

Comments on Preprint SB 4 Released September 3, 2009

Overview:

PSB 4 (and SB 458) would result in a radically changed Delta Protection Commission, with changed mission, changed authorities, and changed governance. The proposals are a large departure from the recommendations of the *Delta Vision Strategic Plan* and would not ensure consistency with the Delta Plan. The thrust of this bill is economic development of the Delta, reflected in the changed resource management plan where the absence of other policy goals makes that policy document unavailable for achieving consistency with the Delta Plan which must include other goals, including ecosystem restoration, water supply reliability, and levee investments.

Overall, the provisions of PSB 4 reduce the commission roles in land use decisions, increasing the likelihood of what *the Delta Vision Strategic Plan* identified as “inappropriate” land uses because of risks from floods and conflicts with increased water supply reliability or ecosystem restoration. Additionally, Section 29773 invites conflict between the commission and the council, at great expense to the state.

The conservancy proposed in PSB 4 is unlikely to effectively implement the ecosystem improvements being developed in any of the current policy processes (Delta Vision, the Bay Delta Conservation Plan, or the Ecosystem Restoration Program). Its mission is fragmented to include economic well being of Delta residents, departing from the natural resource enhancement mission of other California conservancies. It lacks sufficient capacity to manage large scale ecosystem restoration projects. The requirement of a conservancy strategic plan consistent with five named plans (section 32376) dramatically weakens the relationship between the conservancy and the Delta plan and could result great expenditure of energy in sorting out plan inconsistencies.

	Section	Comment	Possible Solution
I. Preprint Senate Bill 4 (incorporating SB 458, Wolk)			
	Public Resources Code Section 29702 (a).	Wording of co-equal goals varies from the Delta Vision Strategic Plan.	Amend to be consistent with definition of coequal goals in Preprint AB 1, as revised in comments on Preprint AB 1. Achieve the coequal goals of assuring a reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. An action critical to achieving the co-equal goals is recognizing and enhancing the unique cultural,

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			recreational, and agricultural values of the California Delta as an evolving place, but it is separate from the co-equal goals.
	29703.5	Bill states that the Delta Protection Commission provides an existing forum for Delta residents to engage in decisions regarding actions in the delta. However, many issues affecting the Delta are also state interests and the state has a substantial policy and financing presence in the Delta.	Revise: The Delta Protection Commission created pursuant to Section 29735 provides an existing forum for Delta residents <u>and state agencies</u> to engage in decisions (continue with existing language).
	29735	<p>The bill changes the make-up of the Commission, reducing its members from 23 to 15. With regard to State agencies, the Director of Parks and Recreation, the Director of Fish and Game, the Director of Boating and Waterways, and the Director of Water Resources are eliminated, The Secretary of Food and Agriculture and the executive officer of the State Lands Commission are retained, and the Secretary of the Natural Resources Agency and the Secretary of Business, Transportation and Housing are added. It seems unwise to delete the Director of Parks and Recreation, when recreation is one of the values to be protected, to delete the Department of Fish and Game, when ecosystem is to be protected and restored, Boating and Waterways, which has a significant interest in the Delta, and DWR, which will be affected by, and likely to participate in, Delta actions.</p> <p>The <i>Delta Vision Strategic Plan</i> did not call for this type of reorganization of the Delta Protection Commission.</p>	Restore membership of directors of key state agencies with an interest in the Delta and awareness of statewide implications of Delta actions.
	29736	Repeals present provision for four-year terms and replaces it with members who serve at the pleasure of their appointing bodies. This replaces members who have fixed tenures and can exercise independent judgment with members who are more likely to be subject to political influences in order to keep their positions.	Retain fixed terms for appointed members.
	29739(a)	The commission shall elect a chairman from among the County Supervisor members. This effectively precludes other members, who	Revise as follows: The commission, during the first

