

Resolution No. **2018-12-04-1503-03**

STOCKTON CITY COUNCIL

RESOLUTION ADOPTING WRITTEN FINDINGS OF CONSISTENCY WITH THE DELTA PLAN WITH SUPPORTING DOCUMENTATION

The 2009 Delta Reform Act (the "Act") created the Delta Stewardship Council (the "DSC") and established new state policies aimed at addressing preservation of the California Delta ecosystem while simultaneously ensuring that the important role the Delta plays as a critical link in the state's water infrastructure be continued in a sustainable manner; and

The Act established two "coequal goals": Provide a more reliable water supply for California; and protect, restore and enhance the Delta ecosystem. The coequal goals must be met in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place; and

The Act mandated that the DSC establish a legally enforceable plan for the management of Delta water and environmental resources (the "Delta Plan") and to ensure compliance with the Delta Plan through oversight and coordination with state and local agencies.

In May of 2013, the DSC adopted the Delta Plan, and all activities that thereafter occur in whole or in part within the legal Delta, and that are deemed Covered Actions under the Delta Plan and the Act, must be undertaken in a manner consistent with the applicable regulatory policies adopted therein; and

Notwithstanding anything to the contrary in this Resolution or the administrative record of this action, the City reserves the right to contest whether its adoption of the Envision Stockton 2040 General Plan Update is a Covered Action pursuant to the exemption provided in Water Code section 85057.5(b)(4) based upon the consistency present between the Envision Stockton 2040 General Plan Update and the Sustainable Communities Strategy and Regional Transportation Plan adopted by the San Joaquin Council of Governments in June of 2018, but in the spirit of comity and transparency the City has adopted this Resolution to provide full disclosure of the pertinent facts and to ensure compliance with applicable law; and

Pursuant to Water Code section 85057.5 the adoption of the Envision Stockton 2040 General Plan Update may be considered a Covered Action, and pursuant to Water Code section 85225, prior to implementing the Covered Action the city must submit to the DSC a written certification of consistency, with detailed findings as to whether this action is consistent with the Delta Plan. This resolution is intended to provide the city's written certification of consistency with the Delta Plan and to provide the detailed findings and supporting documentation for those findings; and

Before the City Council has adopted this certification of consistency it has considered the draft Envision Stockton 2040 General Plan Update and Utility Master Plan Supplements; the Draft and Final Environmental Impact Report; the staff report to City Council; the

October 25 and November 15, 2018 Planning Commission staff reports; the Signed Planning Commission Resolution 2018-11-15-0501; the Policy and Action Changes Memo of November 16, 2018; the September 24, 2018 Ag Belt Memo; the Revised UMPS dated October 2018; the CAPAC General Plan- Settlement Consistency Table; the August 10, 2018 letter from the DSC (attached hereto as **Exhibit 1**) and all of the associated records, correspondence, testimony and information that constitutes the administrative record of the this proceeding as that term is defined in the California Environmental Quality Act and its associated regulations and case law and the City Council hereby incorporates by reference said documents and information as if set forth fully herein; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The Above recitals are true and correct and are incorporated herein by this reference.

2. For the reasons stated above, based on the findings stated herein, and as otherwise stated and shown in the administrative record of this action, the City Council of the City of Stockton does hereby certify that the Envision Stockton 2040 General Plan Update and Utility Master Plan Supplements are consistent with the Delta Plan.

3. The City Council has made detailed findings to support this certification stated above, pursuant to 23 CCR 5002; Delta Plan Policy G P1.

4. The policies set out in the Delta Plan potentially applicable to this action are 23 CCR 5010 (Locate New Urban Development Wisely - DP P1), 23 CCR 5013 (Require Flood Protection for Residential Development in Rural Areas RR P2), 23 CCR 5014 (Protect Floodways RR P3) and 23 CCR 5015 (Floodplain Protection RR P4).

5. Policy DP P1 requires that new development within the legal Delta be limited to specified areas; including "[a]reas that city or county general plans as of the date of the Delta Plan's adoption, designate for residential, commercial, and industrial development in cities or their spheres of influence...". The areas within the legal Delta designated for such development in the City of Stockton general plan effective on the date of the Delta Plan's adoption are depicted in **Exhibit 2**. Although the terms on that map do not always explicitly say the permitted development is "residential, commercial and industrial" in nature the City's chosen terms have the same effect, as per the stipulated judgement in the Delta Stewardship Council Cases, Judicial Council Coordination Proceeding No. 4758, attached hereto as **Exhibit 3**. As can be seen in the current map depicting the areas of "residential, commercial and industrial" growth to be allowed under the Envision Stockton 2040 General Plan Update and Utility Master Plan Supplements, attached hereto as **Exhibit 4**, such development will be limited to the area previously so designated in the City of Stockton general plan effective on the date of the Delta Plan's adoption.

