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August 4, 2008

Honorable Phil Isenberg  
Chairman, Delta Vision Blue Ribbon Task Force  
650 Capitol Mall  
Sacramento, CA 95814

Dear Chairman Isenberg:

Please accept the following comments and recommendations on the second draft of the Delta Vision Strategic Plan on behalf of the California Building Industry Association (CBIA). We also submitted comments as part of the business and water stakeholders' coalition and have tried to minimize any repetition of comments here.

The monumental challenge undertaken by you and other members of the Blue Ribbon Task Force affects a number of critical state public policy issues important to California homebuilders and the ability to provide shelter for future generations. The focus of the comments below is upon improving the key policies of the Strategic Plan related to land use, water supply and housing.

Overall, CBIA is pleased with the direction and policies of the latest draft Strategic Plan. Be advised that there is one set of actions that is extremely short-sighted and unfair that CBIA strongly recommends be removed from the next draft of the Strategic Plan. CBIA also offers comments on several other proposed actions that can be improved to promote more effective implementation of the Delta Vision.

#### **Proposed Action 7.3: Unfair and Unacceptable Policy Direction**

New California homes are built as some of the most water-efficient in the world because the California Energy Commission requires that all cost-effective water conservation measures be included in Title 24 Residential Energy Standards. Last month the Building Standards Commission adopted the nation's first statewide Green Building Code that will result in the inclusion of additional water conservation measures in new development.

In contrast, the second draft Strategic Plan proposes a fundamentally unfair approach of placing an even greater burden upon new homebuyers by requiring them to pay for "best available" water savings devices, apparently whether cost-effective or not. Further, it would impose additional mitigation requirements upon new homebuyers by requiring them to pay for water conservation measures for existing residents. Then it proposes to add an additional new requirement that new development not take any additional water from California rivers and streams.

These actions recommended in this section will not encourage new development to be more water efficient but, rather, have the effect of discouraging new housing. Indeed, they include an "offset" requirement proposed in AB 2153 (Krekorian) that was debated and soundly rejected by the Legislature this session by a vote of 30 to 37 on the floor of the Assembly. These provisions of the Plan, therefore, should be stricken.

CBIA supports the inclusion of cost-effective water conservation devices in new development as required by current law and building codes and also supports reasonable mitigation for new water use as well as the expansion of the use of recycled water when available to new development from water and wastewater agencies.

Taxing new housing to compensate for the shortcomings of California's water supply policies won't serve the long-term water interests of the state – it will just make housing more expensive or more difficult to produce. Furthermore, as the Plan recommends various incentives to encourage conservation for agriculture – whose activities consume more than four times as much water than do urban activities – so too should be the approach with housing.

California water agencies have a very successful track record of promoting and achieving water conservation through incentive programs to their customers to retrofit to lower-flow shower-heads, low flow toilets, more efficient appliances, and landscape improvements. The public reaction is generally positive to such incentives, feeling that the water agency and government is providing them something of value. Mandates, particularly ones that may not be cost-effective, or that ask someone in a water efficient home to pay for someone else's water conservation, are not positive. Mandates create resentment – which is counter-productive to promoting water conservation.

### **Governance**

CBIA supports the business and water coalition's recommendation that the Strategic Plan not include a California Delta Ecosystem and Water Plan that could take a decade or more to prepare and approve. CBIA believes the Vision and Strategic Plan can provide the specific policy direction necessary to successfully proceed with implementation. Recognizing that many of the policy issues raised in the described CDEW Plan remain to be addressed, we offer a few comments.

1. As noted in prior comments and testimony, CBIA commends the Task Force for the balanced approach taken in the latest draft to establish state land-use interests in and around the Delta – ecosystem, water supply reliability, flood control – and to work with landowners, local government, and others to acquire or protect those properties. Landowners have acquired or owned property under current laws and Delta primary and secondary zone designations and have assumed they could pursue uses currently permitted upon their property. If the state is going to change the permitted uses, and therefore the value, of someone's property, it should identify the state's purpose and fully compensate the landowner for any loss in value.
2. CBIA is concerned about the potential for the creation of a sizeable bureaucracy proposed by the Strategic Plan's creation of multiple new councils, boards, utilities and teams. Alternatively, CBIA supports the creation of a California Delta Ecosystem and Water Council as an oversight body and believe it should be given both the authority and the responsibility for implementing the Vision and the Strategic Plan. This is a much more reasonable and functional model for governance and well serves both public and private interests by coordinating and housing under one roof the elements of the Plan. This further promotes accountability – a key aspect of ensuring the goals of the Plan are carried out.

