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April 4, 2024

Will Nelson
County of Contra Costa
Department of Conservation and Development
30 Muir Street
Martinez, CA 94553

Delivered via email: AdvancePlanning@dcd.cccounty.us

RE: Comments on Draft Environmental Impact Report for the County 2045 General Plan and Climate Action Plan Update, SCH# 2023090467.

Dear Will Nelson:

Thank you for the opportunity to review and comment on the County of Contra Costa Draft Environmental Impact Report (DEIR) for the 2045 General Plan and Climate Action & Adaptation Plan Update (2045 General Plan). The Council recognizes that the objective(s) of the County's General Plan and Climate Action Plan Update (project) are to determine the extent and types of development needed to achieve the community's long-range vision for physical, economic, social, and environmental goals, achieve compliance with applicable State and regional policies and provide the basis for establishing and setting priorities for detailed programs.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, Wat. Code, sections 85000 et seq. (Delta Reform Act). The Delta Reform Act charges the Council with furthering California's coequal goals of providing a more reliable water supply and protecting, restoring, and

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enhancing the Sacramento-San Joaquin River Delta (Delta) ecosystem, which are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. (Wat. Code, § 85054.)

The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh. (Wat. Code, § 85300) The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, title 23, section 5001 et seq. The Delta Reform Act granted the Council specific regulatory and appellate authority over certain actions of State or local public agencies that take place in whole or in part in the Delta ("covered actions"). (Wat. Code, §§ 85210, 85225, 85225.10.) A state or local public agency that proposes to undertake a covered action is required to prepare a written Certification of Consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and submit that certification to the Council prior to initiating the implementation of the project. (Wat. Code, § 85225)

The Delta Reform Act also directs the Council to review and provide timely advice to local and regional planning agencies regarding the consistency of local and regional planning documents with the Delta Plan. The Council's input includes, but is not limited to, reviewing the consistency of local and regional planning documents with the ecosystem restoration needs of the Delta and reviewing whether the lands set aside for natural resource protection are sufficient to meet the Delta's ecosystem needs. (Wat. Code, §85212)

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

Based on the project location and project description provided in the DEIR, the project appears to meet the definition of a covered action. Water Code section 85057.5(a) states that a covered action is a plan, program, or project, as defined by the California Environmental Quality Act (Public Resources Code section 21065), that meets all of the following conditions:

(1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh. The 2045 General Plan planning area includes lands within the unincorporated area of Contra Costa County. A portion of the planning

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area is located within the Delta, and thus, the project would occur in part within the boundaries of the Delta.

(2) Will be carried out, approved, or funded by a State or a local public agency. The 2045 General Plan and Climate Action Plan and DEIR would be approved and carried out by the County, a local public agency.

(3) Is covered by one of the provisions of the Delta Plan. As described below, the project is covered by, and aligned with multiple Delta Plan regulatory policies.

(4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and State interests in the Delta. The project may have a significant impact on the achievement of the coequal goal to protect, restore, and enhance the Delta ecosystem and the implementation of government sponsored flood control programs in the Delta.

The State or local agency approving, funding, or carrying out the project must file a Certification of Consistency with the Council prior to project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(k)(3).)

POTENTIALLY APPLICABLE DELTA PLAN POLICIES

The following section describes the Delta Plan regulatory policies that may apply to the project based on the information in the DEIR.

Governance Policy 1: Detailed Findings to Establish Consistency with the Delta Plan

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002) specifies what must be addressed in a Certification of Consistency by a certifying agency for a project that is a covered action. The following is a subset of policy requirements that a project must fulfill to be considered consistent with the Delta Plan:

Mitigation Measures

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs., tit. 23, § 5002(b)(2)) requires covered actions not exempt from the California Environmental Quality Act (CEQA) to include all applicable feasible mitigation measures adopted and

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incorporated into the Delta Plan as amended April 26, 2018 (unless the measures are within the exclusive jurisdiction of an agency other than the agency that files the Certification of Consistency), or substitute mitigation measures that the agency finds are equally or more effective. These mitigation measures are identified in Delta Plan Appendix O and are available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

The DEIR does not propose mitigation measures for the project. Rather, the DEIR considers that all potentially significant impacts are minimized to the greatest extent feasible through general plan policies and actions, and that no feasible mitigation is available. Council staff is available to engage in early consultation on this matter.

Best Available Science

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002(b)(3)) requires actions subject to Delta Plan regulations to document the use of best available science as relevant to the purpose and nature of the project. The Delta Plan defines best available science as “the best scientific information and data for informing management and policy decisions.” (Cal. Code Regs., tit. 23, § 5001(f)). Best available science is also required to be consistent with the guidelines and criteria in Appendix 1A of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>) and in the Delta Plan regulations (Cal. Code Regs., tit. 23, appen. 1a).

