

Mr. Ezra Rapport, Executive Director  
Association of Bay Area Governments  
101 Eighth Street  
Oakland CA 94607



May 16, 2013

**SUBJECT: Comments on Plan Bay Area Draft EIR and Draft Plan**

Dear Mr. Rapport:

The Marin Conservation League has been involved in land use and conservation planning throughout Marin County since our founding in 1934. MCL's efforts have contributed substantially to creating and preserving the abundance of public parks, open space lands and productive agricultural resources which attracts visitors to the County from all over the world. Marin's remarkable abundance of natural beauty and parklands is all the more significant to the region because it lies near the heart of one of the world's great metropolitan areas.

MCL has been tracking the evolution of the Sustainable Communities Strategy (Plan Bay Area, or "Plan") from the outset of the SB 375 process and has commented on previous scenarios and the scope of the DEIR. We understand that the basic mandate of SB 375 is to influence future land use development patterns, housing, jobs, and transportation investments so as to accommodate anticipated regional population and job growth in a manner that will reduce per capita greenhouse gas emissions.

We appreciate the opportunity to present, first, our general comments on the Draft Plan and planning process, followed by more detailed comments on the Draft EIR.

**General Comments on Plan and Plan Process**

1. MCL Applauds Plan Bay Area's Recognition That Marin Should Be a Low Growth Area. A fundamental premise of Plan Bay Area is that growth should be focused in the existing employment centers, namely, San Francisco, the South Bay (Silicon Valley) and the East Bay. This approach is supported by the fact that each of these employment centers is presently served by extensive and robust public transit systems. MCL supports the goal of focusing growth: (1) as compact infill in or near existing job centers to minimize urban

sprawl, and/or (2) near major public transit systems such as BART or CalTrain. The conclusion that Marin should be a low growth area follows from this basic approach. Marin is not a major employment center and does not have a public transit network that is anywhere as robust as the other areas. In addition, we note that because of its geography and water supply, Marin has limited growth potential. An important goal of SB375 is to preserve open space and parklands and this, too, supports the recognition that Marin should be a low growth area.

MCL fully recognizes that Marin County is part of a large metropolitan area and, as such, enjoys both the benefits and responsibilities of being a part of that region. MCL is particularly interested, however, in how Plan Bay Area might impact Marin County. In view of Marin's distinctive geography and the long-established resource lands that make up almost 85 percent of the County, future growth in the County is highly constrained by limited available land. Even without urban growth boundaries (Novato is the only community with an UGB), Marin's communities have little space to grow. Therefore, it is appropriate that the Plan has assigned Marin the lowest growth in jobs and households of any county in the regional planning area. This assignment recognizes that Marin is unique in that its public park and open space lands and agricultural resources benefit the entire Bay Area in environmental, economic, and equity terms. Even at that low growth rate, the employment projections for Marin exceed historic growth rates and are overly ambitious. Marin has other limits to growth: water supply is finite except where conservation and efficiency can free up in lieu supply, and extensive developed and undeveloped portions of the eastern county are susceptible to current flooding and future sea level rise.

2. Sea Level Rise. MCL is disappointed that Plan Bay Area fails to adequately address sea level rise. Despite California's leadership in attempting to address climate change, it is now clear that the sea level will rise over the next few decades and that we face storms of greater frequency and intensity. It is essential that we begin planning for this eventuality rather than defer planning to an unspecified future time. We believe it would be tragic to channel any substantial development into areas that are subject to flooding now, and are vulnerable to future flooding. This is a very critical flaw in the Plan.
3. Feasibility and Certainty of Plan Strategy. The intent of employing land use as a means to reduce dependence on cars and light trucks, and thereby reduce GHG emissions, is an admirable goal. MCL questions, however, both the feasibility and the certainty of the Plan in realizing this intent. The process for projecting growth, employment, housing

and related elements based on modeling is too complex to yield meaningful results. Moreover, the modeling employed to achieve the Plan integrates assumptions having a high degree of uncertainty, particularly since they rely on actions that are beyond the control of local, regional, and State government. For example, as noted below, it appears that the population and employment growth numbers for the Bay Area are excessive and completely out of line with historical data. The consequence of using these higher numbers causes the Plan to overstate the need for housing. This, in turn, causes the Plan to open up more areas to development than will be necessary, thereby putting developers in the driver's seat when it comes to deciding where development will occur.

