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GAVIN NEWSOM, Governor
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February 6, 2025

Adam Noelting, Principal Planner
Metropolitan Transportation Commission
375 Beale Street
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Subject: Plan Bay Area 2050+ (Regional Transportation Plan/Sustainable Communities Strategy for the Nine-County San Francisco Bay Area), Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2025010348, Nine-County San Francisco Bay Area

Dear Mr. Adam Noelting:

The California Department of Fish and Wildlife (CDFW) has reviewed the Metropolitan Transportation Commission/Association of Bay Area Governments' (MTC/ABAG) Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) for the Plan Bay Area 2050+ (Regional Transportation Plan/Sustainable Communities Strategy for the Nine-County San Francisco Bay Area) (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect fish and wildlife resources of the State. Please be advised, by law, CDFW may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW is providing the MTC/ABAG, as the Lead Agency, with specific detail about the scope and content of the environmental information related to CDFW's area of statutory responsibility that must be included in the EIR (Cal. Code Regs., tit. 14, § 15082, subd. (b)).

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) For purposes of CEQA, CDFW

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority over the Project pursuant to the Fish and Game Code. For example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority, if the Project impacts the bed, channel or bank of any river, stream or lake within the State (Fish & G. Code, § 1600 et seq.). Likewise, to the extent the Project may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

REGULATORY REQUIREMENTS

California Endangered Species Act

A CESA Incidental Take Permit (ITP) must be obtained from CDFW if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Under CESA, "take" means "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish & G. Code, § 86.) CDFW's issuance of an ITP is subject to CEQA and to facilitate permit issuance, any project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA permit.

CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species. Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065.) In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports findings of overriding consideration for impacts that remain significant despite the implementation of all feasible mitigation. Findings of consideration under CEQA, however, do not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, lakes or streams and associated riparian

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habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including associated riparian or wetland resources); or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also generally subject to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the final EIR and complied with its responsibilities as a Responsible Agency under CEQA.

Migratory Birds and Raptors

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

PROJECT DESCRIPTION AND LOCATION SUMMARY

Proponent: Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG)

Objective: The objective of the Project is to develop a regional land use and transportation plan.

Location: Counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, Sonoma, citywide in the San Francisco Bay Area.

Timeframe: 2025-2050

The CEQA Guidelines (§§15124 & 15378) require that the draft EIR incorporate a full Project description, including reasonably foreseeable future phases of the Project, and that contains sufficient information to evaluate and review the Project's environmental impact. Please include a complete description of the following Project components in the Project description including but not limited to the information below.

- Land use changes resulting from, for example, rezoning certain areas.

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- Footprints of permanent Project features and temporarily impacted areas, such as staging areas and access routes.
- Area and plans for any proposed buildings/structures, ground disturbing activities, fencing, paving, stationary machinery, landscaping, and stormwater systems.
- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features.

ENVIRONMENTAL SETTING

Sufficient information regarding the environmental setting is necessary to understand any potentially significant impacts on the environment of the proposed Project and any alternatives identified in the draft EIR (CEQA Guidelines, §§15125 & 15360). CDFW recommends the draft EIR provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including all rare, threatened, and endangered species (CEQA Guidelines, §15380). The draft EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for sensitive natural communities see: <https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>), and any stream, riparian, or wetland set back distances the Cities may require. Fully protected, threatened or endangered, candidate, and other special-status species or sensitive natural communities that are known to occur, or have the potential to occur in or near the nine-county San Francisco Bay Area include, but are not limited to: the species listed in **Attachment A**.

Habitat descriptions and species profiles included in the draft EIR should include robust information from multiple sources: aerial imagery; historical and recent survey data; field reconnaissance; scientific literature and reports; U.S. Fish and Wildlife Service's (USFWS) Information, Planning, and Consultation System; California Aquatic Resources Inventory; and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDDB). Only with sufficient data and information can the MTC/ABAG adequately assess which special-status species are likely to occur in the Project vicinity.

CDFW recommends surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocol>.

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Botanical surveys for special-status plant species, including those listed by the California Native Plant Society (<http://www.cnps.org/cnps/rareplants/inventory/>), should also be conducted during the blooming period for all sensitive plant species potentially occurring within the Project area and include the identification of reference populations. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants available at: <https://www.wildlife.ca.gov/Conservation/Plants>.

