



**DELTA STEWARDSHIP COUNCIL**  
A California State Agency

980 NINTH STREET, SUITE 1500  
SACRAMENTO, CALIFORNIA 95814  
WWW.DELTACOUNCIL.CA.GOV  
(916) 445-5511

May 15, 2013

**Chair**  
Phil Isenberg

Carolyn Clevenger, MTC EIR Project Manager  
Metropolitan Transportation Commission  
101 Eighth St.  
Oakland, CA 94607

**Members**  
Frank C. Damrell, Jr.  
Randy Fiorini  
Gloria Gray  
Patrick Johnston  
Hank Nordhoff  
Don Nottoli

Via email: [eircomments@mtc.ca.gov](mailto:eircomments@mtc.ca.gov)

**Executive Officer**  
Christopher M. Knopp

**Re: Plan Bay Area Regional Transportation Plan/Sustainable Communities Strategy Draft EIR**

Dear Ms. Clevenger:

We have reviewed the Draft Environmental Impact Report (EIR) for the Plan Bay Area Regional Transportation Plan/Sustainable Communities Strategy (Plan Bay Area) prepared by the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG). We welcome the opportunity to provide input regarding how to ensure the consistency of Plan Bay Area with the Delta Plan. Because the Delta Plan has not yet been adopted<sup>1</sup>, our comments are based on the current draft Delta Plan (May 2013). We appreciate the opportunity to comment on the Draft EIR and look forward to continued coordination between our agencies to further our related efforts. We are particularly interested in working with you to determine how the exemption process (for "covered actions") defined in Water Code Section 85057.5 should work.

As you may know, in 2009 the California Legislature created the Delta Stewardship Council (DSC) to play a synthesizing and coordinating role among the many agencies and interest groups who have a stake in the Delta's future. The DSC was also tasked with developing, adopting and implementing the Delta Plan. The Delta Plan, once adopted, will be an enforceable plan to further the achievement of the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. 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 DSC sets state policy for the Delta through the Delta Plan and coordinates state and local agencies to achieve policy objectives. In addition, the Council was granted specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta. To do this, the Delta Plan contains a set of regulatory policies with which State and local agencies are required to comply. The Delta Reform Act specifically established a certification process for compliance with the Delta Plan. This means that state and local agencies that propose to carry out, approve, or fund a qualifying action in whole or in part in the Delta, called a "covered action," must certify that this covered action is consistent with the Delta Plan and must file a certification of consistency with the Council that includes detailed findings.

---

<sup>1</sup> The Delta Plan is anticipated to be adopted in May 2013.

*"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall 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."*

It is important to note that not all actions that occur in whole or in part in the Delta are covered actions. Only certain activities qualify as covered actions, and the Delta Reform Act establishes specific criteria and exclusions. One of these exclusions is for actions within the secondary zone of the Delta that a metropolitan planning organization determines are consistent with its sustainable communities strategy (SCS). Such proposed actions are *not* "covered actions" regulated by the DSC. Water Code Section 85057.5(b)(4) states:

"Covered action" does not include any of the following: ...Any plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization under Section 65080 of the Government Code has determined is consistent with either a sustainable communities strategy or an alternative planning strategy that the State Air Resources Board has determined would, if implemented, achieve the greenhouse gas emission reduction targets established by that board pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code. For purposes of this paragraph, "consistent with" means consistent with the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, as applicable, and any infrastructure necessary to support the plan, program, project, or activity.

The ability to exempt certain actions from the DSC's certification process provides MTC and ABAG with a potentially significant role in shaping how development occurs in the secondary zone of the Delta and the way in which planning for metropolitan areas and the Delta are coordinated.

