



Delta Protection Commission Concludes The Old Sugar Mill Project Is Inconsistent With The Delta Protection Act

By Kari E. Fisher

The Delta Protection Commission, charged with protecting the Sacramento-San Joaquin Delta, ruled in the early hours of January 26, 2007 that the Old Sugar Mill Project approved by Yolo County last year is inconsistent with several policies contained in the Land Use and Resource Management Plan for the Primary Zone of the Delta and the Delta Protection Act.

Background: History of the Old Sugar Mill Project and the Appeals filed with the Delta Protection Act

On November 3, 2006, the Concerned Citizens of Clarksburg and the Natural Resources Defense Counsel each filed an appeal with the Delta Protection Commission challenging the October 24, 2006 decision of the Yolo County Board of Supervisors to approve the Old Sugar Mill Specific Plan and related actions. The appeals argue that the Old Sugar Mill Project, located in Clarksburg, California, conflicts with the Delta Protection Act and policies within the Resource Management Plan. The Old Sugar Mill Specific Plan proposes the redevelopment of the 105.4 acres of the old sugar beet processing site. Specifically, 28.2 acres would be allotted for residential development, adding up to 162 new homes to the town. In addition, the Specific Plan allows for 24.7 acres of commercial uses, 29.7 acres of industrial uses, 5.7 acres of public uses, 3.2 acres of waterfront, and 3.9 acres of roads. The Specific Plan proposes the improvement of infrastructure for the purpose of serving the Specific Plan area, including a water system for domestic and fire protection, a storm drainage system, and a wastewater treatment system. In addition, the Specific Plan provides

for increased recreational opportunities in the Delta and improvements to Clarksburg's library and schools. Prior to Yolo County's approval of the Specific Plan and subsequent rezoning of the property, the site was zoned as M-2 (Heavy Industrial).

The Delta Protection Commission's Decision

Pursuant to the Commission's applicable regulations (Cal. Code Regs., tit. 14, §§ 20000 et. seq), appeals filed with the Commission are heard in a two phase process. First, the Commission held a hearing on November 16, 2006, its first available meeting following the filing of the appeals, to determine whether the appeals fall within the Commission's jurisdiction and whether or not appealable issues had been raised. At that hearing, the Commission determined that the appeals do fall within the Commission's jurisdiction because the Old Sugar Mill Specific Plan would constitute "development" within the "primary zone" of the Delta pursuant to the Act. The Commission further determined that the appeals each raise at least one appealable issue under the Act. The Commission therefore proceeded to the second hearing phase and heard the merits of the appeals on January 25, 2007, its next regularly-scheduled meeting. The Commission's objective at the de novo hearing on the merits was to either (1) deny the appeals or (2) agree with the appeals and remand the Project back to the County for reconsideration. At the hearing, supporters of the project stated the Specific Plan would promote economic development and revitalize a small Delta community, while not impacting any agricultural land because the redevelopment project would

be built on industrial land within Clarksburg's urban limit line. Project opponents argued the project would be precedent-setting since the Specific Plan would allow residential development within the primary zone of the Delta. After a nearly seven-hour hearing, the Commission ultimately determined that the challenged actions of the County were inconsistent with three specific policies in the Resource Management Plan and related policies in the Act. Of the twelve policies cited by the appellants, the Commission found the Specific Plan to be inconsistent three: Land Use Policy 3, regarding buffers between residential and agricultural areas; Land Use Policy 4, concerning the requirement that there be sufficient flood protection and support infrastructure to support the development; and Levees Policy 3, regarding development density in areas protected by levees in the primary zone of the Delta, which includes the Clarksburg area. As described in the proposed findings prepared by Delta Protection Commission staff and subject to Commission approval, the bases of the findings of inconsistency are:

Land Use Policy 3 states: "New residential, recreational, commercial, or industrial development shall ensure that appropriate buffer areas are provided by those proposing new development to prevent conflicts between any proposed use and existing agricultural use. Buffers shall adequately protect integrity of land for existing and future agricultural uses. Buffers may include berms and vegetation, as well as setbacks of 500 to 1,000 feet." (Cal. Code Regs., tit. 14, §20060, subd. (c).) The proposed findings state the Specific Plan is inconsistent with Land Use Policy 3 because the proposed buffer between agricultural

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and urban uses would not provide separation equivalent to or beyond that recommended in the policy and future agricultural uses may not be adequately protected.

Land Use Policy 4 states, "New non-agricultural residential development, if needed, shall be located within the existing Primary Zone communities where support infrastructure and flood protection are already provided." (Cal. Code Regs., tit. 14, § 20060, subd. (d).) The proposed findings state the Specific Plan is inconsistent with Land Use Policy 4 because the project area has not been substantially documented as having adequate flood protection given the current questions regarding integrity of Delta levees.

Levees Policy 3 states, "Through flood ordinances based on Flood Emergency Management Act model ordinances, developed by the International Conference of Building Officials and included in the Uniform Building Code, local governments shall carefully and prudently carry out their responsibilities to regulate new construction within flood hazard areas to protect public health, safety, and welfare. Increased flood protection shall not result in densities beyond those allowed under zoning and general plan designations in place on January 1, 1992 for lands in the Primary Zone." (Cal. Code Regs., tit. 14, § 20100, subd. (c).) The proposed findings state the Specific Plan is inconsistent with Levees Policy 3 because the project includes increased flood protection mitigation and the residential component increases residential densities.

Conclusion and Implications

The Commission will review the proposed findings and analysis prepared by staff for consistency with its regulations and the Act at their next scheduled meeting on February 22, 2007. After approving the findings, the Old Sugar Mill Specific Plan will be sent back to Yolo County. The Yolo County Board of Supervisors may amend the Project to address the problems raised by the Commission and then resubmit the matter for review to the Commission, or go to court to challenge the Commission's inconsistency determination. For more information, visit www.delta.ca.gov.