



Delta Stewardship Council

A CALIFORNIA STATE AGENCY

Agenda Item: 5
Meeting Date: November 19, 2020

October 28, 2020

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Metropolitan Transportation Commission/Association of Bay Area Governments
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Delivered via email: aircomments@bayareametro.gov

RE: Comments on Notice of Preparation of an Environmental Impact Report for Plan Bay Area 2050, SCH#

Dear Adam Noelting:

Thank you for the opportunity to review and comment on the Metropolitan Transportation Commission/Association of Bay Area Governments (MTC/ABAG) Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for Plan Bay Area 2050. The Delta Stewardship Council (Council) recognizes the objective(s) of Plan Bay Area 2050, as described in the NOP, to serve as the 2021 Regional Transportation Plan and Sustainable Communities Strategy (RTP/SCS), a long-range regional plan for transportation, housing, the economy and the environment in the nine-county San Francisco Bay Area region. This letter summarizes requirements of the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act), the Council's enabling statute, pertaining to Plan Bay Area 2050, and provides the Council's comments on the NOP regarding the scope and content of the EIR for Plan Bay Area 2050.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, codified in Division 35 of the California Water Code, sections 85000-85350 (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 enhancing the Sacramento-San Joaquin River Delta (Delta) ecosystem. (Wat. Code, § 85054.) The Delta Reform Act further states that the coequal goals 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. The Council is charged

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with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan. (Wat. Code, § 85300.)

Pursuant to the Delta Reform Act, the Council has adopted the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh that furthers the coequal goals. The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, Title 23, sections 5001-5015. A state or local 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 implementation of the project. (Wat. Code, § 85225.) As is discussed in more detail below, the Delta Reform Act also gives the Council specific authority to advise local and regional planning agencies regarding the consistency of local and regional planning documents with the Delta Plan. (Wat. Code, § 85212.)

Delta Reform Act Requirements concerning Local and Regional Planning Agencies

1. Early Consultation

The Delta Reform Act grants the Council specific authority to review and advise local and regional planning agencies regarding the consistency of local and regional planning documents, including sustainable communities strategies and alternative planning strategies, with the Delta Plan. The Delta Plan requires a metropolitan planning organization preparing a regional transportation plan that includes land within the Delta primary or secondary zones to consult with the Council early in the planning process regarding the issues and policy choices relating to the Council's advice. (Wat. Code, § 85212.)

Thank you for meeting with Council staff on December 12, 2019, and January 22, 2020, to discuss Plan Bay Area 2050, and for replying in a letter dated April 7, 2020 to the Council's February 25, 2020 comment letter regarding the proposed Growth Geographies that are located within the Delta. This early engagement enables the Council to offer timely advice on the consistency of Plan Bay Area 2050 with the Delta Plan. The Council looks forward to continued consultations with MTC/ABAG as preparation of the draft EIR and Plan Bay Area 2050 continue.

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2. Council's Review of the Draft Sustainable Communities Strategy

Plan Bay Area 2050 is a regional transportation plan and sustainable community strategy for the nine-county Bay Area region that includes land within the Delta, specifically in portions of Alameda, Contra Costa, and Solano Counties. In addition to early consultation (described above), Section 85212 of the Delta Reform Act requires MTC/ABAG to provide to the Council:

- a draft sustainable communities strategy and an alternative planning strategy, if any, **no later than 60 days prior to the adoption of the final Plan Bay Area 2050**; and
- **concurrent** notice of its submission of the strategy(ies) via electronic mail to coveredactions@deltacouncil.ca.gov.

If the Council concludes that the submitted draft sustainable communities strategy (or alternative planning strategy) is inconsistent with the Delta Plan, it will provide to MTC/ABAG a written notice of the claimed inconsistency **no later than 30 days prior to the adoption of the final Plan Bay Area 2050**. If MTC/ABAG receives a timely written notice of inconsistency from the Council, MTC/ABAG's adoption of the final Plan Bay Area 2050 must include a detailed response to the Council's notice. (Wat. Code, § 85212.)

Please notify the Council via electronic mail addressed to Avery Livengood (Avery.Livengood@deltacouncil.ca.gov) when the adoption hearings for the final Plan Bay Area 2050 are scheduled. The Council would also welcome a presentation by MTC staff to the Delta Stewardship Council on the draft sustainable communities strategy at a future Council meeting prior to the adoption hearings.

Comment on Scope and Content of EIR for Plan Bay Area 2050

A state or local agency that proposes to carry out, approve, or fund an action that occurs in whole or in part in the Delta (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 implementation of the project. (Wat. Code, § 85225.) A covered action is an action that:

- (1) will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;
- (2) will be carried out, approved, or funded by the state or a local public agency;

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(3) is covered by one or more provisions of the Delta Plan; and

(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. (Wat. Code § 85057.5(b)(4).)

The Delta Reform Act exempts actions within the Secondary Zone of the Delta that a metropolitan planning organization determines are consistent with its sustainable community strategy (or alternative planning strategy) and that the State Air Resources Board has determined would achieve regional greenhouse gas emission reduction targets. (Wat. Code, § 85057.5(b)(4).) MTC/ABAG is the metropolitan planning organization for the Bay Area region, which contains portions of the Secondary Zone of the Delta. Thus, Water Code Section 85057.5(b)(4) provides MTC/ABAG with a significant role in shaping the State's Delta policy. Although Plan Bay Area 2050 is not a covered action, MTC/ABAG should ensure that it is consistent with the Delta Plan, as discussed in greater detail below.