6. Policy RR P2 requires that new residential development of five or more parcels shall be protected through floodproofing to a level of 12 inches above the 100-year base flood elevation plus sufficient additional elevation against a 55-inch rise in sea level at the Golden Gate, unless the development is located within certain areas including

"[a]reas that city or county general plans, as of the date of the Delta Plan's adoption, designate for development in cities or their spheres of influence...". As explained in paragraph 4, above, the area within the legal Delta designated for residential development in the Envision Stockton 2040 General Plan Update and Utility Master Plan Supplements was previously so designated in the City of Stockton general plan on the date of the Delta Plan's adoption. Further, the Envision Stockton 2040 General Plan Update and Utility Master Plan Supplements impose the flood control requirements of SB 5, including 200-year flood protection, on all new development in the legal Delta.


7. Policy RR P3 prohibits encroachment in a floodway. In the Envision Stockton 2040 General Plan Update and Utility Master Plan Supplements, the City of Stockton has undertaken appropriate analysis of potential stormwater and flood related impacts and has imposed all appropriate and feasible measures in mitigation of those potential impacts; including specifically the imposition of all current standards associated with the design and operation of the City's MS4 and compliance with the City's current and future stormwater permits issued by the State of California, including measures intended to provide 200-year flood protection as required by SB5 and to reduce and/or retain stormwater runoff from future development.

8. Policy RR P4 prohibits encroachments to be constructed in the Lower San Joaquin River Floodplain Bypass area. As depicted in Attachment D, the Envision Stockton 2040 General Plan Update and Utility Master Plan Supplements do not contemplate development and/or encroachments within the Lower San Joaquin River Floodplain Bypass area and further the Envision Stockton 2040 General Plan Update and Utility Master Plan Supplements impose on all new development within the legal Delta the flood control requirements imposed by SB 5.

9. The City reserves the right to contest whether its adoption of the Envision Stockton 2040 General Plan Update and Utility Master Plan Supplements is a Covered Action pursuant to the exemption provided in Water Code section 85057.5(b)(4) based upon the consistency present between the Envision Stockton General Plan Update and the Sustainable Communities Strategy and Regional Transportation Plan adopted by the San Joaquin County Council of Governments in June of 2018.


10. The City Manager is authorized and directed to make such filings as are required pursuant to Water Code section 85225 and all associated policies and regulations, and to take such other actions as are appropriate and necessary to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED _____ December 4, 2018


MICHAEL D. TUBBS, Mayor
of the City of Stockton

ATTEST:




CHRISTIANA SLEGG, Deputy City Manager and
Interim City Clerk of the City of Stockton



DELTA STEWARDSHIP COUNCIL

A California State Agency

980 NINTH STREET, SUITE 1500
SACRAMENTO, CALIFORNIA 95814
HTTP://DELTACOUNCIL.CA.GOV
(916) 445-5511

August 10, 2018

David Stagnaro
Planning Manager
City of Stockton
425 North El Dorado Street
Stockton, CA 95202
David.Stagnaro@stocktonca.gov

Chair
Randy Fiorini

Members
Frank C. Damrell, Jr.
Michael Gatto
Maria Mehranian
Susan Tatayon
Skip Thomson
Ken Weinberg

Executive Officer
Jessica R. Pearson

RE: Comments on Envision Stockton 2040 General Plan Update and Draft Environmental Impact Report for the General Plan Update and Utility Master Plan Supplements

Dear Mr. Stagnaro:

Thank you for the opportunity to review and provide comments on the Draft Envision Stockton 2040 General Plan Update and Draft Environmental Impact Report (Draft EIR) for the General Plan Update and Utility Master Plan Supplements. Delta Stewardship Council (Council) staff also appreciated the opportunity to attend a workshop on the General Plan Update on July 30, 2018 and to discuss certain aspects of the General Plan Update and Draft EIR with you via telephone on August 6, 2018.

The Council is an independent State of California agency established by the Sacramento-San Joaquin Delta Reform Act of 2009 (SBX7 1; Delta Reform Act). The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan, regulatory portions of which became effective on September 1, 2013.

As stated in the Delta Reform Act, the State has "coequal goals" (which) means two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place" (Water Code section 85054).

Through the Delta Reform Act, the Council was directed to review and provide timely advice to local and regional planning agencies regarding the consistency of local and regional planning documents with the Delta Plan. The Council's input includes, but is not limited to, reviewing the consistency of local and regional planning documents with the ecosystem restoration needs of the Delta and reviewing whether the lands set aside for natural resource protection are sufficient to meet the Delta's ecosystem needs. (Water Code section 85212).

