



News & Publications

New Sacramento-San Joaquin River Delta Plan Takes Effect

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On September 1, 2013, the Sacramento-San Joaquin Delta Plan, designed to guide land use and resource management in the Sacramento-San Joaquin River Delta, took effect pursuant to California's Delta Reform Act of 2009. The overall policy intent of the Plan is to further the Act's coequal goals of ensuring a more reliable water supply for California, while protecting, restoring, and enhancing the Delta ecosystem. The Plan is significant for developers and governmental agencies because it establishes land use regulations that apply to development projects in the Delta that are considered "covered actions." Covered actions are broadly defined as projects that a state or local agency carries out, approves, or funds. Given this broad sweep of authority, many projects in the Delta already subject to state or local agency approval will now be subject to yet another layer of regulatory oversight.

The Delta Reform Act requires that a project in the Delta that meets the definition of a covered action must be consistent with the Plan. The agency that carries out, approves, or funds a project must determine whether the project is a covered action under the Plan. A project for purposes of the California Environmental Quality Act may or may not be considered a covered action, depending upon whether other criteria established by the Act have been satisfied. If the agency determines that the project is a covered action, then the agency must certify the project's consistency with the Plan. Any person may appeal this consistency determination to the Delta Stewardship Council, the entity created by the Act to implement the Plan, if that person believes the project is inconsistent with the Plan.

Related Professionals

Scott B. Birkey

Related Practice Areas

Land Use



Three key chapters of the Plan will have the greatest impact on development in the Delta.

First, the chapter **“Protect and Enhance the Unique Cultural, Recreational, Natural Resource, and Agricultural Value of the California Delta as an Evolving Place”** includes regulations relating to land use and development. One of these regulations seeks to confine new development to existing development areas, as identified by existing city or county general plans. Another regulation requires that water management facilities, ecosystem restoration, and flood management infrastructure must be sited to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans. These regulations are likely to have the most impact on development in the Delta because they directly impact where and how certain development may occur.

Second, the chapter **“Protect, Restore, and Enhance the Delta Ecosystem”** includes regulations pertaining to the protection, restoration, and enhancement of the Delta. These regulations state that the State Water Resources Control Board’s flow objectives will continue to govern the flow of water out of the Delta. Other regulations in this chapter relate to the protection and restoration of habitat in the Delta that may be imposed on a developer as mitigation for projects defined as covered actions.

Third, the chapter **“Reduce Risk to People, Property, and State Interests in the Delta”** focuses on flood management issues and includes four regulations that serve this purpose. The first of these regulations sets priorities for state investment in Delta levees, other flood protection, and protection of sensitive ecosystems. The second regulation requires that new residential development of five or more parcels be protected through floodproofing to a level 12 inches above the 100 year base flood elevation. The other two regulations provide for protection of floodways and floodplains.

Ultimately, one of the key policy questions is whether the Plan and its regulations will result in actual progress toward the coequal goals established by the Delta Reform Act. Many groups are dissatisfied with the Plan’s approach. The Plan is the subject of litigation in seven different lawsuits, mostly focused on the Plan’s compliance with CEQA, brought by a number of different stakeholders, including environmental groups, water districts, agricultural interests, and local governments. Implementation of the Plan is also likely to see its share of controversy, as agencies struggle to decide which projects should be considered covered actions subject to the Plan’s jurisdiction and restrictions on development.

Putting aside resolution of the Plan’s policy issues, developers or governmental agencies with a project in the Delta will now need to consider whether the Plan applies to its project, and if so, the extent to which the Plan may impact that project’s development.