3. CBIA likes the concept of a Public Advisory Group, but its membership needs to specifically include Delta area landowners, including non-agricultural landowners.
4. It is interesting that the Strategic Plan proposes that the Delta Protection Commission's Resource Management Plan be made compatible with the requirements of the Coastal Zone Management Act. What are the advantages of that? Whatever benefits may be derived need to be weighed against the potential complications of adding even more federal agency involvement in an already overcrowded field of government agencies.
5. The concept of identifying land areas critical to Delta management in "Special Area Management Plans" (SAMPs) is one CBIA can support if the state provides specific purposes for doing so, but it is recommended that the Task Force consider changing the name. Both the United States Army Corps of Engineers and the CZMA use the SAMPs term, and CBIA is unsure if you actually want the federal designation or are proposing something similar under California law? CBIA recommends that the state create its own designation and avoid additional federal complications, perhaps a "Delta Area Management Plan," or a DAMP?

### **Delta Conservancy**

CBIA supports the creation of a new Delta Conservancy as proposed in Action 1.3 to undertake ecosystem restoration and enhancement projects. CBIA also supports the Strategic Plan's call for the new Conservancy to be solely devoted to the Delta. When created, the Conservancy should be given the necessary funds to acquire land, enter into easements with willing landowners, and to provide stewardship over critical areas of the Delta.

California has a long history of public and private conservancies working with landowners to provide sensitive and effective stewardship over large land areas to protect habitat and multiple species. CBIA has several large landowner members who have very successfully participated in such programs, and we believe that creation of a well-funded and effective Delta Conservancy is critical to achieving the primary goals of the Delta Vision.

### **Financing**

CBIA objects to one particularly unnecessary and extreme provision of the finance section under item "2." on page 26. That provision says that "if any funds devoted to the CDEW Plan activities are used for other purposes, no water shall be conveyed through the State Water Project." There must be something a little less drastic than shutting down the state's water supply to ensure the intended discipline of Plan funds is maintained.

CBIA has had a great deal of experience in dealing with fees and simply recommends that the Plan conform the rules governing "nexus" and "reasonableness" to the existing statutory regime. amount and the facility or service provided. We dislike all fees, but ones that provide a visible and quantifiable benefit are more acceptable than those without.

CBIA fully supports item “8.” on page 28 in support of the adoption of tiered, or water conservation, rate structures by water agencies. Each water agency needs to determine how best to charge its customers for the water they deliver, but CBIA strongly supports the use of tiered rate structures to promote water conservation and to discourage water waste. It is critical that water agencies include “lifeline” provisions similar to other utilities to ensure environmental justice is provided. A properly structured rate system can take the revenue collected from customers who waste water and use it to fund water conservation incentives and programs within their jurisdiction.

### **Delta Ecosystem**

Most of CBIA’s comments on ecosystem issues were included in the business and water coalition letter, but we want to once again highlight the important role a Delta Conservancy can play in land stewardship to complement the critical aquatic improvements being pursued through development of the Bay Delta Conservation Plan. CBIA supports the construction of water treatment wetlands as proposed in Action 6.5 wherever feasible and appropriate and believe that the Conservancy could play a key role in the long-term maintenance of such wetlands.

This section makes reference to the threat of contaminants in the form of pesticides, metals, and ammonia from agricultural and urban drainage and runoff as potentially significant stressors to the Delta ecosystem. Unfortunately, new residential development frequently gets lumped in with existing or other “urban” development as a significant stressor.

The Task Force should be aware of the fact that new development is subject to unprecedented water quality regulations to control runoff before, during and post-construction by US EPA, State and Regional Water Boards. CBIA follows stringent runoff management requirements – as set forth by the state – which should satisfy the stormwater runoff objectives of the Plan.

Indeed, many of CBIA’s members are leading the way in innovative low-impact development practices and implementation of best management practices. CBIA has also become more active in research activities related to new development runoff and would be happy to share the results of that research with your staff. CBIA has shared this information with the State Water Resources Control Board (SWRCB) in a collaborative effort as it updates the Construction General Permit. The bottom line is that homebuilders cannot stop all runoff from new development in and around the Delta, but the pollutant loads from new development now and in the future will be significantly lower than projects built in the past.

### **Water Supply and Reliability**

Despite CBIA’s strong opposition expressed earlier to the recommendations in Action 7.3, California homebuilders take pride in the water conservation success of new homes they have built in the state and have a few additional comments offer on this section.

1. CBIA questions the introduction of issues like Integrated Regional Water Management Plans, Total Maximum Daily Loads and Confined Animal Feeding Operations which already part of the water quality management and regulatory landscape.