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

CA Water Code §85054

Covered Action Status

Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions of State or local public agencies that take place in whole or in part in the Delta. To do this, the Delta Plan contains a set of regulatory policies with which State and local agencies are required to comply. The Delta Reform Act specifically established a certification process for compliance with the Delta Plan. This means that State and local agencies that propose to carry out, approve, or fund a qualifying action in whole or in part in the Delta, called a "covered action," must certify that this covered action is consistent with the Delta Plan and must file a certificate of consistency with the Council that includes detailed findings.

As noted in the Draft General Plan, most of the western portion of Stockton's Planning Area is located within the Legal Delta, and thus subject to State oversight through the Delta Plan. The City of Stockton (City) has identified the need for the General Plan to be consistent with the Delta Plan (Draft General Plan, p. 3-17). The City has also identified that the Delta Plan includes a requirement for consistency findings for covered actions, which include the proposed General Plan (Draft EIR, pp. 4.2-3, 4.4-6, 4.10-4). The City also acknowledges the role of the Delta Plan's policies to address flood protection for residential development and limit encroachment in floodplains (Draft EIR, p. 4.9-7).

It should be noted that the Delta Reform Act establishes specific criteria and categories for exempting actions from the Council's regulatory authority. One of these exemptions is for actions within the Secondary Zone of the Delta that a metropolitan planning organization determines are consistent with its sustainable communities strategy (SCS). Such proposed actions are not covered actions regulated by the Council (Water Code section 85057.5(b)(4)).

The Draft EIR analyzes consistency with the San Joaquin Council of Governments' (SJCOG) 2014 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) (Draft EIR, p. 4.10-18). An updated 2018 RTP/SCS was adopted by SJCOG on June 28, 2018. With respect to land use, the 2018 RTP/SCS is consistent with the Delta Plan. The City may request an evaluation of the updated General Plan's consistency with SJCOG's 2018 RTP/SCS. If SJCOG determines that the updated General Plan is consistent, the proposed project would be exempt from the Council's covered action process.

Additional information on covered actions and the certification process can be found on the Council website, <http://deltacouncil.ca.gov/covered-actions>.

Comments on the Draft General Plan

Based on our review, Council staff has not identified any specific inconsistency between the Draft General Plan and the Delta Plan pursuant to Water Code section 85212. In fact, several General Plan policies align with the Delta Reform Act and the Delta Plan, including the following:

- **General Plan Land Use Designations.** Council staff is pleased to see that the General Plan Update will re-designate areas depicted as "Village" in the southern portion of the Planning Area to "Open Space/Agriculture". The Council supports this proposed change, which contributes to consistency between the General Plan and the Delta Plan.

Other land use designation changes in the Planning Area within the secondary zone of the Legal Delta appear to align with **Delta Plan Policy DP P1, Locate New Urban Development Wisely** (23 Cal. Code of Regs. section 5010). This includes redesignation of areas north of the City Limits from "Village" to "Economic and Education Enterprise," as the subject area was previously designated for development in the City's General Plan as of the date of the Delta Plan's adoption (May 16, 2013).

- **Climate Change.** The Council supports General Plan Policy CH-5.1A which outlines the City's intention to conduct a "comprehensive climate change vulnerability assessment to inform the development of adaptation and resilience policies and strategies". In a closely related effort, over the next couple of years, the Council will be undertaking a *Climate Change Vulnerability Assessment and Adaptation Strategy for the Sacramento – San Joaquin Delta* that seeks to incorporate stakeholder input, best available science, and identifies specific high-priority options for adapting to the changing climate. Council staff look forward to working with the City as a collaborative stakeholder in this process.

Council staff requests the City incorporate the following technical correction to the Draft General Plan regarding the Delta Plan:

- Land Use Element, p. 3-17, second paragraph. Please change the reference to the "Delta Reform Plan" to the "Delta Plan."

Comments on the Draft EIR

Council staff appreciates the City's consideration and incorporation of comments we offered on the Notice of Preparation (NOP) for the 2040 General Plan Update and Utility Master Plan Supplements EIR in a letter dated June 22, 2017.