Pursuant to Water Code Section 85212, the DSC will be required to review Plan Bay Area for consistency with Delta Plan. The law states:

The council shall review and provide timely advice to local and regional planning agencies regarding the consistency of local and regional planning documents, including sustainable communities strategies and alternative planning strategies prepared pursuant to Section 65080 of the Government Code, with the Delta Plan. 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. A metropolitan planning organization preparing a regional transportation plan under Section 65080 of the Government Code that includes land within the primary or secondary zones of the Delta shall consult with the council early in the planning process regarding the issues and policy choices relating to the council's advice. No later than 60 days prior to the adoption of a final regional transportation plan, the metropolitan planning organization shall provide the council with a draft sustainable communities strategy and an alternative planning strategy, if any. Concurrently, the metropolitan planning organization shall provide notice of its submission to the council in the same manner in which agencies file a certificate of consistency pursuant to Section 85225. If the council concludes that the draft sustainable communities strategy or alternative planning strategy is inconsistent with the Delta Plan, the council shall provide written notice of the claimed inconsistency to the metropolitan planning organization no later than 30 days prior to the adoption of the final regional transportation plan. If the council provides timely notice of a claimed inconsistency, the metropolitan planning organization's adoption of the final regional transportation plan shall include a detailed response to the council's notice.

The DSC staff appreciates this opportunity for review in order to outline some of the issues of concern to the Council. Based on the most recent draft of the Delta Plan, our review of the Draft EIR for Plan Bay Area identified the following areas to consider in order to ensure consistency:

- **Urban boundaries.** The urban boundaries identified in Plan Bay Area should be consistent with the Delta Plan for the areas in which the Delta Stewardship Council has concurrent jurisdiction with MTC

and ABAG. The boundaries are described in draft Delta Plan Policy DP P1 (23 CCR Section 5010)<sup>2</sup>. These boundaries are intended to strengthen existing Delta communities while protecting farmland and open space, providing land for ecosystem restoration needs, and reducing flood risk. DP P1 is based on city boundaries and spheres of influence effective as of the date of the Delta Plan's adoption. It states:

**23 CCR Section 5010. Locate New Urban Development Wisely**

(a) New residential, commercial, and industrial development must be limited to the following areas, as shown in Appendix 6 and Appendix 7:

(1) Areas that city or county general plans as of the date of the Delta Plan's adoption, designate for residential, commercial, and industrial development in cities or their spheres of influence;

(2) Areas within Contra Costa County's 2006 voter-approved urban limit line, except no new urban residential, commercial, and industrial development may occur on Bethel Island unless it is consistent with the Contra Costa County general plan effective as of the date of the Delta Plan's adoption;

(3) Areas within the Mountain House General Plan Community Boundary in San Joaquin County; or,

(4) The unincorporated Delta towns of Clarksburg, Courtland, Hood, Locke, Ryde, and Walnut Grove.

(b) Notwithstanding subsection (a), new residential, commercial, and industrial development is permitted outside the areas described in subsection (a) if it is consistent with the land uses designated in county general plans as of the date of the Delta Plan's adoption, and is otherwise consistent with this chapter.

(c) For purposes of Water Code Section 85057.5(a)(3) and Section 5001(j)(1)(E) of this Chapter, this policy covers proposed actions that involve new residential, commercial, and industrial development that is not located within the areas described in subsection (a). In addition, this policy covers any such action on Bethel Island that is inconsistent with the Contra Costa County general plan effective as of the date of the Delta Plan's adoption. This policy does not cover commercial recreational visitor-serving uses or facilities for processing of local crops or that provide essential services to local farms, which are otherwise consistent with this chapter.

(d) This policy is not intended in any way to alter the concurrent authority of the Delta Protection Commission to separately regulate development in the Delta's Primary Zone.

The Draft EIR states, "The proposed Plan targets new household and job growth in [priority development areas (PDAs)], which are largely within the urbanized footprint and typically support infill development. However, a relatively small portion of PDA acreage (approximately 7,600 acres) overlaps with agricultural lands, about 80 percent of which is grazing land. The rest is divided between Farmland of Local importance, Farmland of Statewide Importance, Prime Farmland, and Unique Farmland. Additionally, PDA boundaries overlap with approximately 300 acres of lands that are under Williamson Act contract. Most of the overlap between PDA and agricultural land is located in Contra Costa and Solano counties (2,700 and 3,000 acres, respectively). While the PDAs are areas in which growth is focused, PDAs would not be developed in their entirety, and would include diverse land uses in addition to jobs and housing that could include preservation of agricultural land."

