

AGENDA ITEM 12: Commission Project Review Process

Prepared by: Jennifer Ruffolo

Presented by: Erik Vink and Jennifer Ruffolo

Requested Action: Approve revised approach to commenting on projects and actions affecting the Delta

STAFF RECOMMENDATION

Staff recommends that the Commission adopt a revised approach to commenting on projects and actions affecting the Delta that reflects the full range of the Commission’s authority under the Public Resources Code (PRC). In summary, the new approach would include:

- Delegation to staff of the Commission’s authority to comment on specific projects, pursuant to PRC §29770(d), §29773(a), and of the Commission’s authority to identify and provide recommendations pursuant to PRC §29703.5(a);
- New standardized comment letters reflecting the four types of Commission authority (jurisdiction over local government project approval in the Primary Zone, non-jurisdictional projects that may affect Delta resources in the Primary Zone, “Delta as Place,” and the Great California Delta Trail); and
- Bi-monthly summaries of staff comment letters informing the Commission of proposed projects and other activities that affect the Delta

BACKGROUND

I. Current approach:

Staff continually monitors land use activity in the Delta pursuant to the Commission’s statutory authority. Through bi-weekly discussions with the Executive Director, the staff determines which projects require comment letters, and the issues or concerns to be raised in the letters. At each Commission meeting, the Executive Director’s report presents a summary of land use comment letters sent during the preceding two months.

II. Need for updated approach:

There are two main reasons for updating the Commission’s comment procedures. First, staff believes it would be appropriate to ensure that the Commission’s comment procedures are commensurate with the statutory authority being employed, and that the letters specify the nature of the Commission’s interest and any staff concerns about the proposed project or action. Second, there is a current written policy in place for comment letters, approved in 2005, but that policy preceded the Delta Reform Act and thus is outdated. Furthermore, the staff does not presently follow the 2005 procedures. Staff believes that an updated set of procedures would facilitate more effective communication between staff and Commissioners.

III. The Commission’s Statutory Authority:

The Commission may review proposed development in the Primary Zone for consistency with: the policies of the Land Use and Resource Management Plan (LURMP) (as called for in Public Resources Code (PRC) §29760), approved portions of local general plans, or the Delta Protection Act (PRC §29770(a),(b)). More specifically, the Delta Protection Act calls upon local agencies to internalize and implement the LURMP by adopting amendments to their General Plans so that those Plans are consistent with the LURMP for land within the Primary Zone (PRC §29763). Where local agencies have not adopted these amendments to their General Plan, the agencies must make a series of specific findings based on their record regarding the impacts of the proposed development on the Delta (PRC §29765). Only Sacramento and Yolo counties have complied with this requirement after the 2010 LURMP update.

The Delta Reform Act (Statutes of 2009, 7th Ex. Session, Chapter 5) identified the Commission as a forum for Delta residents to engage in decisions regarding actions to recognize and enhance the unique cultural, recreational, and agricultural resources of the Delta. As such, the Commission is the “appropriate agency to identify and provide recommendations to the Delta Stewardship Council on methods of *preserving the Delta as an evolving place* as the Delta Stewardship Council develops and implements the Delta Plan” (PRC § 29703.5(a), emphasis added). The Commission may also review and comment on “any significant project or proposed project within the scope of the Delta Plan, including but not limited to actions by state and federal agencies, that *may affect the unique cultural, recreational, and agricultural values within the primary and secondary zones.*” (PRC §29773(a), emphasis added).

The Commission also has a statutory mandate to develop and adopt a plan for the Great California Delta Trail. (PRC §5852-5855). In addition, PRC §29770(d) authorizes the Commission to “comment on projects in the Secondary Zone that impact the Primary Zone,” although the statute does not define “impact.”

