



Delta Stewardship Council

A CALIFORNIA STATE AGENCY

July 20, 2021

MTC Public Information
Attn: Draft EIR Comments
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Via email: eircomments@bayareametro.gov

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RE: Comments on the Draft Plan Bay Area 2050 and Draft Environmental Impact Report, SCH# 2020090519

To whom it may concern:

Thank you for the opportunity to review and comment on the Metropolitan Transportation Commission/Association of Bay Area Governments (MTC/ABAG) Draft Plan Bay Area 2050 and the associated Draft Environmental Impact Report (Draft EIR). The Delta Stewardship Council (Council) recognizes the objective(s) of Plan Bay Area 2050, as described in the Notice of Availability, 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.

As stated in our previous comment letters related to Plan Bay Area 2050¹, the Council is an independent state agency established by the Delta Reform Act of 2009, which is codified in Division 35 of the California Water Code, sections 85000-85350. The Delta Reform Act charges the Council with furthering California's coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Sacramento-San Joaquin River Delta and Suisun Marsh (Delta) ecosystem, 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. (Cal. Water Code § 85054.) Pursuant to the Delta

¹ The Council previously submitted comment letters on Plan Bay Area 2050 on February 25, 2020 and October 28, 2020. MTC/ABAG responded to the Council's February 25, 2020 comment letter in a letter dated April 7, 2020 regarding the proposed Growth Geographies that are located within the Delta.

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Reform Act, the Council has adopted the Delta Plan, a legally enforceable management framework for the Delta for achieving the coequal goals. (Cal. Water Code § 85001(c).)

The Delta Reform Act also requires the Council to review and provide advice and input to local and regional planning agencies regarding the consistency of local and regional planning documents, including sustainable communities strategies and alternative planning strategies. The Council's input shall include, but not be 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 (Cal. Water Code § 85212.). This letter constitutes the Council's review of and advice on the Draft Plan Bay Area 2050 pursuant to Water Code section 85212, as well as the Council's comments on the associated Draft EIR.

MTC/ABAG's Plan Bay Area 2050 is an (RTP/SCS) for the nine-county San Francisco Bay Area region. Portions of the nine-county region, specifically Alameda, Contra Costa, and Solano Counties, include land within the Delta.

Delta Reform Act Requirements for Regional Transportation Plans and Sustainable Communities Strategies

The Delta Reform Act requires that metropolitan planning organizations preparing a regional transportation plan that includes land within the primary or secondary zones of the Delta consult with the Council early in the planning process. (Cal. Water Code § 85212.) Council staff and MTC/ABAG staff met for this purpose on December 12, 2019 and January 22, 2020.

The Delta Reform Act also requires that the metropolitan planning organization provide a draft SCS and an alternative planning strategy, if any, to the Council, no later than 60 days prior to adoption of the final RTP, along with concurrent notice of the submission in the same manner as an agency filing a certification of consistency. (Cal. Water Code § 85212.) MTC/ABAG made Draft Plan Bay Area 2050 available to the Council on June 3, 2021, including concurrent notice, in the same manner in which agencies file a certificate of consistency, pursuant to Water Code section 85225.

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

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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. (Cal. Water Code § 85212.)

Preliminary findings as to the consistency of the June 3, 2021 Draft of Plan Bay Area 2050 with the Delta Plan are offered within this letter based on Council staff analysis². The Council invites MTC staff to make a presentation to the Delta Stewardship Council on Plan Bay Area 2050 at the September 23, 2020 Council meeting prior to the adoption hearings. 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.

Delta Plan Covered Actions

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. (Cal. Water Code § 85225.) The Delta Reform Act exempts from this requirement 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. (Cal. Water 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.

Council Review of and Input on the Draft Plan Bay Area 2050 and Draft EIR

This section presents the Council's review of and input on the submitted Draft Plan Bay Area 2050, pursuant to Water Code section 85212. It also presents the Council's comments on the Draft EIR.