The map of PDAs (Figure 2.3-5) shows several PDAs in Contra Costa County within the Legal Delta. However, they appear to be within the Contra Costa County Urban Limit Line, which would mean they

---

<sup>2</sup> The draft Delta Plan's policies are also proposed regulations that will be submitted to the Office of Administrative Law following the adoption of the Delta Plan. Therefore, the policies are referenced by both their Delta Plan policy number and regulatory section number. Both the proposed regulations and the latest draft Delta Plan are available on the DSC website.

would be exempt from DP P1. Please verify that this is the case. The map also shows PDAs close to, but outside, the border of the Suisun Marsh in Suisun City and Benicia. Please confirm the location of these PDAs.

In the Final EIR, please cite draft Delta Plan Policy DP P1, provide an analysis of potential conflict with the policy due to the urbanization of agricultural land and open space within the Legal Delta and the Suisun Marsh, and describe how any conflicts with the policy could be avoided or mitigated.

- **Farmland Mitigation.** The Draft EIR lists several measures (2.3(g)) to be considered by implementing agencies and/or project sponsors to mitigate impacts on agriculture. In the Plan Bay Area Final EIR, please consider adding the following agricultural mitigation measures described in the Delta Plan Final EIR:

“Design proposed projects to minimize, to the greatest extent feasible, the loss of the highest valued agricultural land.

For projects that will result in permanent conversion of farmland, preserve in perpetuity other farmland through acquisition of an agricultural conservation easement, or contributing funds to a land trust or other entity qualified to preserve Farmland in perpetuity (at a target ratio of 1:1, depending on the nature of the conversion and the characteristics of the farmland to be converted, to compensate for permanent loss).

Redesign project features to minimize fragmenting or isolating farmland. Where a project involves acquiring land or easements, ensure that the remaining nonproject area is of a size sufficient to allow viable farming operations. The project proponents shall be responsible for acquiring easements, making lot line adjustments, and merging affected land parcels into units suitable for continued commercial agricultural management.

Reconnect utilities or infrastructure that serve agricultural uses if these are disturbed by project construction. If a project temporarily or permanently cuts off roadway access or removes utility lines, irrigation features, or other infrastructure, the project proponents shall be responsible for restoring access as necessary to ensure that economically viable farming operations are not interrupted.

Manage project operations to minimize the introduction of invasive species or weeds that may affect agricultural production on adjacent agricultural land.

Establish buffer areas between projects and adjacent agricultural land that are sufficient to protect and maintain land capability and agricultural operation flexibility. Design buffers to protect the feasibility of ongoing agricultural operations and reduce the effects of construction- or operation-related activities (including the potential to introduce special-status species in the agricultural areas) on adjacent or nearby properties. The buffer shall also serve to protect ecological restoration areas from noise, dust, and the application of agricultural chemicals. The width of the buffer shall be determined on a project-by-project basis to account for variations in prevailing winds, crop types, agricultural practices, ecological restoration, or infrastructure. Buffers can function as drainage swales, trails, roads, linear parkways, or other uses compatible with ongoing agricultural operations.”

- **Habitat restoration areas.** Plan Bay Area should set aside land for future habitat restoration needs, consistent with the Delta Plan’s priority habitat restoration areas (PHRAs), for the areas in which the Delta Stewardship Council has concurrent jurisdiction with MTC and ABAG. These include the Suisun Marsh PHRA and the Western Delta/Eastern Contra Costa County PHRA, which includes Dutch Slough, Winter Island and Decker Island (shown in Figure 4-8 of the Draft Delta Plan).

