

Summary Minutes of the  
Delta Protection Commission Meeting  
Wednesday, August 19, 2009

City of Isleton

ADMINISTRATIVE AGENDA

**1. Call to Order/Flag Salute**

Chair Nottoli called the meeting to order at 9:10 a.m.

**2. Roll Call**

**Present:** Chair Nottoli, Commissioners Armor, Brand, Becerra, Dawson, Eggman, Ferguson, Halverson-Martin, Johnston, McGowan, Pegos, Piepho, Ray, Reagan, Ruhstaller, Scriven, van Loben Sels, Vick, Mark Wilson and Daniel Wilson.

**Absent:** Commissioner Cabaldon

CONSENT AGENDA (Items 4-11)

**Public Comment**

Will Middleton, Clarksburg thanked Linda Fiack and the Commission for submitting a letter of comment on the TANC project. Mr. Middleton said he presented the letter to the SMUD Board of Directors which had an impact on deliberations. He also said that the scoping period would be extended. Mr. Middleton said he was concerned because there has been no outreach to, or representation of, rural communities and hoped that the language in the Management Plan regarding transmission lines would be as specific and detailed as possible as it is the only language the Delta has. He praised the County of Yolo for their diligence in monitoring the project.

Commissioner McGowan stated that he concurred with Mr. Middleton in that the language regarding transmission lines should be strengthened because a project such as this would have a huge impact on the Primary Zone.

Peggy Bohl, Clarksburg stated that she had concerns regarding the policies in the Management Plan and how they apply to the TANC project and asked why the language in Utilities and Infrastructure Policy 1 was stricken from the March 26, 2009 to April 23, 2009 Management Plan Update.

Linda Fiack responded that any changes to the Management Plan Update were a reflection of the Commission and Planning Advisory Team Meetings and indicated the language could be changed pursuant to Commission discussion.

Commissioner McGowan moved approval of the Consent Agenda; Commissioner Armor seconded. The Consent Agenda was approved unanimously.

REGULAR AGENDA

**12. A. Consistent with Program Strategies 4 and 5 of the Commission's 2006- 2011 Strategic Plan, and Program Administration Task 5 of the Adopted 2008-2009 Strategic Plan Tasks, Receive Status Update on Senate Bill 458 (Wolk) Sacramento-San Joaquin Delta Conservancy and Informational Update on Related Assembly Bills 13 (Salas) and 642 (Huber).**

**B. CONSIDER ADOPTION of Position of Support for Senate Bill 458 Consistent with Program Implementation Tasks 2 and 5 of the Adopted 2008-2009 Strategic Plan Tasks and the Commission's Comments Provided to the Delta Vision Blue Ribbon Task Force on August 14, 2008, Relative to Structure and Governance Pertaining to Establishment of a Delta Conservancy.**

**C. AUTHORIZE Chair of the Commission to Provide a Letter to Senator Wolk in Support of Senate Bill 458.**

Linda Fiack reported that the item was discussed at the April 23, 2009 meeting because there had been a request for the Commission to support the legislation.

Commissioner McGowan stated that he objected to the Commission taking action on legislation as it was not its role, but the role of the various agencies on the Commission.

Commissioner Piepho stated that she supported Commissioner McGowan's comments, particularly since the five Delta counties comment on legislation individually.

No action was taken on the agenda item and Chair Nottoli asked that Commission staff continue to monitor the bill.

**13. A. Pursuant to Commission Member Direction to Staff in Follow-up to Public Comment Received at the April 23, 2009 Meeting of the Commission, Receive and Discuss Assembly Bill 1253 (Fuller) Striped Bass.**

**B. CONSIDER ADOPTION of Position of Opposition of Assembly Bill 1253.**

**C. AUTHORIZE Chair of the Commission to Provide a Letter to Assemblyman Fuller in Opposition of Assembly Bill 1253.**

Commissioner Armor reported that AB 1253 had been totally gutted and rewritten, and the current iteration adds provisions for CALFED's Independent Science Board to conduct a review of all available predation studies and to look at ways to improve facilities at Clifton Court Forebay to reduce predation.

#### **Public Comment**

Bill Worrell, Antioch stated that the Commission is the only hope that residents and organizations have on this matter. He asked that the Commission make a statement to protect the striped bass and free up monies in the striped bass and Bay Delta restoration funds to re-establish the striped bass fishery as an economic engine for the Delta.

