



Loma Prieta, Redwood and San Francisco Bay Chapters

MTC Public Information
Attn: Draft EIR Comments
375 Beale Street, Suite 800
San Francisco, CA, 94105
Via email to: eircomments@bayareametro.gov
Cc: info@bayareametro.gov

July 19, 2021

SUBJECT: COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT FOR PLAN BAY AREA 2050

Dear Commissioners,

The Sierra Club's San Francisco Bay Three-Chapter (Loma Prieta, Redwood and San Francisco Bay) Sea Level Rise Committee respectfully submits the following comments on the Draft Environmental Impact Report (DEIR) on Plan Bay Area 2050 (PBA).

The majority of our comments consist of the letter written by Richard Grassetti of Grassetti Environmental Consulting found in our additional Attachment 1. The submittal by Mr. Grassetti and the Citizens Committee to Complete the Refuge consists of both a letter and a Table (Attachment A). The letter addresses the general flaws and inadequacies of the subject DEIR. The Table addresses specific issues. Due to the unfortunate limited time period allowed for responses, the Sierra Club's Sea Level Rise Committee has not had time to review all of the issues addressed in Mr. Grassetti's Attachment A and therefore we limit our submittal to Mr. Grassetti's narrative letter, and we take no position on the specific comments he has provided in his Attachment A. We do fully endorse and enclose in our comments Mr. Grassetti's narrative letter. Limiting the public review and comment period to 45 days, for a document that is nearly three thousand pages long when all related MTC/ABAG studies and appendices are included, is prejudicial to the public's ability to respond to such a document. The Club did request 90-days, but that request was rejected without accompanying rationale.

The Sierra Club's San Francisco Bay-Three Chapter Transportation Committee will also provide comments on this Draft DEIR under separate cover.

Please consider the following comments in addition to Mr. Grasseti's narrative:

1. In PBA Section 7 Implementation Plan, MTC-ABAG declare themselves in a chart the lead agency for sea level rise adaptation/resilience. We find this baffling since MTC's expertise has been transportation and ABAG, housing. There are other agencies such as BCDC or the SF Bay Regional Water Board that have much greater experience and expertise in addressing sea level rise adaptation and resilience measures. According to the PBA 2050 MTC-ABAG's role will be a funding role and as such it should identify itself as a partner agency not a lead agency.

2. We find project objective 6 in Section 4 inadequate:

Section 4.1.2; Project Objectives: 6. Conserve the region's natural resources, open space, clean water, and clean air with the intent of improving health of Bay Area residents and workers and improving the health of the environment locally and globally.

Statements such as "...improving the health of the environment locally and globally..." are extremely vague. What does environmental health mean? Does it mean healthy for humans? The focus of the other environmental strategies is certainly focused on reduction of risks and hazards to human health. Does it mean healthy ecosystems? How does this relate to a changing world in the sense of climate change and sea level rise?

Specifically for sea level rise, we believe that the statement should be much more specific, calling for the preservation of San Francisco Bay as a locally and globally essential aquatic ecosystem, including the preservation all of its various habitats such as sub-tidal, intertidal, tidal flats and tidal marshes, transition zones and adjacent uplands wherever possible.

3. In Section 4.2.7 Moratorium on Flood Zone Development Alternative, the DEIR makes the extraordinary statement that:

Conclusion

Implementation of the proposed Plan's land use development pattern, sea level rise adaptation infrastructure, and transportation projects would have a **less-than-significant (LTS)** impact because existing federal, State, and local regulations and oversight are in place to specify mandatory actions that must occur during project development, which would adequately address potential for construction or operation of projects to result in violation of water quality standards or waste or stormwater discharge requirements. No mitigation is required."

This is simply not an accurate statement. Many wetlands in the Bay Area were approved for development despite the regulatory processes identified in the above DEIR statement. The Sierra Club has taken part in litigation and other advocacy exercises that saved many acres of wetlands despite regulatory approval for their destruction. For example, 76-acres of wetlands in San Leandro Bay were saved from destruction by the Port of Oakland as a result of litigation instituted by several environmental organizations after regulatory agencies permitted or took no action regarding the proposed destruction. Those wetlands are now restored to tidal marsh as part of the Martin Luther King, Jr. Regional Shoreline Park in Oakland.