This policy generally requires that the process used by the County to analyze project alternatives, impacts, and mitigation measures for the project be clearly documented in the DEIR and supporting record, and effectively communicated to foster improved understanding and informed decision-making, meeting the criteria in Appendix 1A.

Delta as Place Policy 1: Locate New Urban Development Wisely and Risk Reduction Policy 2: Require Flood Protection for Residential Development in Rural Areas

Certain Delta Plan regulatory policies make allowances for certain actions occurring within Contra Costa County’s 2006 voter approved urban limit line (Cal. Code Regs.,

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tit 23, § 5010(a)(2), § 5013(a)(2). Specifically, Delta Plan Policy **DP P1**, limits new residential, commercial, and industrial development to, in relevant part: 1) areas that city or county general plans, as of May 16, 2013, designate for residential, commercial, and industrial development in cities or their spheres of influence; and 2) areas within Contra Costa County's 2006 voter-approved urban limit line, except that no new residential, commercial, and industrial development may occur on Bethel Island unless it is consistent with the Contra Costa County general plan effective as of May 16, 2013 (Cal. Code Regs., tit. 23, § 5010 and Appendix 7). Delta Plan Policy **RR P2**, requires a minimum level of flood protection for residential development of five or more parcels but does not apply to areas within Contra Costa County's 2006 voter-approved urban limit line, except Bethel Island (Cal. Code Regs., tit. 23, § 5013).

The 2045 General Plan goals appear to align with provisions of **DP P1** and **RR P2** through Land Use Element goals, such as, Goal LU-6 "Effective coordination with other agencies to ensure consistent planning, service delivery, and community development", and Goal LU-10 "Rural, agricultural, and open space areas that provide scenic value, support Delta ecosystem health, and meet the needs of the agricultural industry". Under the Conservation, Open Space, and Working Lands Element sections, Goal COS-2 "A thriving, and resilient agricultural sector based on resource conservation and sustainability practices, Goal COS-5 "Protected and restored watercourses, riparian corridors, and wetland areas that improve habitat, water quality, wildlife diversity, stormwater flows, and scenic values", and Goal COS-9 "Protected, preserved, and enhanced scenic quality, recreational value, and natural resources of the San Francisco Bay/Sacramento San Joaquin Delta estuary system and shoreline" also align with Delta Plan policies **DP P1** and **DP P2**. Lastly, the Health and Safety Element Goal HS-6 "Resilient and thriving Bayshore and Delta communities that are safeguarded and adaptively managed for rising sea levels", would align with the achievement of **DP P1** and **RR P2**.

The DEIR provides the following statement (p. 5.11-20,21):

Delta Plan Policy DP P1 requires that any new residential, commercial, or industrial development must be limited to areas within the Urban Limit Line (ULL), and also specifies that no new residential, commercial, or industrial development may occur on Bethel Island, even though it is inside the ULL, unless it is consistent with the existing General Plan. Although the proposed General Plan would redistribute

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some of the existing General Plan development capacity on Bethel Island by expanding commercial uses and reducing residential uses, the proposed General Plan does not allow a net increase in allowed development on the island. Therefore, the proposed General Plan is consistent with Policy DP P1.

DP P1 covers any new residential, commercial, and industrial development on Bethel Island that is inconsistent with the Contra Costa County general plan effective as of May 16, 2013. The County should include substantial evidence in the record, including this potential finding, in a future certification of consistency for Delta Plan Policy DP P1.

The proposed 2045 General Plan includes additional actions which address the Delta Plan and related Council initiatives. Specifically, "Action HS-6.4 Coordinate with the BCDC, Delta Stewardship Council, and other involved agencies and stakeholders to create a joint-powers authority or public-private partnership to develop, fund, and implement measures that leverage the results of Adapting to Rising Tides, Bay Adapts, and other studies and programs", and Policy LU-P6.1 "Ensure that County projects and decisions on private development and land use activities within the Legal Delta are consistent with a; The Land Use and Resource Management Plan for the Primary Zone of the Delta adopted by the Delta Protection Commission, (b) The Delta Plan adopted by the Delta Stewardship Council".

The Council appreciates the County's effort to incorporate these and other provisions of the Delta Plan in the 2045 General Plan, notes that the County has continued to refer projects to the Council for review as described above, and thanks the County for its continued engagement in our Delta Adapts Adaptation Plan. We encourage the County to submit a certification of consistency to the Council using these and other goals, actions, and policies that would demonstrate how the 2045 General Plan is consistent with the Delta Plan.

CLOSING COMMENTS

More information on covered actions, early consultation, and the certification process can be found on the Council website, <https://coveredactions.deltacouncil.ca.gov>. Council staff are available to discuss the issues outlined in this letter as the County proceeds in the next stages of its project

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and approval processes. Please contact Pat Kelly at
patricia.kelly@deltacouncil.ca.gov with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Henderson", with a long horizontal flourish extending to the right.

Jeff Henderson

Deputy Executive Officer

Jeff.Henderson@deltacouncil.ca.gov