Council staff notes that the City evaluates the potential for conflict with the Delta Plan within the Draft EIR in the discussion of Impact LU-2, on p. 4.10-23. The analysis focuses on how

David Stagnaro
City of Stockton
August 10, 2018
Page4

General Plan goals SAF-3 (Sustain Clean and Adequate Water Supplies) and LU-5 (Protect, Maintain, and Restore Natural and Cultural Resources) and associated policies support the coequal goals. The analysis also identifies that, as discussed above, the proposed General Plan does not allow new residential, commercial, or industrial development in the Delta that was not already allowed in the existing 2007 General Plan, noting consistency with Delta Plan Policy DP P1. The City concludes that implementation of the proposed General Plan policies and actions would support, rather than conflict with the Delta Plan. This information will be useful for the City to present as part of the record accompanying a certification of consistency with the Delta Plan, should it be determined that the General Plan Update is a covered action.

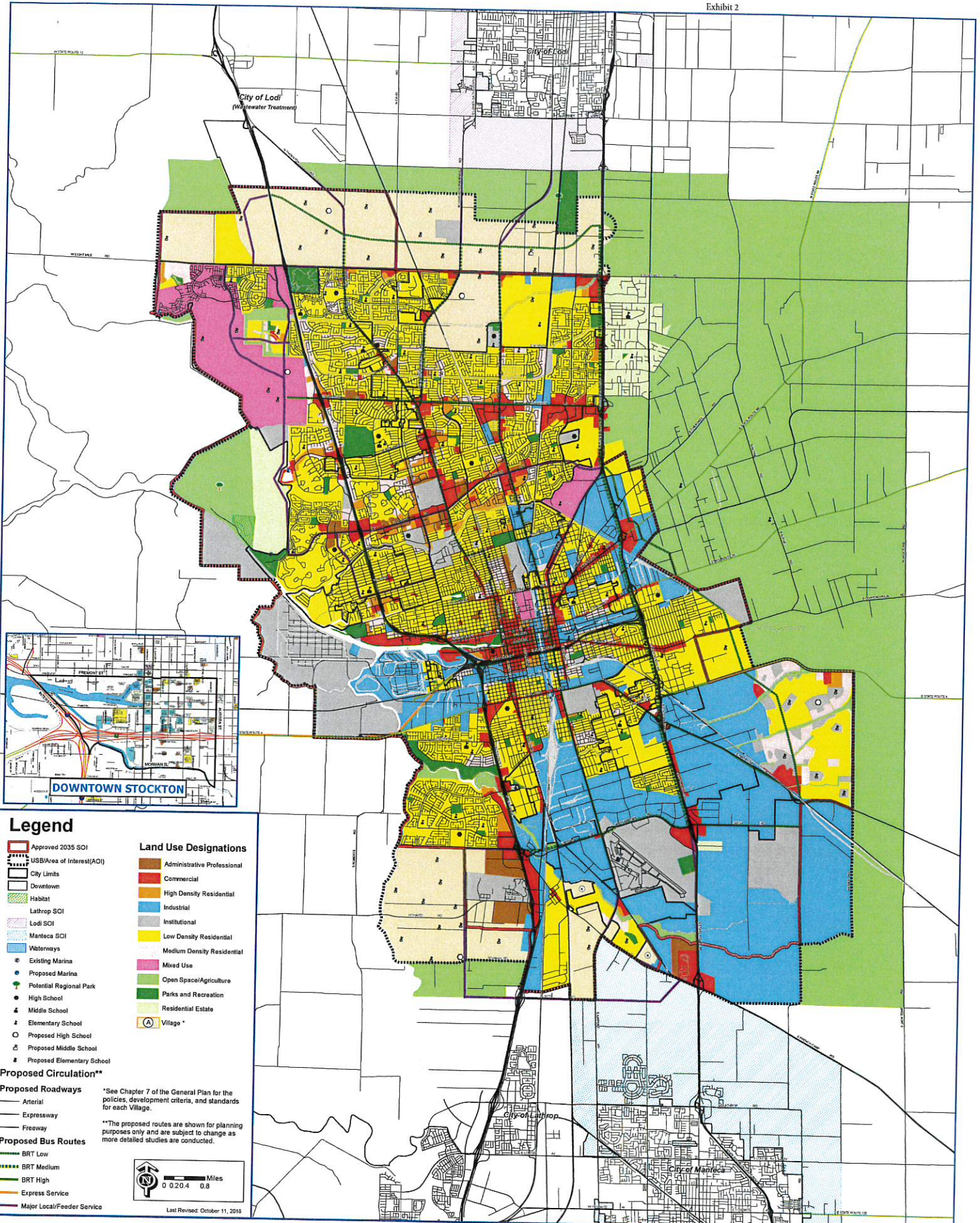
Closing Comments

We encourage the City to continue early consultation with Council staff and to work collaboratively with SJCOG, as appropriate, to discuss the consistency certification process for the General Plan Update. Continued consultation is an important step to ensure consistency between the 2040 General Plan and the Delta Plan, so that the two plans are complementary and serve to protect the Delta. Please contact Kate Anderson of my staff at (916) 445-5028 or kate.anderson@deltacouncil.ca.gov with any questions, comments, or concerns.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council