It's not that these are not critical water issues today, but they are tangential to the Delta. CBIA recommends that you support regional self-sufficiency, greater water conservation, and improvements in water quality, and that only the elements of this section that help direct and move clean water through and around the Delta be retained.

2. CBIA supports the Governor's goal of reducing per capita water use by 20 percent by 2020 and supports AB 2175 (Laird) in concept. CBIA also agrees with some water agencies' concerns that such a program be implemented in an equitable manner that is fair to those water agencies that have already conserved and reasonable to businesses that have a high water demand.
3. CBIA strongly supports the expanded use of recycled water. The state needs a proactive policy to promote increased water reuse and a reduction in conflicts among state agencies in regulating recycled water.
4. CBIA strongly supports the expanded use of seawater and brackish water desalination. Seawater desalination should be a priority water supply for the state, and the Legislature should adopt policy direction and requirements that the Coastal Commission approve desalination plants co-located with coastal power plants as soon as possible.
5. Action 8.8 attempts to simplify the very complex issue of groundwater infiltration and proposes to reduce flows to the Delta in conflict with other recommendations in the Strategic Plan to increase flows to the Delta. It proposes changes in land use and policies affecting a 45 million acre watershed area that may or may not make any sense.

Groundwater recharge should probably be addressed as a regional issue through adoption of policies appropriate for each region's rainfall patterns, groundwater basin locations, and water uses. Recommending requiring rainwater harvesting for new development is another example of the Strategic Plan getting pretty far afield from the Delta, and may make sense in the North Coast, and maybe not for Coachella. Similarly, stormwater capture may be great above an aquifer, but builders have been required to do so above bedrock, as well.

6. CBIA supports the business and water coalition's recommendations on dual conveyance and increased storage.

### **Delta as Place**

CBIA supports the recommendation for improving awareness and economic survival of the Delta through designation as a National Heritage Area (NHA) and as a State Recreation Area. We believe the NHA development process should be used to determine appropriate gateway locations and feel there is merit to pursuing the special enterprise zone concept.

CBIA strongly supports the recommendation of Action 11.2 to identify specific areas outside of the current primary zone where state interests in flood facilities or ecosystem priorities warrant state acquisition or easements. It will be critical to the success of these efforts that potentially affected landowners be notified and consulted as early in the process as possible. This is an area where the Delta Conservancy can play a vital role in securing land protection through acquisitions, easements, or stewardship plans.

CBIA supports the Delta Protection Commission's involvement and assistance in developing Specific Plans for the Delta's legacy towns, but the draft reads as though the DPC would be given too much authority in plan development. For Specific Plans to be successful, they should be generated by the locals with planning, mapping, economic development, fiscal analysis and other assistance provided by the DPC.

The experience of California homebuilders in land use planning tells illustrates how Specific Plans need to come from the landowners and businesses in those towns to be successful, rather than from the DPC down. If the DPC sees a fatal flaw in a plan or major problem, it should work with the locals to change it, but CBIA believes the Specific Plans must have local buy-in and ownership to be successful.

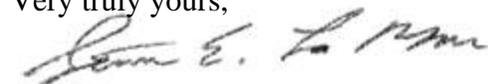
CBIA supports the implementation of the flood legislation and policies adopted in the 2007 legislative session. CBIA's members have a great deal of experience in the formation and use of assessment districts. CBIA uses them because they are one of the more equitable methods of balancing costs and benefits. New development can offer solutions to levee financing that provide long-term public benefits to both existing and future residents. It will be very challenging to create four assessment districts covering large areas of the Delta, but the concept has merit if it can be done in a manner in which voters will recognize the direct benefits.

CBIA supports most of the emergency preparedness recommendations with the exception of the proposal for "roof exits" in building codes. Concepts such as these were considered by the Legislature over the past two years of debate on flood-protection policy and legislation and were judged to be impractical. Indeed, California homebuilders take public safety very seriously and work with cities and counties, local flood control agencies, the Central Valley Flood Protection Board, the Department of Water Resources, the US Army Corps of Engineers, and the Federal Emergency Management Agency to build communities and houses that are flood safe and in compliance with local, state and federal flood protection requirements. But, the roof exit idea makes little practical sense and should be removed from the Plan.

### **Conclusion**

CBIA is supportive of the majority of the direction and recommendations in the Strategic Plan and believes it can be significantly improved if you give serious considerations to the recommendations above. Thank you for your attention to CBIA's comments.

Very truly yours,



Steve LaMar

Chairman, Water Resources Subcommittee