IMPACT ANALYSIS AND MITIGATION MEASURES

The CEQA Guidelines (§15126.2) necessitate the draft EIR discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project. This includes evaluating and describing impacts such as:

- Land use changes that would reduce open space or agricultural land uses and increase residential or other land use involving increased development;
- Potential for impacts to fully protected and special-status species;
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.
- Water quality impacts resulting from construction and operation of the Project; and
- Impacts to the bed, channel, and bank, in the reservoirs and creeks downstream of the Project;

The CEQA document also should identify existing and reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to each impact (CEQA Guidelines, §15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact (e.g., reduction of available habitat for a listed species) should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

The CEQA Guidelines direct the MTC/ABAG, as the Lead Agency, to consider and describe in the draft EIR all feasible mitigation measures to avoid and/or mitigate potentially significant impacts of the Project on the environment based on comprehensive analysis of the potential direct, indirect, and cumulative impacts of the

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Project. (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370.) This should include a discussion of take avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with the USFWS, the National Marine Fisheries Service and CDFW. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

Fully protected species may not be taken or possessed at any time except in limited circumstances (Fish & G. Code, §§ 3511, 4700, 5050, & 5515). Therefore, the draft EIR should include measures to completely avoid “take” of fully protected species.

CDFW COMMENTS

The Project baseline environmental setting should be determined using an appropriate geographic scale to understand potentially significant impacts on the environment. To meaningfully evaluate potential impacts to special-status plant, fish and wildlife species, and critical habitat and connectivity corridors, impact assessments should be provided for each parcel within redesignated or rezoned locations.

The transportation and land use strategies may lead to habitat fragmentation, impacting wildlife corridors and connectivity across key areas such as the East Bay Hills, Santa Cruz Mountains, and the Bay-Delta estuary. Ensure the draft EIR assesses the Project’s effects on habitat connectivity and wildlife movement corridors, consistent with California Department of Fish and Wildlife’s guidance on wildlife linkages. The draft EIR should consider aquatic connectivity for species such as salmon and steelhead, along with terrestrial corridors linking parklands and open spaces. CDFW recommends the draft EIR evaluates the effects of transportation infrastructure on aquatic connectivity and incorporates avoidance measures such as wildlife crossings and habitat buffers.

The Project plan should align with existing Regional Conservation Investment Strategies (RCIS) for the Bay Area, focusing on landscape-scale conservation to protect biodiversity and mitigate development impacts. The draft EIR to analyze potential conflicts with Natural Community Conservation Planning (NCCP)/Habitat Conservation Program (HCP) objectives and require consistency with adopted conservation strategies to avoid habitat loss.

Also, CDFW recommends the draft EIR assess Plan Bay Area 2050+ compliance with AB 1889 and provide recommendations for local policy integration.

The draft EIR should consider potential impacts on state-managed lands, such as wildlife areas and ecological reserves, including recreational and ecosystem services impacts. CDFW recommends the draft EIR include a thorough analysis of impacts to CDFW lands, with mitigation measures for disturbance, habitat degradation, and increased human-wildlife conflicts.

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Given the Bay Area's vulnerability to sea level rise, wildfires, and drought, the plan must incorporate adaptation strategies to maintain ecological integrity under climate change scenarios. CDFW recommends that the draft EIR provides a robust cumulative impact analysis that considers regional development trends and their impacts on biological biodiversity.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to prepare subsequent CEQA documents or to make supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (d) & (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be filled out and submitted online here: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found here: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

CDFW anticipates that the proposed Project, will have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP in order to assist the MTC/ABAG in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jason Teichman, Environmental Scientist, at 707-210-5104 or Jason.Teichman@wildlife.ca.gov; or Wesley Stokes, Senior Environmental Scientist, (Supervisory), at (707) 339-6066 or Wesley.Stokes@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
Erin Chappell
Regional Manager
Bay Delta Region

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Attachments: Attachment A: Biological resources: Counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, Sonoma.
RareFind, January 27, 2025

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2025010348)
Jason Teichman, CDFW Bay Delta Region - Jason.teichman@wildlife.ca.gov

REFERENCES

Notice of Preparation (NOP), Program Environmental Impact Report, Plan Bay Area 2050+ (Regional Transportation Plan/Sustainable Communities Strategy for the Nine-County San Francisco Bay Area), January 24, 2025.

RareFind and California Natural Diversity Database (CNDDB) accessed January 27, 2025.