Furthermore, most permitting processes look at the immediate effects of a project on resources such as tidal marshes, e.g., does the project impact/fill existing wetlands. But this does not address the problem that is inherent in sea level rise issues where the impacts will occur in the future. As sea level rises, tidal marshes will drown if they cannot move inland/upland. If new development prevents marsh migration that will be an impact of that development on the marsh and such an impact could have been avoided by not undertaking that development. Clearly this is a CEQA issue. If a berm or seawall is constructed, adjacent tidal marshes will erode due to the wave energy that is reflected back onto the marsh from the berm/seawall. Again, clearly this is an impact on tidal marsh resources that results from a project creating a berm or seawall and thus clearly a CEQA issue that needs to be addresses through avoidance or mitigation. Where these impacts will occur is well known now and documents such as the Adaptation Atlas provide great help in identifying such sites. The PBA 2050 DEIR must address these impacts because relying on other agencies to address them is avoiding the obligations of a programmatic EIR. A programmatic EIR needs to address potential impacts to public trust resources regardless of the existence of other agencies. After all, those other agencies may rely on the programmatic EIR to determine if they need to address certain impacts.

As stated in Mr. Grasseti's letter, the Sierra Club believes that "Given the above issues, we recommend that the EIR be re-scoped, revised, and re-circulated for public review."

Sincerely yours,

Arthur Feinstein

Arthur Feinstein, Chair
Sierra Club 3-Chapter San Francisco Bay Sea Level Rise Committee



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Dear Commissioners;

Grassetti Environmental Consulting (GECO) has reviewed the Draft Environmental Impact Report (DEIR) on Plan Bay Area 2050 (PBA) on behalf of Citizens Committee to Complete the Refuge (CCCR). This letter presents our comments on the CEQA adequacy of that document. Our comments are based on a review of the DEIR and certain supporting documents by Richard Grassetti, GECO's principal. Mr. Grassetti has over 35 years of experience writing, reviewing, and teaching about CEQA documents and procedures. His qualifications are attached to this letter. We understand that CCCR and the Sierra Club also are submitting comments under separate cover. This letter presents our general DEIR comments followed by a table of more specific comments.

General Comments

Growth Assumptions. The EIR is based on a series of population growth assumptions that apparently emanate from complex black-box models. The problem with these assumptions is that they are impossible for the lay-person to validate, and do not represent a reasonable range of growth possibilities. Further, there are apparent contradictions between growth assumptions within the Plan area and those outside of it. The EIR should explain the assumptions behind the growth projections both in the PBA area and outside of it (in the Cumulative Impacts analysis) in layperson's terms, and discuss the possible range of error of the projections. The Bay Area will become less and less livable and more and more expensive under the Plan's growth assumptions, and, as seen during the Covid pandemic, more and more people may choose to live more in the exurbs and suburbs than in the central cities rather than the other way around, as the Plan assumes. Further, again as evidenced during the pandemic, workers may choose to neither live where they work nor commute, but rather work from home. The plan should address that possibility, as it alters many of its subsequent analyses. The use of a single growth assumption with no disclosed underlying assumptions or range of error calls into question all of the subsequent analyses. Further, the EIR assumes that the relatively minor changes to infrastructure and funding of certain strategies can somehow re-direct growth, while at the same time claiming that it cannot limit or induce growth. Re-directing growth is, by definition, limiting or inducing growth in various sub-regions. If the Plan can re-direct growth, it also can limit or induce growth.

Therefore, the project cannot be assumed to be solely growth accommodating, and alternatives that have different growth assumptions cannot be disregarded (see Alternatives discussion, below).