1. Urban Expansion within the Delta

The Council exercises its authority through regulatory policies (set forth in Title 23 of the California Code of Regulations, Sections 5001 through 5016) and recommendations incorporated into the Delta Plan. One of these policies, Delta Plan Policy **DP P1** (Cal. Code Regs., tit. 23, § 5010) places certain limits on new urban development within the Delta. New residential, commercial, or industrial development must be limited to areas that city or county general plans designate for such development as of the date of the Delta Plan's adoption. In Contra Costa County, new residential, commercial, and industrial development within the Delta must be limited to areas within the 2006 voter-approved urban limit line (ULL). (Cal. Code Regs., tit. 23, § 5010(a)(2).) This policy is intended to strengthen existing Delta communities while protecting farmland and open space, providing land for ecosystem restoration needs, and reducing flood risk.

The Council's February 25, 2020 comment letter advised MTC/ABAG that its selection of Growth Geographies for Plan Bay Area 2050 should ensure that they provide for wise residential, commercial, and industrial development that does not conflict with DP P1, compromise Delta water supply reliability or ecosystem restoration, or negatively impact the Delta as an evolving place. According to MTC's Regional Growth Framework for Plan Bay Area 2050, only areas fully within an existing urbanized area, and undeveloped areas within an established urban growth boundary (UGB) or limit line (ULL), are eligible to be nominated as Priority Development Areas (PDAs) and Priority Production Areas (PPAs). If the Plan Bay Area 2050 PDAs and PPAs are fully within the Contra Costa 2006 ULL, new

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residential, commercial, or industrial development within these areas would be consistent with DP P1.

The EIR should acknowledge Policy DP P1 in the regulatory setting for the Land Use and Planning section, as well as in the growth inducement discussion. The EIR should document how Plan Bay Area 2050 is consistent with Policy DP P1, and evaluate whether any of the Growth Geographies (i.e., PDAs and PPAs) located within or adjacent to the Delta have the potential to induce residential, commercial, or industrial development that would be inconsistent with DP P1.

The Council also has an interest in recommended transportation projects in Plan Bay Area 2050 that may induce urban expansion or improve or degrade connections to rural areas, that would be inconsistent with DP P1. The EIR should describe what infrastructure, beyond the recommended transportation projects, is necessary to support the strategy or the plans, programs, projects, or activities encompassed within it.

2. Consistency with Ecosystem Restoration Needs

Section 85212 of the Delta Reform Act requires that the Council's input on local and regional planning documents, including sustainable communities strategies, include, but not be limited to reviewing:

- the consistency of local and regional planning documents with the ecosystem restoration needs of the Delta; and
- whether the lands set aside for natural resource protection are sufficient to meet the Delta's ecosystem needs.

The Delta Plan designates six priority habitat restoration areas (PHRAs) that have the greatest potential for large-scale habitat restoration (Delta Plan, Chapter 4, p. 136-138). Delta Plan Policy **ER P3** (Cal. Code Regs., tit. 23, § 5007) states that significant adverse impacts to the opportunity to restore habitat must be avoided or mitigated in these areas (depicted in Appendix 5:

<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%205.pdf>). Four PHRAs are located partially or wholly within the Plan Bay Area 2050 planning area: (1) Suisun Marsh; (2) Cache Slough; (3) the southern and western portions of the Yolo Bypass; and (4) the Winter Island and Dutch Slough portions of the Western Delta PHRA. The consistency of Plan Bay Area 2050 with the ecosystem restoration needs of the Delta is based on its impacts to the opportunity to restore habitat in these PHRAs.

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Plan Bay Area 2050 designates locally-nominated Priority Conservation Areas (PCAs), which are lands set aside for protection. As noted in the Council's February 25, 2020 comment letter, the Council supports the new PCA designation in Cache Slough, which aligns with the Cache Slough PHRA. This new PCA complements the existing East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan PCA, which covers the Dutch Slough portion of the Delta Plan's Western Delta PHRA. In future RTP/SCS updates, the Council encourages MTC/ABAG to consider including additional PCAs within Delta Plan PHRAs, particularly the Suisun Marsh PHRA, to better ensure that the lands set aside for natural resource protection are in the priority locations and at elevations necessary to meet the Delta's ecosystem needs. The Council, for its part, will encourage Solano County and other participating jurisdictions to nominate Suisun Marsh for PCA designation in future updates to the RTP/SCS.

Closing Comments and Next Steps

As MTC/ABAG proceeds with development and environmental impact analysis for Plan Bay Area 2050, the Council invites MTC/ABG to continue to engage Council staff to ensure consistency between Plan Bay Area 2050 and the Delta Plan, to ensure that the two Plans are complementary in nature and serve to protect the Delta while promoting sustainable growth and economic vitality in the broader region.

Please contact Avery Livengood at (916) 445-0782 or Avery.Livengood@deltacouncil.ca.gov with any questions.

Sincerely,



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Delta Stewardship Council

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