The DEIR addresses this somewhat, but what it says is not encouraging. First, as the DEIR points out (Page ES-11), MTC and AGAB cannot assure future development patterns since they cannot regulate local land use policy or zoning. This lack of authority is also the primary reason given for finding most of the 39 potentially significant impacts in the DEIR unavoidable, in that the regional agencies cannot require local jurisdictions to impose mitigation measures. Second, even if compact development patterns do successfully bring housing, jobs, and retail in close proximity, served by transit, no one can predict with certainty the extent to which residents will occupy nearby jobs, or choose to use public transit if jobs are distant. In spite of these uncertainties and the Plan's reliance on a host of other assumptions about future conditions, the Plan is confident that the goals and targets will be met (or, in the case of several voluntary goals, not met).

The DEIR states that with Plan implementation and growth estimates, there will be a per capita decrease in Btu consumption of about 1%. While this is certainly better than an increase, we question whether the effort was worth it, given the extraordinary planning effort and funds expended by the Plan to achieve such a minor reduction.

4. Need For Better Coordination Between Land Use and Transportation Elements. Plan Bay Area does not adequately integrate its land use planning mandates with a transportation investment strategy. These should go hand-in-hand. For example, PDA's should not be designated based on uncertain future transportation investments. Moreover, the Plan does not appear to recognize or reconcile the process for evaluating investments in transportation projects with the process for making housing investments. The Plan often treats all public transit systems as being equal. Access to an infrequent local bus service with one route is quite different than access to BART.

5. Affordable Housing. A goal of the Plan (and requirement of SB 375) is to provide housing within the region that is affordable to all economic levels, and to better align jobs with housing supply. MCL recognizes the need for diverse and affordable housing and supports such housing if it is developed in appropriate locations, i.e., as infill, accessible to transit and services, and without impacts on sensitive resources and public facilities. We understand that RHNA numbers have an independent origin and that SB 375 simply brings them together with transportation investments and a land use strategy that attempts to incentivize the development of affordable housing in a compact pattern, primarily within PDAs.

Ultimately, however, locating affordable housing will depend on the availability of sites, local planning decisions, cost considerations and funding, willing developers, and receptive neighbors – a complex set of variables. In one way or another, affordable housing is typically subsidized in one manner or another – whether in the form of direct payments to the developer, tax incentives, or accepting burdens on public facilities that would otherwise not be allowed. The Plan should evaluate the availability of money to pay for these subsidies. So we question the feasibility of promising to “house 100 percent of the region’s projected growth (from a 2010 baseline year) by income level.” (Plan, Page 19.) We also question the advisability of trying to force that goal. Housing prices will continue to be high in the Bay Area, and many commuting job holders will continue to opt for more affordable housing outside the region. Moreover, many people may opt for a larger home further from work than a small unit nearby.

The Plan should expand its definition of “housing units” to be counted, given the growing population of seniors and the limited supply of senior housing. To achieve equity goals, senior, assisted, 2nd and converted units should be included in those counted by the Plan in order to provide 100% housing for this population and to allow Plan incentives to encourage their construction in addition to brand new construction of multiple unit structures.

6. Four-year Plan Review. The Plan states that it is a work in progress that will be updated every four years (Page 121), but provides no further details as to how this might occur. For example, will interim targets be set so that progress (in four years) can be measured? And if targets are not being met, will they be adjusted and require shifting commitments of funds or land use decisions? Would such adjustments require further CEQA review if new impacts are identified or known impacts made more severe? How will local jurisdictions with limited resources be expected to adjust decisions every four years, a cycle that is unique to Regional Transportation Plan process but does not

correspond to RHNA or other planning cycles? The adopted Plan should outline this process more clearly.

7. The Plan as a “Platform for Advocacy” to Modernize CEQA. MTC and ABAG purport to be strong supporters of the original goals of the California Environmental Quality Act (CEQA), and yet the Plan sponsors propose to wade into current legislative debate over active CEQA bills as “advocates,” with incomplete evidence and an obvious bias. (Plan, Page 129-130.) It is enough that SB 375 has outlined mechanisms and conditions for streamlining CEQA as an incentive to promote new housing and commercial buildings. It is highly inappropriate for the Plan, whose life span is 25 to 30 years into the future, to become a “bully pulpit” for advocacy where differing legislative views are still in play. MCL believes that, rather than weakening CEQA, current legislative efforts should focus on strengthening a number of sections of the Act. A recent analysis of California’s economy since CEQA was enacted confirms that CEQA has had a positive rather than a negative effect on the economy of the State.
  