² The preliminary findings provided in this comment letter will be recommended by Council staff and considered for approval by the Council at its September 23, 2021 monthly meeting, following a presentation by MTC/ABAG and public comment. The Council will then transmit an updated version of this letter to MTC/ABAG inclusive of any revisions approved by Councilmembers and attesting to the Council's action should the Council approve the findings.

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 the regulatory 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 (May 16, 2013). 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.

Council staff reviewed the Draft Blueprint for Plan Bay Area 2050 in February 2020 for consistency with **DP P1**. The Draft Blueprint designates four types of "Growth Geographies," or geographic areas used to guide where housing and jobs development would occur: Priority Development Areas (PDAs), Priority Production Areas (PPAs), Transit-Rich Areas (TRAs), and High-Resource Areas (HRAs). Plan Bay Area 2050 identifies strategies to accommodate new residential, commercial, and/or industrial development within these Growth Geographies.

The Council's February 25, 2020 and October 28, 2020 comment letters advised MTC/ABAG that its selection of Growth Geographies should ensure that they provide for wise residential, commercial, and industrial development that does not conflict with **DP P1**. According to MTC/ABAG'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 PDAs and PPAs. Thus, by definition, new residential, commercial, or industrial development within these areas should be consistent with **DP P1**. Council staff have reviewed the PDA and PPA boundaries identified in Draft Plan Bay Area 2050 within and adjacent to the Delta, including changes to these boundaries since the Draft Blueprint was approved in February 2020, and have confirmed that these PDAs and PPAs would be consistent with **DP P1**.

The Draft Plan Bay Area 2050 includes two TRAs within the Delta, both of which are located within Contra Costa County's 2006 voter-approved ULL, and thus would be consistent with **DP P1**. Council staff did not identify any HRAs within the Delta.

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The Council's October 28, 2020 comment letter on the Notice of Preparation (NOP) requested that the Draft EIR acknowledge Policy **DP P1** in the regulatory setting for the Land Use and Planning section, as well as in the Draft EIR growth inducement discussion. Thank you for acknowledging Policy DP P1 throughout the Land Use, Population, and Housing section of the Draft EIR . While the Growth-Inducing Impacts section of the Draft EIR does not specifically acknowledge Policy **DP P1**, it concludes that Draft Plan Bay Area 2050 is not growth-inducing, but rather accomodates forecasted growth in the region.

The Council's October 28, 2020 comment letter also requested that the Draft EIR document how the RTP/SCS is consistent with Policy **DP P1**, and evaluate whether any of the Growth Geographies 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 Land Use, Population, and Housing section discussion of Impact LU-2 ("Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect") for land use impacts acknowledges Policy **DP P1** and states that "[P]rojected development could affect consistency with the Delta Plan adopted by the Delta Stewardship Council because development at the urban edge could adversely impact agriculture, natural resources, recreational land, and water quality in the Delta" (pp. 3.11-24 – 3.11-25). The discussion goes on to state that:

"In order to be consistent with Delta Plan Policy DP P1, new residential, commercial, or industrial development is permitted outside the urban boundaries only if it is consistent with the land use designated in the relevant county general plan as of the date of the Delta Plan's adoption (January 2019). Jurisdictions with land in the Primary Zone are required by [Public Resources Code (PRC)] Section 29763 to adopt general plans with land uses consistent with the goals and policies in the Delta Plan, subject to review by the Delta Stewardship Council. Therefore, subsequent projects within the proposed Plan that fall within the Delta Plan boundaries would be required to demonstrate consistency with the plan and satisfy mitigation requirements" (p. 3.11-25).

This description of Policy **DP P1** should be revised to correctly reflect the policy's requirements. Policy **DP P1** stipulates that 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 (May 16, 2013). 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. (Cal. Code Regs., tit. 23, § 5010(a)(2).) The requirements of Public Resources Code section 29763, referenced on page

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3.11-25 of the Draft EIR, pertain to the Delta Protection Commission and its Land Use and Resource Management Plan for the Primary Zone of the Delta. While the Delta Protection Commission has jurisdiction within the Delta's primary zone, the Council's jurisdiction includes the primary and secondary zones of the Delta as well as Suisun Marsh.

