



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

February 9, 2024

John Funderburg
City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565

Delivered via email: jfunderburg@pittsburgca.gov

**RE: Comments on the Draft Environmental Impact Report for the
City of Pittsburg General Plan 2040 Update, SCH# 2022040427**

Dear John Funderburg:

Thank you for the opportunity to review and comment on the City of Pittsburg Draft Environmental Impact Report (DEIR) for the City of Pittsburg General Plan 2040 Update (General Plan 2040). The Delta Stewardship Council (Council) recognizes the objective(s) of the City of Pittsburg General Plan Update (project) are to determine the extent and types of development needed to achieve the community's long-range vision for physical, economic, social, and environmental goals, achieve compliance with applicable State and regional policies, and provide the basis for establishing and setting priorities for detailed programs.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009. (Wat. Code, § 85000 et seq.; 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)

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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 with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh. (Wat. Code, § 85300) The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, title 23, section 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. (Wat. Code, §§ 85210, 85225, 85225.10). A state or local public 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) The Delta Reform Act also directs the Council to review and provide timely advice to local and regional planning agencies regarding the consistency of local and regional planning documents with the Delta Plan. The Council's input includes, but is not 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. (Wat. Code, § 85212)

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

Based on the project location and project description provided in the DEIR, the project appears to meet the definition of a covered action. Water Code section 85057.5(a) states that a covered action is a plan, program, or project, as defined pursuant to the California Environmental Quality Act (Pub. Resources Code, § 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; The General Plan planning area includes lands within and surrounding the City of Pittsburg. A portion of the planning area is located within the Delta, and, thus, the project would occur in part within the boundaries of the Delta.

(2) Will be carried out, approved, or funded by a State or a local public agency; General Plan 2040 and DEIR would be approved and carried out by the City, a local public agency.

(3) Is covered by one or more of the provisions of the Delta Plan. As described below, the project is covered by, though likely consistent with, multiple Delta Plan regulatory policies.

(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. The project may have a significant impact on the achievement of the coequal goal to protect, restore, and enhance the Delta ecosystem and the implementation of government sponsored flood control programs in the Delta.

The State or local public agency approving, funding, or carrying out the project must file a Certification of Consistency with the Council prior to project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(k)(3))

POTENTIALLY APPLICABLE DELTA PLAN POLICIES

The following section describes the Delta Plan regulatory policies that may apply to the project based on the information provided in the DEIR.

Governance Policy 1: Detailed Findings to Establish Consistency with the Delta Plan

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002) specifies what must be addressed in a Certification of Consistency by a project proponent of a project that is a covered action. The following is a subset of policy requirements that a project must fulfill to be considered consistent with the Delta Plan:

Mitigation Measures

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs., tit. 23, § 5002(b)(2)) requires covered actions not exempt from the California Environmental Quality Act (CEQA) to include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018, (unless the measures are within the exclusive jurisdiction of an agency other than the agency that files the Certification of Consistency), or substitute mitigation measures that the agency finds are equally or more effective. These

mitigation measures are identified in Delta Plan Appendix O and are available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

The DEIR does not propose mitigation measures for the project. Rather, the DEIR considers that all potentially significant impacts are minimized to the greatest extent feasible through General Plan policies and actions, and that no feasible mitigation is available. Under this self-mitigating approach, **G P1(b)(2)** would not apply to the project. Should this approach change prior to the adoption of the project, the City should review Appendix O and include any applicable feasible mitigation measures adopted and incorporated into the Delta Plan or identify substitute mitigation measures that the City finds are equally or more effective.

Best Available Science

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002(b)(3)) requires actions subject to Delta Plan regulations to document the use of best available science as relevant to the purpose and nature of the project. The Delta Plan defines best available science as “the best scientific information and data for informing management and policy decisions.” (Cal. Code Regs., tit. 23, § 5001(f).) Best available science is also required to be consistent with the guidelines and criteria in Appendix 1A of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>) and in the Delta Plan regulations (Cal. Code Regs., tit. 23, appen. 1a).

This policy generally requires that the process used by the City to analyze project alternatives, impacts, and mitigation measures for the project be clearly documented in the DEIR and supporting record, and effectively communicated to foster improved understanding and informed decision-making.

Delta as Place Policy 1: Locate New Urban Development Wisely and Risk Reduction Policy 2: Require Flood Protection for Residential Development in Rural Areas

Certain Delta Plan regulatory policies establish specific criteria and categories that would exempt actions from portions of the Council’s regulatory authority. One such exemption is for actions occurring within Contra Costa County’s 2006 voter-approved urban limit line. Those proposed actions are exempted from Delta Policy

DP P1, which places geographic restrictions on new urban development (Cal. Code Regs., tit. 23, § 5010) and Delta Plan Policy **RR P2**, which requires a minimum level of flood protection for residential development in rural areas (Cal. Code Regs., tit. 23, § 5013).

Based on our review, Council staff has not identified any specific inconsistency between the DEIR and the Delta Plan, pursuant to Water Code section 85212 at this time. Furthermore, notwithstanding the exemptions identified above, General Plan 2040 policies appear to support provisions of **DP P1** and **RR P2**. For example, Land Use Element goals, such as 2-G-1 to maintain compact urban development and ensure that lands not environmentally suitable for development remain open space and 2-G-6 to provide incentives for development using infill, reuse and revitalization of land, would advance the achievement of **DP P1** and **RR P2**.

Council staff further notes and concurs with the following statements in the DEIR (p. 3.10-27):

The proposed 2040 General Plan includes actions which address consistency and compliance with the Delta Plan. Specifically, Action 10-A-2.d requires review of all projects located within or adjacent to the Delta Primary Zone and other priority habitat restoration areas to ensure consistency with the criteria and policies of the Delta Stewardship Council's Delta Plan. Additionally, as noted above, the proposed 2040 General Plan includes Action 10-A-2.e, which states: "As applicable, provide opportunities for review of and comment by the California Department of Fish and Wildlife, Reclamation Districts, the Delta Stewardship Council, Delta Protection Commission, SWRCB, and San Francisco Bay Conservation and Development Commission (BCDC) during project review, and consult with the California Department of Fish and Wildlife to ensure that any impacts do not have a significant effect on primary habitat restoration areas as described in the Bay Plan and the Delta Plan." Further, Action 10-A-4.a requires review and regulation of new development to ensure consistency with Federal and State flood and floodway requirements, including Sacramento-San Joaquin River Delta Plan policies, the City's Green Stormwater Infrastructure Plan, and the Contra Costa Clean Water Program's Resource Conservation Plan as applicable and as opportunities arise. The proposed 2040 General Plan does not conflict with the Delta Plan.

John Funderburg
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The Council appreciates the City's efforts to incorporate these and other provisions of the Delta Plan in General Plan 2040, notes that the City has continued to refer projects to the Council for review as described above, and thanks the City for its continued engagement in our Delta Adapts Climate Adaptation Plan. We encourage the City to submit a Certification of Consistency to the Council using these and other goals and actions to demonstrate how the General Plan is consistent with the Delta Plan.

CLOSING COMMENTS

More information on covered actions, early consultation, and the certification process can be found on the Council website, <https://coveredactions.deltacouncil.ca.gov>. Council staff are available to discuss issues outlined in this letter as the City of Pittsburg proceeds in the next stages of its project and approval processes. Please contact Pat Kelly at patricia.kelly@deltacouncil.ca.gov with any questions.

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