The Draft EIR states, "Priority Conservation Areas (PCAs) comprise over 100 regionally significant open spaces for which there exists broad consensus for long-term protection but face nearer-term development pressure. The PCAs designated in the proposed Plan will expand a regional greenbelt dedicated for preservation or protected by federal, state, and local policies." The Draft EIR states that Figure 1.2-2 shows the locations of the PDAs and PCAs, but the PCAs do not appear on this map. Please provide the locations of the PCAs in the Final EIR.

Draft Delta Plan Policy ER P3 (23 CCR Section 5007) calls for protecting opportunities to restore habitat in the PHRAs.

**23 CCR Section 5007 Protect Opportunities to Restore Habitat**

(a) Within the priority habitat restoration areas depicted in Appendix 5, significant adverse impacts to the opportunity to restore habitat as described in Section 5006, must be avoided or mitigated.

(b) Significant impacts referenced in subsection (a) will be deemed to be avoided or mitigated if the project is designed and implemented so that it will not preclude or otherwise interfere with the ability to restore habitat as described in Section 5006.

(c) Mitigation shall be determined, in consultation with the Department of Fish and Wildlife, considering the size of the area impacted by the covered action and the type and value of habitat that could be restored on that area, taking into account existing and proposed restoration plans, landscape attributes, the elevation map shown in Appendix 4 and other relevant information about habitat restoration opportunities of the area.

(d) For purposes of Water Code Section 85057.5(a)(3) and Section 5001(j)(1)(E) of this Chapter, this policy covers proposed actions in the priority habitat restoration areas depicted in Appendix 5. It does not cover proposed actions outside those areas.

At the same time, draft Delta Plan Policy DP P2 (23 CCR Section 5011) calls for respecting local land use when siting water or flood facilities or habitat restoration. For this reason, the priority habitat restoration areas are located in areas not currently designated for urban uses, but rather for agriculture, open space or natural preserve in county general plans.

The Draft EIR states that land development and transportation improvement could occur in or near sensitive habitat. It states, "Potential regional effects on special-status species could occur as a result of habitat fragmentation, increased human intrusion into wildland areas, introduction of invasive species, disruption of migratory corridors, and a resulting regional reduction in biological diversity."

The Draft EIR lists three transportation projects (Table 1.2-14, Items 7-9) that could adversely affect habitat in the Suisun Marsh PHRA:

- Widen I-680 in each direction for express lanes from Martinez Bridge to I-80
- Improve I-80/I-680/Route 12 Interchange (Phase 1)
- Widen I-680/I-80 interchange in each direction for express lanes.

There do not appear to be any proposed transportation projects in the Western Delta/Eastern Contra Costa County PHRA, but please confirm that this is the case.

In the Final EIR, please cite draft Delta Plan Policy ER P3 and describe how any potential conflicts with the policy can be avoided or mitigated. Figure 4-7 of the Draft Delta Plan depicts three examples of how projects can comply with ER P3, two of which may be relevant to the proposed projects:

- Locate structures at the edge of a habitat restoration area, rather than in the middle, to improve opportunities for restoring habitat connectivity.
- Elevate structures so that water can flow underneath to allow for restoration of aquatic habitat dependent on tides or periodic flooding.

Also, please consider how Plan Bay Area may need to coordinate with the proposed Bay Delta Conservation Plan, which does not appear to be listed among the natural communities conservation plans cited in the Draft EIR.

- **Flood risk reduction.** Land use planning for Plan Bay Area should reduce flood risk. The draft Delta Plan contains three policies that are most relevant to ABAG's and MTC's consideration of this issue: Policy RR P2 requires flood protection for residential development in rural areas, Policy RR P3 restricts encroachment in floodways, and Policy RR P4 restricts encroachments in floodplains. Flood risk reduction should be included as a factor when evaluating various land use scenarios.