The Council's October 28, 2020 comment letter noted that the Council also has an interest in recommended transportation projects in the RTP/SCS that may induce urban expansion or improve or degrade connections to rural areas, that would be inconsistent with **DP P1**, and that the Draft EIR should describe what infrastructure, beyond the recommended transportation projects, would be necessary to support the strategy or the plans, programs, projects, or activities encompassed within it.

The Land Use, Population, and Housing section of the Draft EIR discusses transportation system impacts with respect to the Delta Plan within analysis of Impact LU-2, stating that "Development of transportation projects could affect consistency with the Delta Plan if transportation projects were developed at the urban edge and had adverse impacts on agriculture, natural resources, recreational land, and water quality in the Delta. Therefore, subsequent transportation projects within the proposed Plan that fall within the Delta Plan boundaries would be required to demonstrate consistency with the plan and satisfy mitigation requirements" (p. 3.11-28). It should be noted, however, that Water Code section 85057.5(b)(4) exempts such actions from Delta Plan covered action requirements if MTC determines that the action is consistent with either an SCS or alternative planning strategy that achieves California Air Resources Board greenhouse gas emissions targets for the region. In other words, if MTC determines that a transportation project is consistent with Plan Bay Area 2050, that project would be exempt from the Delta Plan covered actions process.

The Growth-Inducing Impacts section also notes that while some proposed transportation projects—such as the widening or expansion of roadways—could be considered growth-inducing at a local scale, these projects would support the growth forecasted for the region. The Growth-Inducement section notes that the proposed transportation projects are designed to achieve more sustainable forecasted growth, and that while obstacles to growth would be removed by providing more capacity in some instances, this growth is forecasted.

***Preliminary Finding:** Based on review of the Draft Plan Bay Area 2050 and the Draft EIR, in compliance with the Delta Reform Act, section 85212, the Council has not identified any inconsistency of Draft Plan Bay Area 2050 with Delta Plan Policy **DP P1**. However, in the Final EIR MTC/ABAG should correctly summarize **DP P1** requirements and identify*

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conclusions regarding consistency with this policy related to the Delta Plan rather than the Land Use and Resource Management Plan for the Delta.

2. Consistency with Ecosystem Restoration Needs and Sufficiency of Lands Set Aside

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.

Thank you for acknowledging this in the Biological Resources section of the Draft EIR. Additionally, we appreciate your acknowledgement of policies **ER P2** ("Restore Habitats at Appropriate Elevations") (Cal. Code Regs., tit. 23, § 5006), **ER P4** ("Expand Floodplains and Riparian Habitats in Levee Projects") (Cal. Code Regs., tit. 23, § 5008), and **ER P5** ("Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species") (Cal. Code Regs., tit. 23, § 5009); and recommendations **ER R2** ("Prioritize and Implement Projects That Restore Delta Habitat") and **WR R12** in the regulatory setting of the Biological Resources section of the Draft EIR. Please note that Delta Plan recommendation WR R12 was amended in 2018; WR R12 is now titled "Promote options for conveyance, storage, and the operation of both."

a. Consistency with Restoration 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:

[https://govt.westlaw.com/calregs/Document/I23BAB44007AA11E39A73EBDA152904D8?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I23BAB44007AA11E39A73EBDA152904D8?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))). As stated in our previous comment letters, four PHRAs are located partially or wholly within the RTP/SCS 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

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ecosystem restoration needs of the Delta is based on its potential to impact the opportunity to restore habitat in these PHRAs.

In its February 25 and October 28, 2020 comment letters the Council requested that in the Draft EIR for this project MTC/ABAG analyze whether Plan Bay Area 2050 would induce growth in any of the areas that the Delta Plan has designated to meet the Delta's ecosystem restoration needs. While the Biological Resources section of the Draft EIR acknowledges Policy **ER P3** in the regulatory setting, it does not describe the PHRAs nor capture these protected areas in the thresholds of significance used to determine impacts to Biological Resources. As described in Section 1 ("Urban Expansion within the Delta"), the Land Use, Population, and Housing section of the Draft EIR states that development at the urban edge could adversely impact natural resources in the Delta (pp. 3.11-24 – 3.11-25). Nevertheless, Impact BIO-2 in the Biological Resources section addresses impacts to "riparian habitat, State- or federally protected wetlands (including but not limited to marsh, vernal pool, coastal), or other sensitive natural communities..." and states that there is a less than significant impact after mitigation. Therefore, although the Draft EIR includes no specific conclusion relative to Policy **ER P3**, it appears that Impact BIO-2 and the associated mitigation measures would adequately address Policy **ER P3**.