Project Objectives. The DEIR and supporting documents state that the project itself would not meet many of its own objectives. Specifically, it would not “house 100% of the region’s projected growth by income level...”, “ensure that all current and future Bay Area residents and workers have sufficient housing options...”, “conserve the region’s natural resources, open space, clean water...”. The numerous “significant and unmitigable impacts” identified in the DEIR confirm this. Given these facts, the DEIR should consider either altering the project to meet its objectives or altering the objectives to align more closely with the proposed project. If the objectives are re-aligned for consistency with the proposed project, then the range of alternatives also can be broadened to consider some of the many additional alternatives identified by agencies and groups that commented on the Notice of Preparation (see Alternatives discussion, below).

Alternatives. Related to the project objectives and growth assumptions is the range of alternatives considered in the DEIR. The DEIR includes only two “action” alternatives, both of which involve minor alterations in transportation funding options to direct growth slightly differently than with the proposed Plan. There are no alternative growth scenarios or major changes in the Plan’s focus, despite those being requested by numerous agencies and organizations in responses to the Notice of Preparation. The result of this minimal range of alternatives is that the impacts associated with them are minimally different, as shown in the Alternatives section of the DEIR. The DEIR impermissibly rejected feasible and reasonable alternatives, including alternatives with different growth scenarios (as discussed above), leading to an inadequate range of alternatives. Therefore the EIR does not comply with CEQA’s requirements that it analyze the comparative effects of a range of reasonable alternatives. The Plan and EIR-assessed alternatives focus on minor changes to transportation infrastructure. As detailed in our specific comments, neither the Plan nor any of the alternatives focus on ecological protection. The strategies in Plan Bay Area 2050 are largely silent on preserving the existence, biodiversity and functions of the Bay’s ecosystems. The DEIR must include Plan Alternatives that incorporate active Environmental Strategies. Without a thriving natural system, the rest of the Plan’s expectations to use nature-based solutions and to enjoy the natural environment are at risk. We propose the following strategy changes for these alternatives (changed text in *Italics*):

Strategy EN-1: Adapt to sea level rise. Protect shoreline communities affected by sea level rise, prioritizing low-cost, high-benefit solutions and providing additional support to vulnerable populations. *Protect vulnerable habitats and ecosystems that are threatened by sea level rise. The use of nature-based solutions (NBS) should be prioritized over that of grey infrastructure. Require a county approved plan for sea-level rise adaptation before building within the FEMA 100-year flood zone.*

Strategy EN5. *Preserve the Bay Area natural environment, biodiversity and ecosystem function.* Provide strategic matching funds to help conserve and maintain high-priority natural and agricultural lands, including but not limited to Priority Conservation Areas and wildland-urban interface areas. *Provide adequate buffers between developed areas and wildlands and implement climate smart techniques for working landscapes. Provide adequate space for migration of tidal wetlands utilizing tools such as the SFEI/San Francisco Regional Water Board’s Adaptation Atlas, the San Francisco Bay Ecosystem Habitat Goals Update, U.S. Fish and Wildlife*

Service Tidal Marsh Ecosystem Recovery Plan, and other available studies to identify appropriate sites for such migration. Support habitat conservation planning, track habitat losses and gains, and monitor habitat quality and ecosystem health. Use scientific input to determine priority conservation areas.

In addition, CCCR is requesting that the Final EIR include one or more alternatives that add robust ecological protection and sustainability to the Plan. That alternative(s) should include, at a minimum, the following elements:

- Maximize the use of work from home, and local work places near where people live, and stop commercial office development in areas that have a shortage of housing relative to employment.
- A moratorium on all development in areas in the currently revised FEMA flood zones until such time as a local jurisdiction has a funded, approved plan to adapt to sea level rise and provides space for tidal marsh inland migration as the sea rises. This could be a condition for a county receiving MTC support.
- Nature-based adaptation of existing transportation infrastructure to sea level rise should be required. Spending on solutions to better protect natural resources should be required if needed in projects such as changing Highway 37 into a causeway. Budgets for necessary projects should include funding for protecting the environment such as allowing for inland migration of marshes under elevated causeways.
- The DEIR should analyze the net new pavement of each alternative to identify and avoid or mitigate impacts to water quality, natural areas, and to avoid exacerbating urban heat island effects.¹