IV. Outdated 2005 Policy:

In January 2005, the Commission approved (by vote, without a resolution or rulemaking) a set of procedures and standard comment letters for reviewing proposed projects in the Delta. The Commission approved:

- Creation of a Standing Committee to meet quarterly to review the process and to guide staff;
- Procedures for commenting on proposed projects;
- Procedures for bringing proposed projects to the Commission for its review at its bi-monthly meetings;
- Establishing a “Zone of Concern” outside of the Primary Zone, in which the Commission should monitor and review projects;
- A CEQA checklist-based standard of review for impacts to the Delta;
- A major-minor project distinction;

- Review of state and federal projects in the primary zone, without regard to the Commission’s jurisdiction; and
- Standard letters that called for review of proposed projects for compliance with the CEQA-based checklist and preliminary recommendation of conformance with the Land Use and Resource Management Plan (LURMP).

The 2005 procedures are both over- and under-inclusive regarding the Commission’s jurisdiction. The 2005 protocols asserted an authority that extends beyond the Commission’s jurisdiction over “development” in the Primary Zone as defined in PRC §29723(a). The PRC does not authorize the Commission to use the Zone of Concern, the major-minor distinction, or the CEQA-based checklist. The procedures also preceded the enactment of the Delta Reform Act (Statutes of 2009, 7th Ex. Session, Chapter 5), which granted the Commission a broader range of authorities as compared with the original Delta Protection Act of 1992. The 2005 procedures likewise preceded the Commission’s statutory authority regarding the Great California Delta Trail (PRC §5852-5855).

The staff’s current land use project review process is not consistent with the Commission’s 2005 direction: the staff does not use the “Zone of Concern,” the CEQA-based checklist, the major-minor distinction, or the adopted comment letters. In addition, the Standing Committee was never convened.

NEW APPROACH TO PROJECT REVIEW

Staff recommends that the Commission adopt new procedures and a revised approach to commenting on proposed land use projects and other issues that affect the Delta. In summary, the new approach would include:

- Delegation to staff of the Commission’s authority to comment on specific projects, pursuant to PRC §29770(d), §29773(a), and of the Commission’s authority to identify and provide recommendations pursuant to PRC §29703.5(a);
- New standardized comment letters reflecting the four types of Commission authority;
- Advising the Commission of proposed projects and other activities that affect the Delta with bi-monthly summaries of staff comment letters; and

I. New Comment Letters

The contents of the Commission comment letters would depend on the statutory authority to be employed. In general, letters would no longer make statements of apparent consistency with the policies of the LURMP. Instead, the letters would describe the specific authority under which the Commission is commenting, indicate the nature of the Commission’s interest and/or concern about the proposed project (or plan or other action), and indicate how the applicant or the reviewing agency can potentially address the Commission’s concerns. There will be four types of letters, although projects or actions could fall under more than one type of Commission authority. In that case, the letter would outline and describe Commission concerns under each applicable authority. The four categories are:

a) Commission jurisdiction over “development” in the Primary Zone

This category includes comment letters on projects or actions that, within staff’s judgment, constitute “development” within the Primary Zone. Letters to local governments will note that, within staff’s

judgment, the proposed project constitutes “development” within the Primary Zone, and where applicable will make an appropriate reference to the Delta Protection Act’s requirement for Commission approval of a local government’s general plan amendments to ensure consistency of local actions with the LURMP. This category of letter includes general plan and zoning ordinance amendments not related to the determination of consistency with the LURMP.

Where the Commission has approved the consistency of the local agency’s amendments to their General Plans so that those Plans are consistent with the LURMP, the letter will note the date of that action, describe the Commission’s jurisdiction, and state that actions taken by local governments may be appealed to the Commission. The letter will also:

1. Cite the definition of “development” in PRC §29723(a);
2. Encourage the local government to review PRC §29760 and the Commission’s LURMP;
3. Request that any project map or proposal indicate the Primary and Secondary Zone boundaries; and
4. Describe staff land use concerns or issues with the project, if any, with respect to the LURMP, the applicable general plan, or the Delta Protection Act. (PRC § 29770(a),(b).)