Council staff have reviewed the Growth Geographies within and adjacent to the Delta, including changes to these boundaries since the Draft Blueprint was approved in February 2020, and has not identified any conflict between the Growth Geographies and PHRAs depicted in Delta Plan Policy **ER P3**.

b. Sufficiency of Lands Set Aside

The Council appreciates that Plan Bay Area 2050 aims to protect conservation areas by including strategies to protect open space lands and to concentrate development within already developed areas (a focused growth approach). Implementation of Plan Bay Area 2050 Strategies EN4 and EN5 would protect existing scenic resources, including scenic views, located within open space lands, agricultural lands, wildland-urban interface lands, and designated Priority Conservation Areas (PCAs) (Draft EIR, p. 3.2-11).

Plan Bay Area 2050 sets aside specific lands for conservation in locally-nominated PCAs. The Council's February 25, 2020 and October 28, 2020 comment letters noted that the Draft Blueprint featured two PCAs that overlap with a Delta Plan PHRA. The East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (ECCC HCP/NCCP) PCA covers the Dutch Slough portion of the Delta Plan's Western Delta PHRA, and the Cache Slough PCA covers the Delta Plan Cache Slough PHRA. Council staff has reviewed the

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PCAs identified in the Draft Plan Bay Area 2050 and Draft EIR, and determined that two additional PCAs are located partially within a Delta Plan PHRA. The Delta Recreation Area PCA covers the Dutch Slough portion of the Delta Plan's Western Delta PHRA, and the Tri-City-County Cooperative Planning Area PCA covers the northwestern corner of the Delta Plan's Suisun Marsh PHRA.

Thank you for including these PCAs corresponding to Delta Plan PHRAs in the Draft Plan Bay Area 2050. We continue to encourage MTC/ABAG to designate the entire Suisun Marsh, the southern and western portions of the Yolo Bypass, and Winter Island as PCAs. The Council will support and encourage additional locally-nominated PCA designations that recognize and align with these remaining Delta Plan PHRAs located within Solano County and Contra Costa County. Such actions will 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.

***Preliminary Finding:** Based on review of the Draft Plan Bay Area 2050 and the Draft EIR, in compliance with the Delta Reform Act, section 85212, the Council has not identified that lands set aside for conservation and restoration in the Draft Plan Bay Area 2050 are inconsistent with the ecosystem restoration needs of the Delta.* However, as discussed above, MTC/ABAG should work with the Council, Solano County, and Contra Costa County to recognize and align additional PCAs with remaining Delta Plan PHRAs.

Closing Comments and Next Steps

Pursuant to Water Code section 85212, the Council has reviewed and provided advice and input on the Draft Plan Bay Area 2050 as outlined in this letter. The Council has not identified any inconsistency with the Delta Plan.

The preliminary findings provided in this comment letter will be recommended by Council staff and considered for approval by the Council at its September 23, 2020 monthly meeting, following a presentation by MTC/ABAG and public comment. The Council will then transmit an updated version of this letter to MTC/ABAG inclusive of any revisions approved by Councilmembers and attesting to the Council's action should the Council approve the findings.

The Council invites you to continue to engage Council staff prior to and following the adoption of Plan Bay Area 2050 to coordinate implementation and subsequent plan updates. Please contact Avery Livengood at (916) 445-0782 or Avery.Livengood@deltacouncil.ca.gov with any questions.

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Sincerely,

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

Jeff Henderson, AICP

Deputy Executive Officer

Delta Stewardship Council

CC:

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