8. Public Outreach. Throughout the planning process, MCL has been frustrated by the apparent inability of ABAG and MTC to communicate effectively with the general public. The Plan claims to be the product of a highly collaborative process of surveys, stakeholder sessions, public workshops and meetings, and “countless other means” of communication. It is possible that the majority of these meetings involved local planning professionals and elected representatives, leaving much of the task of public outreach in the hands of local governments. Unfortunately, the opportunities for ABAG and MTC staff to hear *directly* from the general public have been limited to a few large, highly programmed public meetings and workshops, where *listening* has not been matched by *responsiveness* to public concerns. As a consequence, to ordinary citizens and non-profit organizations like MCL, the outcome has seemed pre-ordained from the beginning. The short time allowed to digest and to respond to the Draft Plan and a huge Draft EIR has done nothing to dispel that perception.

### **General Comments and Questions on Draft EIR**

1. Areas of Known Controversy, and Issues to be Resolved (DEIR page ES-11 and 12)  
As required by the CEQA Guidelines, the Executive Summary section of the Draft EIR provides a list of known controversial issues raised by the public and agencies, and a list of issues to be resolved. MCL agrees with the listed issues, but wishes to add several other controversial issues that have been raised by many individuals and public agencies, and/or are in need of resolution, as follows:

- The jobs, population, household, and housing numbers forecast for the Bay Area as a whole and for specific communities are considered by many to be too high. MCL continues to believe that the Plan overstates growth for the Bay Area as a whole, as well as for Marin. Inflated population growth could lead to excessive development outside PDAs and to unintended sprawl. Given the critical role that population and job growth numbers play in forecasting housing needs, it is vital that the discrepancies between ABAG forecasts, Department of Finance forecasts and historical trends be resolved before major funding or planning commitments are made, such as rezoning.
  - Loss of local control over general plan policies, zoning, and community character is the most-often-cited area of controversy. This point is raised in the second bullet, Page ES-11, which acknowledges public concerns about possible conflict with existing plans and local regulations, but nowhere in the Plan is it made clear that the Plan can only recommend and offer incentives in the form of grants and CEQA streamlining, but is otherwise has no authority over local land use decisions. The relationship between regional authority and local control needs to be more explicitly stated.
  - Local traffic congestion is attributed to regional growth and not to transportation improvements, and is therefore considered by the DEIR to be less than significant (DEIR, Page 2.14-14). Yet this issue has been raised by the public frequently as an inherent and pervasive consequence of the Plan (i.e., as a “paradox of densification”). Notwithstanding the goal of the Plan, which is to *reduce* vehicle miles overall, more concentrated housing and commercial development in PDAs promoted by the Plan will increase local congestion on collectors and arterials. These local facilities are not included in regional traffic models or are unlikely to be improved through transportation investments. This will be a continuing area of controversy.
2. Use of EIR as first tier program document. Page 1.1-11 states that the EIR can be used as a first tier document for environmental review of specific development or transportation projects. Unlike typical program EIRs, such as on local general plans or on comparable projects within a region, this EIR analyzes conditions at a high level of generality and therefore misses many local and subregional contextual elements necessary for analyzing development projects in or out of a PDA. The Plan EIR provides broad cumulative analysis (it is a cumulative EIR by definition), but does not provide an

adequate program coverage of most CEQA issues. Given the generality of the EIR, it should not be used as a first tier document.

3. Mitigation: The DEIR provides an abundance of mitigation measures under every topical area and admits that many are advisory, for consideration by project sponsors of individual projects – that is, MTC and ABAG cannot require local implementing agencies to adopt them. At the same time, the DEIR, Page 1.1-3, Para. 1 under Mitigation, states that in those cases where MTC and ABAG do not have regulatory or approval authority (the majority of potentially significant impacts) that Project sponsors *shall* (emphasis added) commit to mitigation measures at the time of certification of their project environmental review documents . . . and that these commitments *obligate* project sponsors to implement measures that would minimize or eliminate significant impacts pursuant to CEQA.” Para. 2 further notes that projects taking advantage of CEQA Streamlining provisions *must* apply the mitigation measures to address site-specific conditions” if impacts are to be reduced to levels of insignificance. Since MTC/ABAG *cannot require* local implementing agencies to adopt mitigation measures, the DEIR finds these impacts significant and unavoidable.

The last sentence of paragraph 1 states that “*MTC shall be provided with status reports of compliance with mitigation measures.*” How will MTC possibly track implementation of projects throughout the Bay Area to ensure that “status reports” are submitted? Will this requirement apply only to projects that take advantage of CEQA streamlining provisions, or does it apply to myriad other projects and jurisdictions over the life of the plan? Will this be a transparent public process, and if so how will MTC report on compliance? These two paragraphs raise a multitude of questions about whether potentially significant impacts, all of which are cumulative in nature, will be mitigated and by whom. The DEIR takes a conservative approach and identifies 39 significant unavoidable impacts, either because the regional agencies lack authority, or because the effectiveness of mitigations cannot be assured. Therefore, there is no guarantee that significant cumulative impacts will ever be mitigated.