Legend

- | | |
|---|---|
| <ul style="list-style-type: none"> Approved 2035 SOI USB/Area of Interest (AOI) City Limits Downtown Habitat Lathrop SOI Manteca SOI Waterways Existing Marina Proposed Marina Potential Regional Park High School Middle School Elementary School Proposed High School Proposed Middle School Proposed Elementary School | <p>Land Use Designations</p> <ul style="list-style-type: none"> Administrative Professional Commercial High Density Residential Industrial Institutional Low Density Residential Medium Density Residential Mixed Use Open Space/Agriculture Parks and Recreation Residential Estate Village * |
|---|---|

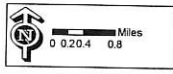
Proposed Circulation**

Proposed Roadways
 — Arterial
 — Expressway
 — Freeway

Proposed Bus Routes
 — BRT Low
 — BRT Medium
 — BRT High
 — Express Service
 — Major Local/Feeder Service

*See Chapter 7 of the General Plan for the policies, development criteria, and standards for each Village.

**The proposed routes are shown for planning purposes only and are subject to change as more detailed studies are conducted.



Last Revised: October 11, 2016

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Exempt from Filing Fees
 Pursuant to Government
 Code Section 6103

6 Attorneys for Petitioner City of Stockton

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15 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 16 IN AND FOR THE COUNTY OF SACRAMENTO

Coordination Proceeding Special Title (Rule 3.550),	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4758
DELTA STEWARDSHIP COUNCIL CASES	STIPULATED JUDGMENT
	Date Action Filed: June 13, 2013_
	Judge: Honorable Michael Kenny Dept.: 31

17 Pursuant to section 664.6 of the Code of Civil Procedure, the Delta Stewardship Council
 18 (Council) and City of Stockton (City) hereby stipulate to the entry of judgment in this matter.

19 The Council and the City enter into this stipulation in light of the following:

20 **RECITALS**

21 A. On May 16, 2013, the Council adopted the Delta Plan, pursuant to the
 22 Sacramento-San Joaquin Delta Reform Act of 2009 (Act) (Wat. Code, §§ 85000 et seq.).

23 B. Subsequently, numerous parties filed a total of seven lawsuits challenging the
 24 Council's adoption of the Delta Plan and its implementing regulations. One of those lawsuits
 25 was filed by the City. Specifically, on June 14, 2013, the City filed a Petition for Writ of
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1 Mandate challenging the validity of the Delta Plan, the Delta Plan's regulations, and the Delta
2 Plan's Environmental Impact Report.

3 C. The City and the Council have determined that the City's challenges can be fully
4 resolved by documenting the Council's interpretations of one of its regulations, and its
5 interpretation of a statutory provision, as explained in recitals D through H, below. The City and
6 the Council are therefore entering this stipulation in order to document those interpretations.

7 D. Delta Plan Policy 1 ("DP P1," codified as 23 California Code of Regulations
8 section 5010), generally limits new "residential, commercial and industrial development" to
9 specified geographical areas that a general plan, in existence as of May 16, 2013, designated "for
10 residential, commercial and industrial development."

11 E. The City is concerned that DP P1 uses the terms "residential, commercial or
12 industrial development" but that the City's applicable general plan uses different terms for those
13 same types of development. The City wants the Council to make it clear that the Council
14 interprets DP P1's terms as applying to the City's functionally equivalent terms. The City is
15 also concerned that DP P1 could apply to, and potentially prohibit, certain public facilities such
16 as a public waste water treatment facility.

17 F. The Council always assumed that DP P1's use of the terms "residential,
18 commercial or industrial development" applied whether a plan used those precise terms, or
19 functionally equivalent terms. The Council also always assumed that DP P1 does not apply to
20 public facilities such as a public waste water treatment facility.

21 G. The City is concerned that the Council might interpret the term "covered action"
22 in Water Code section 85057.5 as including the City's filing a water rights application with the
23 State Water Resources Control Board, and/or that Board's processing or approving such an
24 application.

25 H. The Council always assumed that the covered action exclusion for "a regulatory
26 action of a state agency" in Water Code section 85057.5, subdivision (b) (1) excludes the actions
27 described in the preceding paragraph (G.)
28

1 I. The Council's interpretations fully resolve the City's concerns that the Council's
2 adoption of the Delta Plan and its related actions were potentially inconsistent with the laws
3 outlined in the City's petition and briefs.

