



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

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February 14, 2025

Adam Noelting
Metropolitan Transportation Commission/Association of
Bay Area Governments
375 Beale Street, Suite 800
San Francisco, CA 94105

Delivered via email: aircomments@bayareametro.gov

**RE: Comments on Notice of Preparation of an Environmental
Impact Report for the Plan Bay Area 2050+, SCH#2025010348**

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 for Plan Bay Area 2050+, a regional transportation plan (RTP) and sustainable community strategy (SCS). The Delta Stewardship Council (Council) recognizes the objectives of Plan Bay Area 2050+, as described in the NOP, to serve as the 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 (Wat. Code, § 85000 et seq.; 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+.

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The Council is an independent state agency established by the 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. (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. (Wat. Code, § 85300.)

The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, title 23, sections 5001 et seq. Through the Delta Reform Act, the Council was granted 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 and Suisun Marsh. (Wat. Code, §§ 85210.) 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 initiation of the implementation of the project. (Wat. Code, § 85225.)

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

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 SCSs and alternative planning strategies, with the Delta Plan. (Wat. Code, § 85212.) The Delta Reform Act requires a metropolitan planning organization preparing a RTP 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.)

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

Plan Bay Area 2050+ is a RTP/SCS for the nine-county San Francisco Bay Area region that includes land within the Delta and Suisun Marsh, specifically in portions of Alameda, Contra Costa, and Solano Counties. In addition to early consultation, as described above, Water Code section 85212 of the Delta Reform Act requires MTC/ABAG to provide to the Council both of the following:

- a draft SCS and an alternative planning strategy **no later than 60 days prior to the adoption of the final Plan Bay Area 2050+**.
- **a concurrent** notice of its submission of the SCS in the same manner as a Certification of Consistency via electronic mail to coveredactions@deltacouncil.ca.gov.

If the Council concludes that the submitted draft SCS, or alternative planning strategy, is inconsistent with the Delta Plan, the Council 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 Eva Bush (Eva.Bush@deltacouncil.ca.gov) when the adoption hearings for the final Plan Bay Area 2050+ are scheduled. The Council also would welcome a presentation by MTC/ABAG staff to the Council on the draft SCS at a future Council meeting prior to the final 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 (covered action) is required to first determine whether that action is a covered action and if so, prepare a written Certification of Consistency with detailed findings as to whether the covered action is consistent with the Delta Plan. (Cal. Code Regs., tit. 23, § 5001, subd. (k); Wat. Code, § 85225.) The state or local agency then is required to submit that Certification of Consistency to the Council prior to implementation of the project. (Wat. Code, § 85225.) Water

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Code section 85057.5, subdivision (a), states that a covered action is a plan, program, or project, as defined pursuant to the California Environmental Quality Act (CEQA) in 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.
- (2) Will be carried out, approved, or funded by the state or a local public agency.
- (3) Is covered by one or more provisions of the Delta Plan.
- (4) Will have a significant impact on the 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 Delta Reform Act exempts actions within the secondary zone of the Delta that a metropolitan planning organization determines are consistent with its SCS, 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, subd. (b)(4).) MTC/ABAG is the metropolitan planning organization for the San Francisco Bay Area region, which contains portions of the secondary zone of the Delta. Thus, Water Code Section 85057.5, subdivision (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. (Cal. Code Regs., tit. 23, § 5001 et seq.) 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 that type of 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.,

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tit. 23, § 5010, subd. (a)(2).) This policy is intended to conserve farming and rural land use, protect the unique character of historic Delta communities, and allow for development that supports agricultural and recreation-related economic activities.

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, such as Priority Development Areas and Planning Performance Agreements, 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 and that would be inconsistent with DP P1. The EIR should describe what infrastructure, beyond the recommended transportation projects, is necessary to support the SCS or the plans, programs, projects, or activities encompassed within it. (Wat. Code § 85057.5, subd. (b)(4).)

2. Consistency with Ecosystem Restoration Needs

Water Code section 85212 of the Delta Reform Act requires that the Council's input on local and regional planning documents, including SCSs, include, but not be limited to, reviewing both of the following:

- the consistency of local and regional planning documents with the ecosystem restoration needs of the Delta.
- 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. (Cal. Code Regs., tit. 23, app. 5.) Delta Plan Policy **ER P3** (Cal. Code Regs., tit. 23, § 5007.) requires significant adverse impacts to the opportunity to restore habitat be avoided or mitigated in these areas (Cal. Code Regs., tit. 23, app. 5:

<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%205.pdf>). Four

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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 the plan's impacts to the opportunity to restore habitat in these PHRAs.

Plan Bay Area 2050+ designates locally nominated Priority Conservation Areas (PCAs), which are lands set aside for protection. The Council supports the proposed PCA designation in Cache Slough, which aligns with the Cache Slough PHRA. The Council also supports two additional proposed PCAs 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. These proposed PCAs complement 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.

The Council continues to encourage PCA designations for the entire Suisun Marsh, the southern and western portions of the Yolo Bypass, and Winter Island. In Council staff's opinion, those 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 as described in the Delta Plan.

Closing Comments and Next Steps

As MTC/ABAG proceeds with development and environmental impact analysis for Plan Bay Area 2050+, the Council invites MTC/ABAG 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 Eva Bush at Eva.Bush@deltacouncil.ca.gov with any questions.

Sincerely,

Adam Noelting
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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