Where counties have NOT submitted amendments to their General Plans for the Commission’s consistency approval, the letter will call upon local governments to comply with PRC §29765 to make a set of findings regarding the proposed project, describe the Commission’s jurisdiction, and state that actions taken by local governments may be appealed to the Commission. The letter will also:

1. Cite the definition of “development” in PRC §29723(a);
2. List all the findings required by PRC §29765;
3. Note that the agency must make these findings on the basis of substantial evidence in the record;
4. Request that any project map or proposal indicate the primary and secondary zone boundaries; and
5. Describe staff land use concerns or issues with the project, if any, with respect to the LURMP or the Delta Protection Act (PRC § 29770(a) and (b).)

b) Non-jurisdictional projects that may affect Delta resources

This category includes comment letters on projects or actions that, in staff’s judgment, might affect the Primary Zone (but do not, in staff’s judgment, constitute development within the Primary Zone). This includes federal, State, and local agency projects and plans in the Secondary Zone. Letters will be addressed to the Lead Agency, with a copy to the Delta Stewardship Council, and will also:

- a) Cite PRC §29770(d) authorizing the Commission to comment on projects within the Secondary Zone that impact the Primary Zone;
- b) Describe staff concerns about potential impacts of the project or action on the Primary Zone; and
- c) Request that the Lead Agency take action(s) to identify and avoid or reduce the potential impacts (Actions could include but are not limited to conducting analyses of cumulative impacts of the proposed action on Primary Zone resources or the long-term economic viability of agriculture in the Primary Zone.)

c) Delta as Place

This category includes comment letters for projects that do not, in staff’s judgment, meet the PRC §29723(a) definition of “development,” and relies on the Commission’s authority to advise the Delta Stewardship Council on methods of preserving the Delta as an evolving place as the Council implements the Delta Plan (PRC § 29703.5(a). This also includes advising the Council on actions by local, State, and federal agencies that may affect the unique cultural, recreational, and agricultural values of the Primary and/or Secondary Zones (PRC § 29773(a). This would also include projects that might affect the proposed National Heritage Area boundaries.

Letters will be addressed to the Delta Stewardship Council with a copy to the Lead Agency, and will:

- a) Cite PRC §29703.5(a) (the Commission’s role in advising the Delta Stewardship Council on preserving the Delta as an evolving place in the implementation of the Delta Plan) and/or PRC §29773(a) (actions that may affect the unique values of the Delta within the Primary and Secondary Zones);
- b) List applicable Delta Plan policies and/or recommendations and LURMP policies;
- c) Identify and recommend methods to address staff’s concerns about the project with respect to PRC §29703.5(a) and/or §29773(a);
- d) Where appropriate, describe the Delta National Heritage Area proposal, status, and relevance to the project; and
- e) Encourage the Council to make a finding or take an action that addresses the Commission staff’s concerns about Delta impacts, in accordance with the mandate of PRC § 29773(b) that the Council take the Commission’s recommendations under consideration.

d) Great California Delta Trail

This category includes letters to federal, State, and local agencies identifying opportunities for integrating or incorporating sections of the Delta trail in areas or projects under their jurisdiction. Letters can also suggest co-locating a recreational corridor where feasible with projects in the Delta and within the proposed National Heritage Area boundaries. Letters will:

- a) Cite the Commission’s mandate for the Great California Delta Trail System (PRC §5852-5855);
- b) Cite Commission Resolutions (No. 01-12 for incorporating bicycle lanes along improved Delta levees, and No. 02-12 for incorporating bicycle lanes into future projects on State Routes 4, 12, and 160); and
- c) Describe staff’s view of the project’s potential for enhancing recreation or economic sustainability consistent with LURMP and Delta Plan policies and/or recommendations for encouraging recreation and tourism.

II. Bi-Monthly Summaries of Projects Affecting the Delta

Currently, the Executive Director reports a summary of land use project comment letters at each Commission meeting. This practice will continue; however, staff proposes to modify the summary table to include the type of authority used for each letter, a short description of the project, and the position taken. Examples of the current and revised summary table follow below.