4 **THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED**

5 1. Interpretation of "residential, commercial and industrial" in DP P1. The
6 designations "residential," "commercial," and "industrial" used in DP P1 apply to the City's
7 other functionally equivalent general plan urban-type designations. For example, they apply to
8 the designations, in the City general plan that was in effect on May 16, 2013, of "Village," "Low
9 Density Residential," "Medium Density Residential," "High Density Residential,"
10 "Administrative-Professional," and "Mixed Use." The above does not alter DP P1's limitation
11 of new "residential, commercial, and industrial development" to areas designated for
12 development as of May 16, 2013, as shown in Figure 7-10 of Appendix 7 to the Delta Plan's
13 implementing regulations (23 CCR Appendix 7). (The identical Figure 7-10 can be found in
14 Appendix 7 to the Delta Plan adopted on May 16, 2013.) Functionally equivalent designations
15 are also limited to those areas. For example, a proposed action (see 23 CCR § 5001, subd. (y)
16 for the definition of a "proposed action") in an area designated as "Village" in a City general
17 plan in effect on May 16, 2013, but that as of that date was located outside of the City or its
18 sphere of influence, would be inconsistent with DP P1.

19 2. Application of DP P1 to Public Works. Public works are not "residential,"
20 "commercial" or "industrial." As a result, DP P1 does not apply to any public works projects
21 such as a public waste water treatment facility. These would include the construction, operation,
22 maintenance, repair and replacement of public works improvements pursuant to and consistent
23 with one or more of the plans listed at the end of this paragraph. "Construction" means
24 designing, building or installing pumps, roadways, conveyance facilities and infrastructure,
25 structures and other ancillary public improvements. In contrast, DP P1 applies to any proposed
26 action that involves any new residential, commercial or industrial development (including
27 functionally equivalent development), even if the development is needed to help fund or
28 otherwise support a public works project and/or a listed plan.

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- 1 • Water Master Plan (Prepared for City of Stockton by West Yost Associates, Consulting
2 Engineers; dated July 2008)
- 3 • 2035 Wastewater Master Plan (Prepared for City of Stockton by West Yost Associates,
4 Consulting Engineers; dated October 2008)
- 5 • Regional Wastewater Control Facility Capital Improvement and Energy Management
6 Plan (dated August, 2011)
- 7 • Portions of the "City of Stockton FY 2016-2021 Capital Improvement Plan Proposed"
8 (dated May 16, 2016 [date appears on page 1 of that document's embedded City
9 Manager's Message]) that address Sanitation (P-74 through P-81), Stormwater (P-82
10 through P-87) and Water (P-158 through P-168)

11 3. The term "covered action" in Water Code section 85057.5 does not apply to the
12 City's filing a water rights application with the State Water Resources Control Board (SWRCB),
13 and/or the SWRCB's processing or approval of such an application. Those actions are excluded
14 by Water Code section 85057.5, subdivision (b) (1), which excludes "a regulatory action of a
15 state agency." Moreover, SWRCB applications often include details that may point to particular
16 projects. Those details concerning projects do not convert a SWRCB application, or the
17 SWRCB's processing or approval of the application, into a covered action. In contrast, other
18 public agency actions concerning those projects are potentially covered actions. The fact that a
19 project may potentially or actually receive water subject to the SWRCB water right does not
20 exempt non-SWRCB government actions concerning the project from being covered actions.
21 For example, even if a project is described in a SWRCB application and/or approval, a proposed
22 local government grading permit, zoning change or other action for that project is potentially a
23 covered action.

24 4. The parties incorporate into this agreement the interpretation presented by the
25 Trial Court at page 31 line 1 through Page 32 Line 6 of the May 18, 2016 Ruling On Submitted
26 Matter about the Delta Reform Act. A copy of those pages is attached hereto as Exhibit A.

27 5. City's Right. In the event that the Council, the Legislature or a court (in a final
28 decision in which appeals have been exhausted or the time to appeal has expired) alters, rescinds

1 or invalidates one or more provision in paragraphs (1-3), above, by entering this agreement the
2 City does not waive its right to challenge, in a new lawsuit, any such altered measure, or the
3 application of such rescinded or invalidated measure to the City.

4 6. City's and Council's Right. The City and/or the Council may introduce this
5 Stipulated Judgment in any judicial or administrative proceeding in which the Council, or any
6 other entity or individual, asserts that the City has not complied with any of the Council's
7 regulations.

8 7. Fees and Costs. The City and the Council shall assume and pay for their
9 respective attorneys' fees and legal costs and expenses related to this stipulation, and the City's
10 lawsuit against the Council.