Finally, the EIR mis-states CEQA's requirements regarding identification of the Environmentally Superior Alternative, stating that the EIR need not identify that alternative if the no project alternative is not the environmentally superior alternative. CEQA does not eliminate the requirement of this alternative in this situation. To the contrary, the Guidelines (Section 15126a-d) clearly state that an EIR must identify the alternatives that are environmentally superior to the proposed project and that if the environmentally superior alternative is the no-project alternative, then the EIR must identify another superior alternative. In my 35 years of experience writing, teaching, and reviewing CEQA documents, not once have I seen the erroneous interpretation of the Guidelines on this topic that is used in this EIR. This is a substantive error that needs to be corrected in the final EIR.

¹ A recent Green Streets Symposium provides a compelling vision: "Urban areas of the Bay Area are fully integrated into a "no net impact" system with the larger natural environment. This includes an integrated water system that follows the call to "slow it, spread it, sink it" and brings together the planning for storm water drainage, drought concerns, and flood prevention.

Human-caused emissions can be offset by a rich canopy of trees, grasslands, and chaparral in our open spaces surrounding the urban area and integrated throughout our urban areas – gardens but also greening our infrastructure especially our street grids. Air flows are slowed and softened by trees canopies, our soil systems are protected by and enriched with natural compost." (See <http://transportchoice.org>).

Mitigation Measures. The DEIR includes two separate yet integrated actions. One is approval of a series of funding decisions over the next 50 years. The funding is primarily for transportation-related improvements, but also includes lesser appropriations for sea level rise, lands acquisition, housing equity, and economic equity programs. The second component is a Sustainable Communities Strategy (SCS) Plan for the region, which focuses on meeting regional vehicle miles traveled and greenhouse gas emissions criteria. The funding plan is, in part, intended to assist in the implementation of the SCS plan (which is, in fact PBA 2050). However, neither of the agencies proposing the Plan has substantial jurisdiction or implementation authority over most of the Plan. This is clearly stated in ABAG's and MTC's Draft Implementation Plan Briefs (May 2021). The DEIR and Implementation Plan Briefs note that the Plan has minimal ability to assure its own implementation, other than a portion of the funding assumptions (and major portions of the funding rely on future revenue generation actions). This severely constrains the likely implementation and effectiveness of mitigation measures identified in this EIR.

The DEIR includes a range of mitigation measures intended to reduce impacts of the project. However, there is no implementation strategy for most of the measures. Further, many of the measures involve consultation or implementation of actions "if feasible", which do not, in fact, assure any mitigation. The DEIR reflects some of this ineffectual aspect of mitigation in finding many of the Plan's impacts to be Significant and Unavoidable. Additionally, some of the mitigation measures identified in the DEIR would themselves result in other impacts that are not addressed in the EIR. We suggest that the mitigation measures be revised to eliminate vagueness, assure effectiveness, and assure implementation. Because this is a program EIR where other agencies will implement mitigation measures in the future, those measures must be written to assure that they will be effective and enforceable.

Additionally, most measures would require implementation by a city or county in association with approval of a specific project. However, as identified for each Plan policy in the Implementation Brief report, the lead agencies here have no authority to require implementation of most of the plan policies (with the exception of those that would be explicitly funded by these agencies) there's no mechanism to require that implementation. Therefore the EIR cannot assume that these measures would be implemented and, subsequently, certain impacts would in fact be reduced to less-than-significant levels.

Impact "Footprints". The DEIR addresses specific impact footprints associated with areas planned for growth as well as areas to be directly impacted by the infrastructure improvements proposed for funding in the Plan. These would be the "direct impacts" required to be addressed in CEQA documents. However, CEQA also requires that EIRs address "indirect impacts" of the project (Pub. Res. Code, § 21065). The EIR intensely focuses on identifying acreages of direct impacts, but fails to address the vast majority of the Plan's indirect environmental impacts (both those associated with general growth assumptions and specific infrastructure improvements). A major example of this deficiency is addressed under Sea Level Rise, below. This is an issue throughout the EIR, and does not comply with CEQA analytical requirements.

