

Alert – SB 458 revisions dated 9.9.09

Issued September 10, 2009

Substantial revisions are made to SB 458 and Senators Steinberg and Simitian are now the authors.

- ✓ Further amendments are needed to provide clarity and integrate with other legislation.
- ✓ This bill is linked to revised versions of SB 12 and AB 39, especially regarding achieving consistency with the Delta Plan.
- ✓ The intent of this bill is apparently to leave the Delta Protection Commission's land use authority in place, requiring it to prepare a resources management plan addressing land use, and determining consistency of local general plans in the primary zone with that plan.
- ✓ The bill also requires DPC to prepare a separate economic sustainability plan.
- ✓ References in the bill to the two plans are confusing, and it is not certain that all references actually refer to the intended plan.

Evaluated against comments on the prior version of SB 458,¹ the revisions include some critical positive changes while other recommended changes were not made.

Improvements to SB 458 to conform to *Delta Vision Strategic Plan* recommendations:

1. **Co-equal goals** definition is now consistent with AB 39 (Huffman).
2. The Delta Protection Commission is required to develop a **resources management plan focused on land use** (section 29760 is not repealed, as it was in previous versions of the bill)
3. **Council approval of resources management plan improved**, but actual results in decisions depends on an effective appeals process in SB 12.
4. **Ecosystem restoration** given some primacy for the conservancy (section 32322(a)). The bill would be further improved by clarifying that ecosystem restoration is the primary purpose of the conservancy.
5. **Conservancy is allowed to hold land in fee simple**, important for long-term ecosystem restoration.

Delta Vision Strategic Plan recommendations not included in the bill:

1. **DPC composition, terms and chair remain the same**, and DPC chair serves on council (recommendations made to change all these).
2. Section 29764 remains unchanged, meaning high risk areas in the secondary zone of the Delta remain at risk of floods and inappropriate land use decisions. Section 29773.5 requiring DPC study of possible expansion of the primary zone remains. As this would require both DPC recommendation and then legislative action, at a minimum **protection of named at risk areas is deferred and that protection may never occur**.
3. **Voting rules for DPC and Conservancy continue to be “of members”** rather than “of members present,” a barrier to timely decision making and invitation to strategic absences to stop action.
4. **Land can only be acquired from willing sellers**, a barrier to effective large scale ecosystem restoration.
5. **Requirement for a conservancy strategic plan consistent with five named plans remains**, mudding the relationship of conservancy action to the Delta Plan which should be given primacy.

1. The comments were released September 3, 2009 and the title references preprint SB 4/SB 458:
<http://www.deltavisionfoundation.org/reports.php>

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Further amendments to SB 458 are needed. In rough priority order those include:

1. Clarify role of council in ensuring that resources management plan is consistent with the Delta Plan.
2. Clarify development of the resources management plan and how local government actions will be made consistent with that plan and the Delta Plan, including appropriate council oversight of resource management plan implementation.
3. Clarify development of the economic sustainability plan and its relationship to actions of local governments and state agencies. An economic sustainability plan should appropriately include goals, policies and incentives. Economic/fiscal elements have been discretionary in local government general plans.
4. Address the critical issue of named at risk areas in the Delta effectively. Those areas are: Cosumnes/Mokelumne floodway, San Joaquin/South Delta lowlands, Bethel Island, Isleton, Brannan-Andrus Island, Walnut Grove (including the residential areas of Grand Island), Locke, Clarksburg, Courtland, and Terminous.²
5. Revise the mission, responsibilities and powers of the conservancy to make it an effective instrument of ecosystem restoration.

2. See *Delta Vision Strategic Plan*, Action recommendations 6.2.1, 6.2.2 and 6.2.3