11 8. Other Plaintiffs/Petitioners. Except for the City, this judgment does not affect any
12 plaintiffs or petitioners in this Coordinated Proceeding.

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FRUM CHAIRMAN RANDI
AMONG

1 Dated: Oct 27, 2016

DELTA STEWARDSHIP COUNCIL

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By Randy Fiorini
Randy Fiorini, Chair

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APPROVED AS TO FORM:

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7

Bethany Pane

Bethany Pane, Acting Chief Counsel

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10 Dated: Dec. 13, 2016

CITY OF STOCKTON

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By Kurt Wilson
Kurt Wilson, City Manager

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14

APPROVED AS TO FORM:

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John Luebbecke
John Luebbecke, City Attorney

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19 GOOD CAUSE APPEARING THEREFORE IT IS SO ORDERED:

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21 Dated: _____, 2016

Judge of the Superior Court

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HEALTH CARE SERVICES DIVISION

EXHIBIT A

1 Petitioner's stated concern is that WR P1 permits a Southern-California water supplier to
2 achieve priority in obtaining water. However, the plain language of WR P1 does not affect water
3 right priorities. WR P1 does not provide that if a consistency certification is undergoing the
4 appeals process, another water supplier may come in and usurp the challenged party's water
5 rights or priority. Clearly, Respondent has no authority over water-priority determinations, and
6 any plan or project subject to WR P1 would only be valid to the extent it sought water that a
7 supplier was entitled to via its water rights. Accordingly, the Court finds WR P1 does not alter or
8 affect water rights or priorities.

9 With regard to whether WR P1 affects water right applications, Respondent argues water
10 rights applications are not covered actions pursuant to section 85057.5, subdivision (b)(1):

11 “(b) ‘Covered action’ does not include any of the following:
12 (1) A regulatory action of a state agency.”

13 WR P1 cannot apply to the granting or denial of a water rights application, a matter
14 controlled by the SWRCB (§§ 1250, et seq.). Petitioner argues that the plain language of WR P1
15 could prevent action pursuant to a granted water rights application. While the SWRCB may grant
16 appropriation rights pursuant to section 1253, those rights are still subject to a certification of
17 Delta Plan consistency pursuant to 23 CCR section 5002. However, the requirement of reducing
18 Delta reliance to the extent feasible and cost effective is merely a statutory enumeration of the
19 principles of reasonable use and the public trust doctrine.

20 Section 85023 provides “[t]he longstanding constitutional principle of reasonable use and
21 the public trust doctrine shall be the foundation of state water management policy and are
22 particularly important and applicable to the Delta.” Accordingly, the Legislature affirmed its
23 intent that these principles continue to apply to limit an owner's interest in water. (*Alegretti & Co*
24 *v. County of Imperial* 138 Cal.App.4th 1261, 1279 [water rights are restricted to a “reasonable
25 beneficial use” consistent with article X, section 2 of the California Constitution]; *National*
26 *Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 437 [“parties acquiring rights in trust
27 property...can assert no vested right to use those rights in a manner harmful to the trust.”]) If an
28

1 in-Delta supplier seeks to exercise its water rights without undertaking locally cost effective and
2 technically feasible projects that reduce reliance on the Delta, such an undertaking is contrary to
3 both the principle of reasonable use and the public trust doctrine. Consequently, WR P1 is an
4 assessment of whether a water supplier is compliant with reasonable use and the public trust
5 doctrine. As such, it does not modify water rights in contravention of the Delta Reform Act or
6 preexisting water rights protections.

7 Conclusion

8 The petition for writ of mandate with regard to the statutory challenges heard in this
9 bifurcated proceeding is **DENIED** in accordance with the above ruling.

10 In accordance with Local Rule 1.06, counsel for Respondent is directed to prepare an
11 order denying the petition, incorporating this ruling as an exhibit to the order, and a separate
12 judgment; submit them to counsel for Petitioner for approval as to form in accordance with Rule
13 of Court 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance
14 with Rule of Court 3.1312(b).

15 *C. Save the California Delta Alliance v. Delta Stewardship Council*

16 Petitioner Save the California Delta Alliance argues the Delta Plan is deficient in the
17 following five areas:

- 18 1. Appendix A and the BDCP Covered Activity Consistency Rule contain unlawful
19 underground regulations determining that BDCP projects are exempt from the Delta
20 Plan.
- 21 2. The BDCP exemption rule impairs the scope of the Delta Reform Act.
- 22 3. The flow policy violates the Delta Reform Act.
- 23 4. The Delta Plan does not contain any conveyance or storage policies, in violation of the
24 Delta Reform Act.
- 25 5. The Council has effectively "rubber-stamped" the BDCP for Delta Plan inclusion,
26 contrary to Section 85321.