Commissioner Piepho commented that the Commission should be very watchful of the legislation and consider taking an aggressive stand in opposition. She also said that any letter submitted should indicate the Commission's concern for recreation.

Commissioner Piepho moved that staff provide a letter to Assemblyman Fuller in Opposition of Assembly Bill 1253; Commissioner Dawson seconded. The motion was approved 12:0:4 by roll call vote. (abstentions: Commissioner Armor, Kelly, Newton, Ray)

**14. A. Review and Discuss Draft Management Plan Revisions and Amendments Taking into Consideration Information Provided by the Staff Consulting Team Pursuant to Commission Member Requests, and Input on March 26, 2009 and April 23, 2008, and Comments Received Subsequent to the March 26, 2009 Hearing.**

Dorian Fougères, Management Plan Update (MPU) Facilitator reviewed that public workshops were held and a Planning Advisory Team (PAT) was formed to generate an initial draft. The PAT worked through 70 policies; however, four of the policies could not be decided upon; therefore the PAT proposed options. He asked for comments on the four policies and the options.

Commissioner Newton reported that the State Lands Commission submitted comments in April 2009 that have not been included. She asked that a statement be included in the introduction to address climate change.

Commissioner Ruhstaller stated that San Joaquin County had issues with Page 2 of the Introductory Section. He asked that all language be deleted after the third sentence in the second to last paragraph. He also stated that he had extensive remarks that would be submitted later.

Ms. Fiack clarified that clerical edits were made by Commission staff; however, policy edits would have to come before the full Commission. She said that many comments have been submitted, but staff was awaiting the Commission's Comments. She asked that anyone having additional comments give them to staff so they can be sorted out.

Chair Nottoli asked that comments be submitted to staff by June 26, 2009.

Commissioner Piepho suggested that a day long workshop be scheduled in order to work through any comments.

Commissioner McGowan said he was concerned that timing and scheduling would be a problem for him. He also said there is really no deadline on finishing the MPU because current legislation might force the Commission to adjust the Management Plan in order to come into compliance with other plans.

Mr. Fougères asked that staff turn around time be taken into consideration when committing to a workshop meeting date. He also asked that Commissioner's focus on the substantive and not grammatical aspects of the Plan.

Matt Campbell cautioned that when setting the meeting date, the Commission should note that it “shall meet bi-monthly” under Section 29750 of the Delta Protection Act, and any workshop would have to be noticed as a public hearing.

Commissioner Daniel Wilson moved that the July 23, 2009 meeting be cancelled; Commissioner Russell van Loben Sels seconded. The motion was withdrawn.

Commissioner Daniel Wilson moved that the July 23, 2009 meeting be moved to August, 2009; Commissioner Russell van Loben Sels seconded. The motion was approved unanimously.

Commissioner McGowan asked for the rationale to delete language from Utilities and Infrastructure Policy 1, as in his view the deleted language weakens the Commission's ability to deal with the TANC project. He said he agreed with Mr. Middleton and Ms. Bohl to strengthen the Commission's authority over utility lines. He further stated that Yolo County was drafting an ordinance to deal with the issue and he would ask the County to add language to the ordinance that would strengthen the Commission's role. Mr. Fougères responded that some of the language was deleted because of a consensus of the PAT.

Ms. Fiack suggested that the Commission revert to the original language, reflect the revised language in the draft, and then tackle the revisions in their comments.

Commissioner Armor asked if the word “shall” should be included in the language in Policy 1, as the word is used as a requirement and the Commission does not have the authority. Commissioner Russell van Loben Sels responded that if the Commission uses the word “shall” instead of the word “should”, it would abdicate its authority. Mr. Campbell also responded that Section 29716 of the Act states that nothing in this division authorizes the Commission to exercise any jurisdiction over matters within the jurisdiction of, or to carry out its powers and duties in conflict with the powers and duties of, any other state agency.

Commissioner McGowan moved to revert the Utilities and Infrastructure Policy 1 to its original language and include the word “shall”; Commissioner Piepho seconded. The motion was approved unanimously.

Commissioner Rustahler asked that comments under “goals” be included.

Mr. Fougères reported that he invited the five county planners to address a series of questions on buffers. The invitation stemmed from a question at the March 26, 2009 meeting asking if there were consistent policies for buffers in the five Delta counties.