Example of current Land Use Project summary:

County	Project	Substantial	Primary Zone	Secondary Zone	In Both Zones
San Joaquin	Agricultural Excavation Application (PA-1500096)		X		
	Woodward Island Bridge Project over Middle River		X		
	Winery Ordinance Update				X
Yolo	2016 Zoning Code Amendments (ZF #2016-0005)				X

Example of proposed revised Land Use Project summary:

County	Project Description	Authority	Primary (P) or Secondary (S) Zone or D (Delta-wide)	Comments
Solano	Decker Island Levee Repair Demonstration Project: <i>Repair 200 feet of eroded bank to test viability of environmentally friendly alternative to riprap.</i>	Delta as Place	P	Support for potential to integrate levee protection with ecological restoration while maintaining existing channel configuration.
Contra Costa	New Verizon Wireless Telecommunications Facility	Development project; PRC §29765 Findings required	P	County ordinance protects Delta resources (aesthetics, views)

STATUTORY REFERENCES DISCUSSED IN THIS STAFF REPORT:

PRC Section 29703.5(a)

The Legislature further finds and declares both of the following:

(a) The Delta Protection Commission created pursuant to Section 29735 provides an existing forum for Delta residents to engage in decisions regarding actions to recognize and enhance the unique cultural, recreational, and agricultural resources of the Delta. As such, the commission is the appropriate agency to identify and provide recommendations to the Delta Stewardship Council on methods of preserving the Delta as an evolving place as the Delta Stewardship Council develops and implements the Delta Plan.

PRC Section 29723(a)

“Development” means on, in, over, or under land or water, the placement or erection of any solid material or structure; discharge of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivisions pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), and any other division of land including lot splits, except where the land division is brought about in connection with the purchase of the land by a public agency for public recreational or fish and wildlife uses or preservation; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes.

PRC Section 29760

(a) Not later than October 1, 1994, the commission shall prepare and adopt, by a majority vote of the membership of the commission, and thereafter review and maintain, a comprehensive long-term resource management plan for land uses within the primary zone of the delta. The resource management plan shall consist of the map of the primary zone and text or texts setting forth a description of the needs and goals for the delta and a statement of the policies, standards, and elements of the resource management plan.

(b) The resource management plan shall meet the following requirements:

(1) Protect and preserve the cultural values and economic vitality that reflect the history, natural heritage, and human resources of the delta.

(2) Conserve and protect the quality of renewable resources.

(3) Preserve and protect agricultural viability.

(4) Restore, improve, and manage levee systems by promoting strategies, including, but not limited to, methods and procedures which advance the adoption and implementation of coordinated and uniform

standards among governmental agencies for the maintenance, repair, and construction of both public and private levees.

- (5) Preserve and protect delta dependent fisheries and their habitat.
 - (6) Preserve and protect riparian and wetlands habitat, and promote and encourage a net increase in both the acreage and values of those resources on public lands and through voluntary cooperative arrangements with private property owners.
 - (7) Preserve and protect the water quality of the delta, both for instream purposes and for human use and consumption.
 - (8) Preserve and protect open-space and outdoor recreational opportunities.
 - (9) Preserve and protect private property interests from trespassing and vandalism.
 - (10) Preserve and protect opportunities for controlled public access and use of public lands and waterways consistent with the protection of natural resources and private property interests.
 - (11) Preserve, protect, and maintain navigation.
 - (12) Protect the delta from any development that results in any significant loss of habitat or agricultural land.
 - (13) Promote strategies for the funding, acquisition, and maintenance of voluntary cooperative arrangements, such as conservation easements, between property owners and conservation groups that protect wildlife habitat and agricultural land, while not impairing the integrity of levees.
 - (14) Permit water reservoir and habitat development that is compatible with other uses.
- (c) The resource management plan shall not supersede the authority of local governments over areas within the secondary zone.
- (d) To facilitate, in part, the requirements specified in paragraphs (8), (9), (10), and (11) of subdivision (b), the commission shall include in the resource management plan, in consultation with all law enforcement agencies having jurisdiction in the delta, a strategy 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.
- (e) To the extent that any of the requirements specified in this section are in conflict, nothing in this division shall deny the right of the landowner to continue the agricultural use of the land.

