolving place including California State Park's *Recreation Proposal for the Sacramento San Joaquin Delta and Suisun Marsh*, and the Delta Protection Commission's *Economic Sustainability Plan for the Sacramento-San Joaquin Delta* .

NOW, THEREFORE, BE IT RESOLVED that the Delta Protection Commission hereby ~~supports~~ urges ~~that~~ the Department of Water Resources ~~considers the incorporation~~ of to incorporate improved bicycle lanes (class II lanes, or class I lanes if feasible) as Delta levees are designed, engineered and upgraded; and



BE IT FURTHER RESOLVED that the Delta Protection Commission hereby encourages the Department of Water Resources to revise and amend Department regulations and policies to make them consistent with the public policy of the State to encourage public access to waterways, and to increase opportunities for the public to use levees for non-motorized recreation and transportation.

PASSED AND ADOPTED, this 26th day of July 2012:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chair, Delta Protection Commission

RESOLUTION of Support for Bicycle Lanes in the Sacramento-San Joaquin Delta Along Improved Delta Levees

01-12

WHEREAS, the California Constitution, Article 10, Section 4, guarantees a public right of access to the navigable waterways of the State, including our treasured Sacramento-San Joaquin Delta.

WHEREAS, SB 1556 (Torlakson) mandates the Delta Protection Commission to prepare a plan for the Great California Delta Trail System which is to be a continuous regional recreation corridor that will extend around the Sacramento-San Joaquin Delta; including, but not limited to, the delta's shorelines in Contra Costa, Solano, San Joaquin, Sacramento, and Yolo Counties.

WHEREAS, California Water Code section 11910 requires that the Department of Water Resources incorporate recreational features in flood control projects, such as levees, when consistent with other uses of the projects, and section 11910 mandates that the Department coordinate planning for recreation with other state agencies.

WHEREAS, the landscape of the Delta poses challenges for the development of a regional trail system as it is predominantly agricultural land in private ownership surrounded by narrow levee roads.

WHEREAS, as levee improvements are made, improved bicycle lanes (class II or class I if feasible) could be incorporated into a wider surface corridor.

WHEREAS, improved bicycle lanes (class II bicycle lanes, or class I lanes if feasible) along these levees could be incorporated into the California Delta Trail system to help fulfill SB 1556.

WHEREAS, such bicycle lanes would also support other plans which focus on the enhancement of Delta recreation to assist with economic sustainability of the region in a way that is consistent with the Delta Reform Act of 2009 and defining the Delta as an evolving place including California State Park's *Recreation Proposal for the Sacramento San Joaquin Delta and Suisun Marsh*, and the Delta Protection Commission's *Economic Sustainability Plan for the Sacramento-San Joaquin Delta* .

NOW, THEREFORE, BE IT RESOLVED that the Delta Protection Commission hereby urges the Department of Water Resources to incorporate improved bicycle lanes (class II lanes, or class I lanes if feasible) as Delta levees are designed, engineered and upgraded; and



BE IT FURTHER RESOLVED that the Delta Protection Commission hereby encourages the Department of Water Resources to revise and amend Department regulations and policies to make them consistent with the public policy of the State to encourage public access to waterways, and to increase opportunities for the public to use levees for non-motorized recreation and transportation.

PASSED AND ADOPTED, this 26th day of July 2012:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chair, Delta Protection Commission