Chandler Martin, San Joaquin County, reported that San Joaquin County has not adopted a Transfer of Development Rights (TDR) program and there were no zoning changes in the Primary Zone in San Joaquin County since the inception of the Delta Protection Act. Mr. Martin said he had no account of residential homes that could be constructed on agriculturally zoned parcels. Mr. Martin said that in San Joaquin County, there are 1,807 parcels in the Primary Zone with 690 parcels zoned Ag-40; 1,086 parcels zoned AG-80; 31 parcels with other zoning and 513 of the existing parcels zoned over the AG-40 or AG-80 lot size. Mr. Martin said

that since 1992 less than 40 residential permits were issued for building in the Delta, with many of those permits issued for rebuilding previous dwellings.

Commissioner Johnston asked if there were any antiquated subdivisions. Mr. Martin reported he did not know but would obtain the information. Commissioner Reagan responded that Solano County won a lawsuit that voided ancient maps and bound State law. He said he would provide a copy of the determination.

Commissioner Reagan (for Mike Yankovich, Solano County Planner) reported that Solano County has somewhat adopted a TDR program in that its General Plan includes a provision for developing TDRs on an ag region by ag region basis. He said that 10 ag regions have been identified and each region will have a contractor-led visioning process. Commissioner Reagan stated that there have been zero zoning changes in the Primary Zone since 1992; there are 613 ag zoned parcels in the Primary Zone in Solano County and 449 of those parcels are deemed undeveloped. In addition, there are 410 additional parcels that could be created in the Primary Zone of the Delta.

David Morrison, Yolo County reported that the County has not adopted a TDR program but was proposing provisions in its 2030 General Plan update. The program would be limited to ag parcels to facilitate farm dwellings and ag farm worker housing. Mr. Morrison said that there have been two zoning changes in the Primary Zone since 1992 (a restaurant that burned down and the adoption of the Clarksburg 2002 general plan). He further stated that he did not know how many legal parcels the County had where residential homes could be constructed on agriculturally zoned parcels in the Primary Zone but the County has 918 assessor parcels in Primary Zone. Furthermore, 238 of those parcels are located in the Yolo Bypass and therefore not developable. Mr. Morrison stated that 744 parcels are outside of the Bypass and 354 of those parcels have an address associated with the parcel but it is not known what type of dwelling. Mr. Morrison stated that there are about 300 parcels where residential homes could be constructed on the land; moreover, 45 homes have been built in the Primary Zone since 1992 and the County has approved 12 parcel maps in the Primary Zone.

Mr. Morrison stated that he did not know how many antiquated subdivisions were located in Yolo County but would try to obtain the information. He reported that the California Supreme Court (Gardner case) ruled that all antiquated subdivision maps were invalid before 1893; therefore, the County has taken the position that no antiquated maps before 1929 would be recognized; moreover, those antiquated maps between 1929 and 1964 would require conditional use permits for any development.

Pat Roche, Contra Costa County, reported that the County has not adopted a TDR program but has looked into it. Mr. Roche stated that there has been one rezoning application approved by the County (Quimby Island) in the Primary Zone; there are 820 assessor parcels in the Primary Zone and 463 residential units in the Primary Zone; and 242 assessor parcels listed with ag districts, but no residences. Mr. Roach also said that there is the potential for 580 residential units for development in the Primary Zone.

Commissioner Piepho asked for clarification on the Contra Costa County agricultural core area. Mr. Roche responded that the agricultural core are lands classified as Class 1 and Class 2 soils located in the area between the Cities of Brentwood and Discovery Bay, where division of land is prohibited below 40 acres and where industrial development is prohibited.

Commissioner Scriven asked how much land in the Primary Zone is regulated by FEMA. Mr. Morrison responded that all of Yolo County is under the new FEMA guidelines; Mr. Roche responded that all of Contra Costa County falls within the 100 year flood plain; Mr. Martin responded that all of the Primary Zone in San Joaquin County is under FEMA; Chair Nottoli responded that most of Sacramento County is regulated by FEMA; and Commissioner Reagan responded that a vast majority of the Primary Zone in Solano County falls under FEMA.