PRC Section 29765

Prior to the commission approving the general plan amendments of the local government, the local government may approve development within the primary zone only after making all of the following written findings on the basis of substantial evidence in the record:

- (a) The development will not result in wetland or riparian loss.
- (b) The development will not result in the degradation of water quality.
- (c) The development will not result in increased nonpoint source pollution or soil erosion, including subsidence or sedimentation.
- (d) The development will not result in degradation or reduction of Pacific Flyway habitat.
- (e) The development will not result in reduced public access, provided that access does not infringe upon private property rights.
- (f) The development will not expose the public to increased flood hazards.
- (g) The development will not adversely impact agricultural lands or increase the potential for vandalism, trespass, or the creation of public or private nuisances on private or public land.
- (h) The development will not result in the degradation or impairment of levee integrity.
- (i) The development will not adversely impact navigation.
- (j) The development will not result in any increased requirements or restrictions upon agricultural practices in the primary zone.

PRC Section 29770(a)

Any person who is aggrieved by any action taken by a local government or other local agency in implementing the resource management plan, or otherwise taken pursuant to this division, may file an appeal with the commission. The ground for an appeal and the commission consideration of an appeal shall be that an action, as to land located exclusively within the primary zone, is inconsistent with the resource management plan, the approved portions of local government general plans that implement the resource management plan, or this division. The appeal shall be heard by the commission within 60 days from the date of the filing of the appeal, unless the commission, either itself or by delegation to the executive director, determines that the issue raised on appeal is not within the commission's jurisdiction or does not raise an appealable issue.

PRC Section 29770(b)

In the absence of an appeal by an aggrieved person, the commission may decide by majority vote to review on appeal any action taken by a local government or other local agency in implementing the resource management plan, or otherwise taken pursuant to this division, for land located exclusively within the primary zone, if the commission believes the action may be inconsistent with the resource management plan, or this division.

PRC Section 29770(d)

The commission may comment on projects within the secondary zone that impact the primary zone.

PRC Section 29773(a)

The commission may review and provide comments and recommendations to the Delta Stewardship Council on any significant project or proposed project within the scope of the Delta Plan, including, but not limited to, actions by state and federal agencies, that may affect the unique cultural, recreational, and agricultural values within the primary and secondary zones. Review and comment authority granted to the commission shall include, but is not limited to, all of the following:

- (1) Identification of impacts to the cultural, recreational, and agricultural values of the Delta.
- (2) Recommendations for actions that may avoid, reduce, or mitigate impacts to the cultural, recreational, and agricultural values of the Delta.
- (3) Review of consistency of the project or proposed project with the resources management plan and the Delta Plan.
- (4) Identification and recommendation of methods to address Delta community concerns regarding large-scale habitat plan development and implementation.

PRC Section 29773(b)

The council shall take into consideration the recommendations of the commission, including the recommendations included in the economic sustainability plan. If the council, in its discretion, determines that a recommendation of the commission is feasible and consistent with the objectives of the Delta Plan and the purposes of this division, the council shall adopt the recommendation.

PRC Section 5854(a) The Great California Delta Trail

...The commission shall develop and adopt a plan and implementation program, including a finance and maintenance plan, for a continuous regional recreational corridor that will extend around the delta, including, but not limited to, the delta's shorelines in Contra Costa, Solano, San Joaquin, Sacramento, and Yolo Counties. This plan shall link the San Francisco Bay Trail system to the planned Sacramento River trails in Yolo and Sacramento Counties. This plan shall include a specific route of a bicycling and hiking trail, the relationship of the route to existing and proposed park and recreational facilities and land and water trail systems, and links to existing and proposed public transportation and transit. The transportation and transit links may include, but are not limited to, roadside bus stops, transit facilities, and transportation facilities. The continuous regional recreational corridor planned and executed pursuant to this chapter shall be called the Great California Delta Trail. The continuous regional recreational corridor shall include, but not be limited to, bikeway systems, and hiking and bicycling trails.