Sea Level Rise. The EIR assumes a 2-foot rise in sea level from global warming by 2050. No further assumptions are presented or considered in the document. Yet the Plan's own Implementation Plan Briefs document states that the assumption should be 2 feet of sea level rise plus another foot of king tide, for 3 feet total flood hazard considerations. More importantly the EIR assumes, by omission, that sea level rise ends at the end of the Plan period, in 2050. So, for example, a building constructed in 2040

is fine if constructed assuming 2 feet of sea level rise. Most of the structures and infrastructure constructed during the Plan period would be expected to last until at least 2100, a fact that is entirely ignored in the Plan, which blithely assumes that only 2 feet of rise need be considered. The Plan's own Implementation Plan understood this concern, stating:

*While two feet of inundation is the assumed sea level in 2050 based upon state guidance, it is important to remember the lifespan of assets within the plan. If an asset is anticipated to last until 2100, for instance, it may need to be built for 6.9 feet of permanent inundation (under the medium-high risk aversion scenario) or be designed to be adapted to that level of rise. The rate of sea level rise becomes more and more uncertain the further into the future it is explored. The assumptions for this analysis use the best available science and acknowledge that possibility that sea level rise predictions could escalate in the future, especially with a potential flux with emissions rates and subsequent effects of climate change. It is recommended that local jurisdictions develop advanced adaptation plans that consider sea level rise heights **beyond three feet** (emphasis added) of inundation and incorporate adaptive approaches to accommodate higher water levels.*

Yet the EIR assumes that 2 feet of sea level rise is all that need be considered, even with a 40% increase in Bay Area population. This assumption and the impact analyses based on it are inadequate. At a minimum, the Plan should include (and the EIR should require as mitigation) adequate buffer areas for implementation of long-term (year 2100) sea level rise projections, and prohibit new development in those areas. We suggest that the Plan use mapping conducted in the SFEI's Adaptation Atlas for this purpose (summarized on p. 88 of that document). The Plan (and EIR Alternatives) should include eliminating policies or infrastructure funding that promotes new development in any TRAs, HRAs, or TOD areas subject to year-2100 sea level rise. The Plan and EIR should incorporate the Ocean Protection Council's (OPC) 2020 guidance regarding considering sea level rise in planning documents: "1.1.1 Ensure California's coast is resilient to at least 3.5 feet of sea-level rise by 2050, as consistent with the State's Sea-Level Rise Guidance Document as appropriate for a given location or project."²

Wetlands. As described above, the Plan focuses entirely on development footprint in determining impacts and thereby fails to address indirect off-site impacts, such as the flooding of marshes due to the sea walls and levees. When sea waters back up behind sea walls or levees, even transition levees with some habitat space, the marshes slowly shift from tidally flooded to completely flooded areas with deeper water. This eliminates marsh habitat. Seawalls and levees can also result in drowning of wetlands on the outboard sides of the flood protection because wetlands can no longer migrate inland to escape rising waters. CEQA requires that impacts of mitigation measures be assessed in EIRs. Therefore, this EIR must address the indirect impacts of flood protection structures on habitat and, if possible, eliminate any new development in areas requiring these flood protection structures, as well as those of transportation projects and development, assuming 2100 sea level rise conditions.

²<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj08JmL9OHxAhXL854KHaEXAt4QFjABegQIDxAD&url=https%3A%2F%2Fwww.opc.ca.gov%2Fwebmaster%2Fftp%2Fpdf%2F2020-2025-strategic-plan%2FOPC-2020-2025-Strategic-Plan-FINAL-20200228.pdf&usg=AOvVaw3oL8szDiOg7JsnmJNhYBv>

Conclusions

Given the above issues, we recommend that the EIR be re-scoped, revised, and re-circulated for public review. Our detailed comments are provided on the table starting on the following page.

Sincerely

A handwritten signature in cursive script, appearing to read "Richard Grassetti".

Richard Grassetti
Principal
Grassetti Environmental Consulting