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		<p>may be equally or more talented, from serving as chairman.</p> <p>Section 29739 (c) then provides that the chairperson shall serve as a voting member of the Delta Stewardship Council. This may not be desirable, if the Council is to review recommendations from the commission.</p>	<p>meeting of the commission after January 1, 2010, shall elect from among the members identified in subdivision (a) of Section 29735 its members a chairperson who shall serve for one year.</p>
	29752	<p>The bill revises the existing act, which provides that a majority of the voting members <u>present</u> shall be required to take action. It provides instead that a majority of the members shall be required to take action. This makes it more difficult for the commission to take action. ▼</p>	<p>Retain language in existing act: A majority vote of the voting members <u>present</u> shall be required to take action with respect to any matter unless otherwise specified in this division.</p>
	29756.5	<p>The Commission may act as the facilitating agency for the implementation of any joint habitat restoration or enhancement programs located within the primary zone of the Delta.</p> <p>It is not clear whether this would usurp authority that should be with the Delta Stewardship Council.</p>	Delete 29756.5
	29760	<p>The bill repeals existing provisions which require the commission to prepare a resource management plan for land uses within the primary zone of the Delta.</p> <p>In its place, the bill calls for a comprehensive resources management plan that shall inform the Delta Stewardship Council's policies "regarding the socioeconomic sustainability of the Delta region." That plan shall include public safety recommendations, economic elements of local general plans and other local economic efforts and comments to DWR on its update of the flood management plan and a PLACEHOLDER which must be replaced with effective legislative language before bill passage.</p> <p>This is a major change in the role of the commission. It appears that its land use role is being lost, and it is focused on making recommendations to the Council with a heavy emphasis on economic sustainability.</p>	<p>Preserve the land use role of the Delta Protection Commission by restoring the original language of section 29760.</p> <p>Strengthen the land use role of the commission and offer some protection against inappropriate urbanization by giving the commission land use authority to determine consistency with the Delta Plan for proposed projects in the Cosumnes/Mokelumne floodway and the San Joaquin/South Delta lowlands as if they were in the primary zone, until local governments develop plans for these areas consistent with the Delta Plan.</p>

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		<p>Section 29760 requires the resources management plan to be adopted by the commission by July 1, 2011. Under AB1, the Delta Plan is to be complete by January 1, 2011.</p> <p>See discussion of Delta Plan development and adoption below. Modify this language to be consistent with Delta Plan language below. ▾</p>	<p>Also require local plans for Bethel Island, the City of Isleton, and Brannan-Andrus Island with a focus on safety risks from flood and sea level rise, and authorize and require the commission to exercise land use authority over those plans as if they were in the primary zone.</p>
	29761.5(b)	<p>Provides that the Council shall review the resources management plan for consistency with the Delta Plan and approve the resources management plan. As noted above, it appears that the Delta Plan will come first, so that the Council can evaluate the consistency of the resources management plan with the Delta Plan.</p> <p>Requiring the Council to approve the resources management plan takes away from the Council's authority. The Council should be required only to consider the resources management plan, and adopt all or part of it into the Delta Plan only if in the judgment of the Council, it is consistent with the Delta Plan and will help achieve the co-equal goals.</p> <p>Bill provides that the resources management plan shall be implemented by the Delta Protection Commission. This should be true only if the plan is consistent with the Delta Plan and approved by the Council. The Commission's implementation of its resources management plan must not interfere with the Council's authority in its areas.</p>	<p>Revise: The commission shall transmit copies of the resources management plan and its revisions to the Governor, Legislature, and the delta Stewardship Council within 60 days of the adoption or revision. The Delta Stewardship Council shall review the resources management plan for consistency with the Delta Plan and may approve the resources management plan <u>in whole or in part if, in the judgment of the Council, it is consistent with the Delta Plan and will best help to achieve the co-equal goals.</u> The <u>Council-approved</u> resources management plan shall be implemented by the Delta Protection Commission. <u>If the Council determines that the resources management plan is not consistent with the Delta Plan, it may send it back to the Commission for revision, or the Council itself may make the necessary revisions to make it consistent with the Delta Plan.</u></p>
	29761.6 (e)	This section requires the commission to prepare recommendations to the	Revise:

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		<p>Council in addition to the resources management plan. Subsection (e) requires the council to adopt the recommendations of the commission if it determines that they are feasible and consistent with the objectives of the Delta Plan. This language is too strong, and interferes with the authority of the council to choose the best alternatives for the Delta. This section opens the possibility of conflict between the council and the commission.</p>	<p>The council shall take into consideration the recommendations of the commission, including the recommendations included in the resources management plan [note those are addressed in an earlier section.] If the council 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. and may adopt any recommendation in whole or in part if, in the judgment of the Council, it is consistent with the Delta Plan and will best help to achieve the co-equal goals.</p>
	29763	<p>Local governments are to submit to the commission proposed general plan amendments and land use elements to make their general plans consistent with the resources management plan. This should include consistency with the Delta Plan.</p>	<p>Revise: Within 180 days from the date of the Delta Stewardship Council's adoption of the Delta Plan or the commission's adopting of the resources management plan, whichever occurs first, all local governments shall submit to the commission proposed general plan amendments and land use elements to make their general plans consistent with the resources management plan <u>and the Delta Plan</u> with respect to land use within the primary zone. [Continue with rest of language of this section.]</p>

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	29763.1	<p>Commission to approve general plan amendments only after making a written finding that the proposed amendments are consistent with the resources management plan. Add consistency with Delta Plan.</p>	<p>Revise second sentence: The commission shall approve the proposed general plan amendments by a majority vote of the commission membership and present only after making a written finding that the proposed amendments are consistent with and in furtherance of the resources management plan, and Delta Plan, based on substantial evidence in the record.</p>
	29763.2	<p>Language concerning agricultural practices is unclear and possibly at odds with the co-equal goals of a more reliable water supply for Californians and a meaningful ecosystem restoration.</p> <p>Also note that some of these findings may prove to be inconsistent with the Delta Plan. For example, subsection (g) provides that the general plan will not increase the potential for vandalism or trespass on private land. But if the Delta Plan includes a Delta trail, there may necessarily be some, possibly small, increase in the <i>potential</i> for vandalism. (This provision is currently in the Delta Protection Act.)</p>	<p>In reviewing local government general plans or general plan amendments, the commission shall make written findings as to the potential impact of the proposed amendments, to the extent that those impacts will not increase requirements or restrictions upon agricultural practices in the primary zone, based on substantial evidence in the record, as follows: (continue)</p>
	29764	<p>Land use authority granted to the commission by this division is limited to the primary zone. The <i>Delta Vision Strategic Plan</i> identified a limited number of areas where current land use policies are inadequate and directed local governments to address these insufficiencies. While local governments are developing improved plans, these named areas would be treated as included in the Delta Primary Zone.</p>	<p>Revise:</p> <p>(a) Except as provided in this section, land use authority granted to the commission by this division is limited to the primary zone, and shall not preempt local government general plans for lands within the secondary zone. (b) <u>The commission may exercise land use authority and determine consistency with the Delta Plan over projects in the Cosumnes/Mokelumne flood way and the San Joaquin/South Delta lowlands as if they were in the primary zone, until local governments develop plans for</u></p>