Dave Defanti, Sacramento County, reported that the County does not have an adopted TDR program. The County is currently updating its General Plan and discussing clustering, but mostly for the urban areas. Mr. Defanti stated that there have been 17 zoning changes since 1992, of which 370 acres has been rezoned from Ag 80 to Ag 40, and 260 acres rezoned from commercial recreation to AG-80. He said that there are 2,300 assessor parcels in the Primary Zone with about 200 ag zoned parcels that have development potential. Mr. Defanti also said that a total of 109 additional parcels could be made with a total of 309 residential homes that could be constructed on agriculturally zoned parcels.

Mr. Fougères recommended that the Commission review Land Use Policies 4, 12, 11 and Agriculture Policy 5 because the PAT recommended the policies be considered as a package that addresses clustering.

Commissioner Johnston stated that Land Use Policy 2 does refer to clustering. He said he did not see the sentence “*clustering is intended to support efficient use of agricultural lands and not to support new urban development in the Primary Zone*”. Mr. Fougères said that the Commission could make a note to add the sentence.

Commissioner Russell van Loben Sels stated that he would like Land Use Policy 2 to remain in the new iteration of the Plan. He also stated that the Commission should consider one policy for TDRs and one for clustering, and that Land Use Policy 11 should be cleaned up.

Commissioner McGowan asked how it was the purview of the Commission to determine where development should occur because the Commission’s primary focus should be to determine the standards, conditions, and levels of protection. Commissioner Russell van Loben Sels responded it is the Commission’s responsibility because the Act states that ag lands located in the Primary Zone should be protected from the intrusion of non-ag use.

Mr. Fougères suggested for consideration that language be added to Land Use Policy 11 to address clustering. He also proposed that a date be attached to Land Use Policy 12 to ensure that when a TDR program is developed and all rights transferred, people cannot go back and rezone and claim additional rights. After a short discussion the Commission could not come to a consensus to adopt a date.

Mr. Morrison cautioned the Commission that a date of adoption for ag zoning might be lessening the requirements for zoning instead of tightening them.

**B. CONDUCT PUBLIC HEARING No. 3 (Pursuant to Public Resources Code Section 29762) to Receive Comments on Draft Revisions and Amendments to the Management Plan. Provide Input and Direction to Staff Consultant Team Pursuant to Commission Member Discussion and Public Comment.**

Chair Nottoli convened the public hearing.

There were no speakers.

Chair Nottoli closed the public hearing.

**C. Provide Input and Direction to Staff Consultant Team Pursuant to Commission Member Discussion and Public Comment.**

Chair Nottoli asked that Commissioner comments be provided by June 26, 2009 and that staff develop a matrix showing the comments received for the next Commission meeting.

**D. DIRECT Staff to Return on July 23, 2009 With Policy Revisions and Amendments to the Management Plan.**

Pursuant to Commission action, staff was directed to schedule an all-day meeting in August 2009.

**15. CONSIDER and APPROVE Modification of Executive Director Compensation, and Effective Date for Modification, as Discussed by the Commission on November 20, 2008, January 22, 2009 and March 26, 2009 and Consistent With Recommendations of the Commission Budget Committee (based on the Program Budget Plan); Leadership Strategy No. 2 of the Commission's 2006-2011 Strategic Plan; and Program Administration Task 3 of the Adopted 2008-2009 Strategic Plan Tasks.**

Commissioner Nottoli reported that the item has been before the Commission for at least two years and has now been blessed by the Budget Subcommittee.

Commissioner McGowan announced that he felt the Executive Director position and compensation upgrade was long overdue and should be approved.

Commissioner McGowan moved approval of the Modification of Executive Director Compensation, with an effective date of November 2008 as recommended by the Commission Budget Committee; Commissioner Piepho seconded. The motion was approved 16:1 by voice vote. (Noes: Commissioner Reagan)

**16. Public Comment. Opportunity for Members of the Public to Address the Commission on Items Not on the Agenda.**

There was no public comment.

**17. Commissioner and Staff Comments/Announcements.**

Commissioner Armor reported that the Sherman Island Marker Buoy was put in place. He thanked Chair Notolli for Sacramento County's assistance.

Commissioner Becerra reported that the Department of Boating and Waterways was sponsoring a campaign whereby the agency would give away 700 life jackets at 10 Delta sights over the next few months.

**18. ADJOURN.**

He meeting was adjourned at 9:10 p.m.