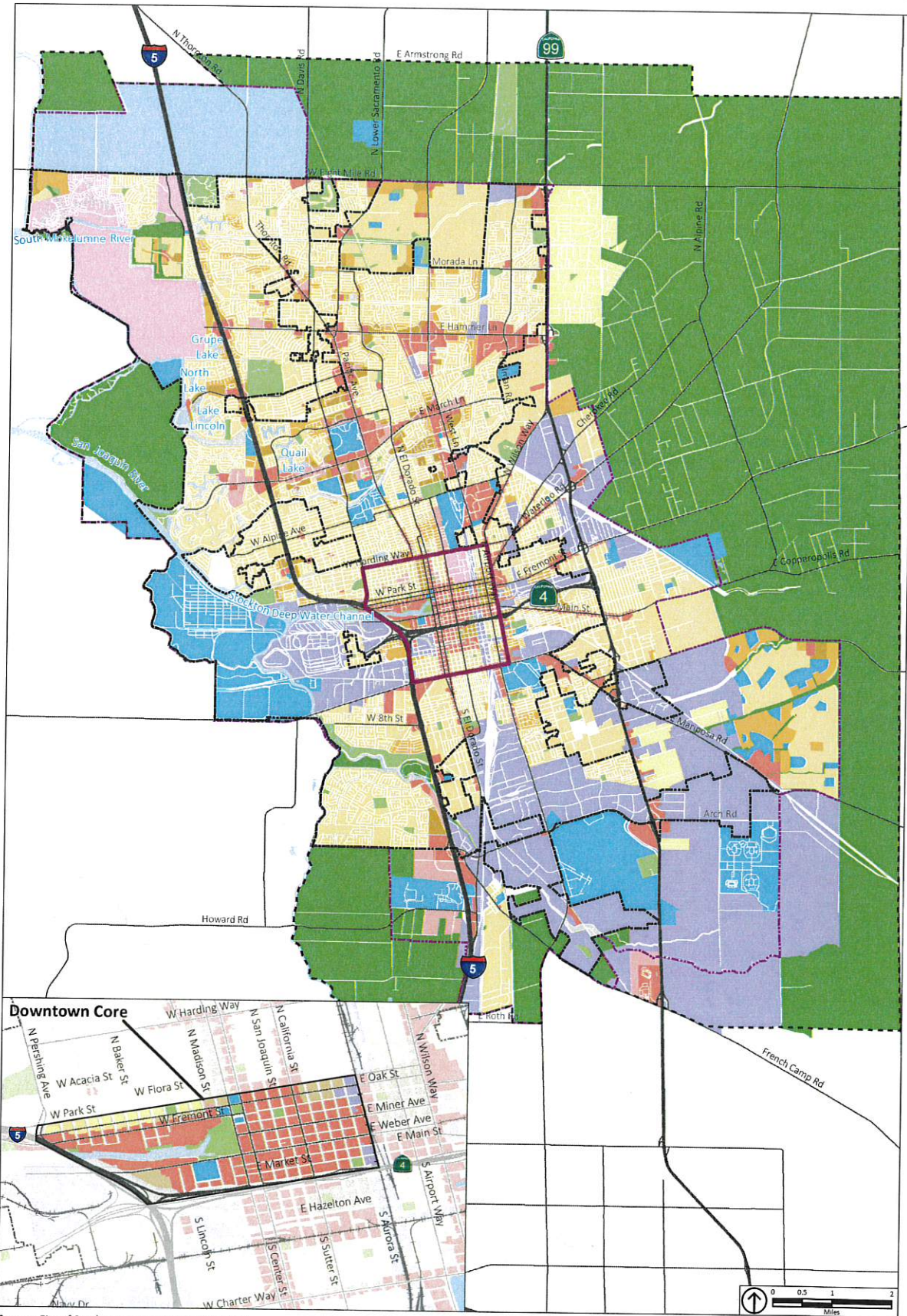
27 ///

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PROJECT DESCRIPTION



Source: City of Stockton, 2017; PlaceWorks, 2017.

- | | | | | |
|----------------------------|-----------------------------|-----------------------------------|----------------------------|---------------------------|
| Residential Estate | Mixed Use | Economic and Education Enterprise | City Limit | Greater Downtown Boundary |
| Low Density Residential | Commercial | Institutional | Sphere of Influence | |
| Medium Density Residential | Administrative Professional | Parks and Recreation | General Plan Planning Area | |
| High Density Residential | Industrial | Open Space/Agriculture | | |

Figure 3-3
Proposed General Plan Land Use Map