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			<p><u>these areas consistent with the Delta Plan. (c) Local communities shall immediately prepare local plans for Bethel Island, the City of Isleton, and Brannan-Andrus Island with a focus on safety risks from flood and sea level rise, and the commission shall exercise land use authority over those plans as if they were in the primary zone. (d) Local governments shall immediately prepare local plans for the following at-risk locations within the primary zone: Walnut Grove (including the residential area on Grand Island), Locke, Clarksburg, Courtland, and Terminous. The plans shall identify ways to reduce risk to life and property through land use policies or a combination of land use regulations and levee upgrades. The commission shall review these plans. Once the Delta Plan is completed, the commission shall again review the plans, for consistency with the Delta Plan.</u></p>
	29765	<p>Prior to approval of general plan amendments by the commission, local government itself may approve development within the primary zone after making findings. Those findings should be subject to appeal/review by the commission and/or the Council</p> <p>Subsection (b) provides that development shall not occur in the primary zone unless the relevant proposed amendment is determined to be consistent with the resources management plan. Add the Delta Plan.</p>	<p>Add: <u>(a)(12) Within 60 days from the date of decision, the decision and findings of the local government shall be reviewed by the commission or the council for consistency with the Delta Plan.</u></p> <p>Revise: (b)Subsequent to the approval by the commission of a general plan or general plan amendment, additional development shall not occur in the</p>

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			primary zone of the Delta unless the relevant proposed amendment to the general plan is determined to be consistent with the resources management plan and the Delta Plan.
	32301(i). and 32322(a)	The efforts of the conservancy are to advance a wide range of matters. It is not clear that the primary thrust of the conservancy is to advance the two co-equal goals. There is a strong focus on the economic well-being of Delta residents, and no mention of water supply reliability.	32322 (a) The conservancy shall pursue its activities in a way that helps to achieve the two co-equal goals and implement the Delta Plan. It shall support efforts that advance both environmental protection and the economic well-being of delta residents (continue with existing language.)
	32332	Provides that the chairperson of the Conservancy board will always be a County Supervisor. This eliminates members who may have differing interests, or statewide interests.	Revise last sentence: The chairperson shall be selected from among the members specified in paragraphs (3) to (7), inclusive, of subdivision (a) of Section 32330.
	32334	A decision of the board requires a vote of six of the voting members, not just a majority of a quorum present at a meeting. This has the effect of making it more difficult for the board to take action.	See previous discussion and suggested changes in language.
	32366	This section significantly limits the conservancy by requiring that it acquire land only from willing sellers, and by prohibiting it from acquiring a fee interest in real property. If the conservancy is to play a major role in the implementation of the ecosystem restoration program, it should have the ability to take title in fee where it deems such acquisition advisable. Acquiring less than the full fee may in some cases result in future purchasers coming and asking to be relieved of land conservation easements, pleading financial hardship of keeping land in agriculture, for example. Of the existing state conservancies, only the Sierra Nevada Conservancy has a similar limitation preventing it from acquiring lands in fee.	The conservancy may acquire from willing sellers or transferors interests in real property and improve, lease, or transfer interests in real property, in order to carry out the purposes of this division. However, the conservancy shall not acquire a fee interest in real property.

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	32370	<p>Provides that the conservancy shall not exercise the power of eminent domain. Implementation of large scale ecosystem restoration will require ability to manage large areas of land. The tools available for this co equal goal should be consistent with those available to ensure greater reliability in water supply for California. Return to the language in the <i>Delta Vision Strategic Plan</i>, giving this conservancy the ability to acquire lands by request to the Public Works Board, a power now available to five existing conservancies. An analysis prepared for Delta Vision details those powers (Department of Justice, Office of the Attorney General. <i>Institutional Options for Delta Vision Governance</i>. October 15, 2007). As noted in that analysis, the power of eminent domain has not been exercised by conservancies but it is prudent to include it among the powers of this conservancy to ensure capacity to achieve the required large scale ecosystem restoration in a timely manner.</p>	<p>Repeal: The conservancy shall not exercise the power of eminent domain. Add: <u>The Delta Conservancy may acquire property through the Public Works Board when required to implement the Delta Plan.</u></p>
	32376	<p>This section requires the conservancy board to prepare a strategic plan to achieve the goals of the conservancy. This would create a multitude of plans—the Delta Plan, the commission’s resources management plan, and a separate Conservancy plan. The Conservancy should instead be guided by the Delta Plan.</p>	<p>Eliminate section 32376</p>