The Draft EIR states, "Impacts on water resources are associated with future land development and with transportation improvements under the proposed Plan that could have the potential to impact water quality, reduce groundwater recharge, alter drainage patterns, create higher erosion rates, increase non-point pollution, increase runoff, and increase exposure to floods."

The DSC staff commends MTC and ABAG for including analysis of potential future inundation due to sea level rise. The Draft EIR states, "Thirty-two of the approximately 700 Plan Bay Area transportation projects under the proposed Plan are located, partially or wholly, within areas projected to be regularly inundated (i.e., inundated multiple times each year) by sea level rise by midcentury....Any increase in transportation investments within the sea level rise inundation zone is considered a significant impact; however, these impacts can be mitigated through careful project-level planning and design that considers long-term sea level rise and includes adaptive strategies that are appropriate to the project type, surrounding land use, and the adjacent Bay shoreline type."

In the Final EIR, please cite draft Delta Plan's flood risk reduction policies and describe how any potential conflicts with the policies can be avoided or mitigated.

We have the following additional recommendations regarding ways in which Plan Bay Area could further promote the achievement of the coequal goals.

- **Transportation investments.** Plan Bay Area should coordinate with the plans of Delta agencies in areas of concurrent jurisdiction. Draft Delta Plan Recommendation DP R5 states, "The California Department of Transportation, local agencies, and utilities should plan infrastructure, such as roads and highways, to meet needs of development consistent with sustainable community strategies, local plans, Delta Protection Commission's *Land Use and Resource Management Plan for the Primary Zone of the Delta*, and the Delta Plan."
- **Water supply reliability.** Plan Bay Area should address the Delta Plan's goal of improving water supply reliability. The draft Delta Plan's legally binding policies and most of its recommendations related to water supply reliability are directed primarily at water suppliers and state and federal agencies. However, there is strong evidence that compact growth reduces per capita water demand, as well as

water supply infrastructure costs,<sup>3</sup> and we therefore request that these environmental and economic benefits be included as factors in the evaluation of land use scenarios. In addition, we note that water use efficiency is one of several criteria required for “transit priority projects” as defined by SB 375 to obtain an exemption from the requirements of the California Environmental Quality Act (CEQA).<sup>4</sup>

- **Protecting the Delta as Place.** Because two counties bridge the Bay Area and the Delta (Solano and Contra Costa), Plan Bay Area should contribute, where appropriate, to protecting and enhancing the unique cultural, recreational, natural resource, and agricultural values of the Delta. Several recommendations in the draft Delta Plan provide guidance in this area. DP R8 and DP R9 call for promoting value-added crop processing and agritourism, respectively. DP R17 calls for enhancing opportunities for visitor-serving businesses.

We look forward to working with you and your staff to ensure consistency between Plan Bay Area and the Delta Plan, so that the two plans are complementary and serve to protect the Delta while promoting sustainable growth and economic vitality in the broader region.

If you have any questions, please contact Jessica Davenport at [jdavenport@deltacouncil.ca.gov](mailto:jdavenport@deltacouncil.ca.gov) or (916) 445-2168.

Sincerely,



Cindy Messer  
Deputy Executive Officer, Delta Plan

cc: Phil Isenberg, Chair, DSC  
DSC Council Members  
Chris Knopp, Executive Officer  
Dan Ray, Chief Deputy Executive Officer  
Joe LaClair, San Francisco Bay Conservation and Development Commission

---

<sup>3</sup> U.S. Environmental Protection Agency. 2006. *Growing Toward More Efficient Water Use: Linking Development, Infrastructure, and Drinking Water Policies*. EPA 230-R-06-001. Downloaded on March 5, 2013 from [http://www.epa.gov/smartgrowth/pdf/growing\\_water\\_use\\_efficiency.pdf](http://www.epa.gov/smartgrowth/pdf/growing_water_use_efficiency.pdf).

<sup>4</sup> SB 375 provides a total CEQA exemption for transit priority projects that comply with a long list of criteria, including having buildings and landscaping that are 25% more water efficient than average for the community.