4. Alternatives. The small differences across alternatives for many of the targets should be interpreted carefully, in that they rely on a host of assumptions about prevailing economic, political and technological conditions expected in 2040. When these assumptions are combined, the resulting lack of certainty prevents identifying clear-cut differences across the range of alternatives. DEIR ES-9 states that “Variation in impacts among alternatives are minor.” Given that outcome differences are so minor, we must ask if the Alternatives offered are really alternatives, or just very minor variations on the

basic Plan Bay Area theme. The FEIR should provide alternatives that are distinctly different from the Plan. MCL previously submitted comments on alternatives that it believes the DEIR should have considered, but all of the alternatives identified by MCL were ignored. Indeed, it appears that ABAG never even considered MCL's comments.

### **Detailed Comments on the DEIR**

1. Climate Change and Sea-level Rise. The ramifications of climate change and consequent sea level rise are of central importance to the feasibility of the Plan. The Plan defers solutions to an unspecified future time. The subject receives considerable attention in the DEIR, and for that reason MCL focuses its comments on that topic.

(Page 2.5-22, *et seq.*) A number of existing laws and regulations are aimed at reducing GHGs, but it is not clear which of these are incorporated into the estimates for GHG reductions to be achieved by the Plan? When the reductions required by existing laws are accounted for, what is the actual reduction due to the Plan? If the Plan just acts to support enacted legislation, the FEIR should estimate the GHG reductions without that support and evaluate whether the reduction due to the Plan alone justifies the complex, expensive and ongoing implementation of the Plan.

(Page 2.5-41)The DEIR takes the position that under the 2011 Appeals Court decision in the *Ballona* case, CEQA does not require analyzing the effects of the environment on the project in an EIR. We believe that this is a narrow decision and is distinguishable because placing development in an area subject to sea level rise will inexorably have an environmental impact. Specifically, once sea level rises, either measures will be taken to protect the development, which measures will have environmental impacts, or the development will be abandoned, requiring the need for replacement housing, which likewise will have impacts. We anticipate that *Ballona* will not stand, and that the California Supreme Court or the State Legislature will have the last say on this important issue.

Nonetheless, the DEIR does analyze these impacts comprehensively "for informational purposes." It would be irresponsible not to do so, in that the low-lying areas around the Bay contain significant transportation corridors and infrastructure and are home to Bay Area residents and businesses. More than a few PDAs coincide with these areas. Planned enhancements, expansions and improvements under the proposed Plan (DEIR 2.5-49) will require some form of flood protection – whether engineered structures like a levee or flood wall, managed retreat, or other strategy. These related projects should be evaluated on a regional basis and their impacts comprehensively assessed across all CEQA topics, including cumulative impacts. The impact of repairing facilities in the



event of flooding from sea level rise should also be anticipated in the EIR.

(Page 2.5-67) Recognizing the importance of this issue to the Plan, the DEIR recommends mitigations for proposed transportation projects (and land use development) subject to regular inundation by midcentury sea level rise, but these appear to be “plans to make a plan.” That is, the DEIR recommends continued collaboration with BCDC and provides a long list of adaptation strategies that might be considered in the future. In effect, it defers mitigation to project-level and/or local planning. The FEIR should provide more rigorous regional and subregional approaches that avoid or aggressively reduce project areas and transportation improvements in areas susceptible to sea level rise.

(Page 2.5-76) Further, given the likelihood of continuing sea level rise past midcentury and projected greater impacts over time, the FEIR should give a reasonable time frame in which to address sea level rise beyond mid-century, allowing sufficient time to assess and implement, the best adaptation strategy. (Page 2.5-67) The discussion of mitigations should also to assess the economic feasibility of such strategies. Otherwise, impacts from sea level rise would make significant portions of the Plan impractical.

(Page 2.5-62) Table 2.5-11 shows the percentage of proposed transportation projects that will be inundated by midcentury sea level rise. Whether it is 5% or 100% may be unrelated to the GHG emissions associated with solving the problem, including the need to reroute to avoid the area completely and/or to replace/repair affected projects. The FEIR should estimate the regional increase in GHG emissions associated with solving sea level rise inundation issues for the Plan’s proposed projects.

(Page 2.8-34) Impact 2.8-7 deals with the 100-year flood hazard zones as mapped by FEMA. Do such areas account for projected sea level rise? If not, using these zones to assess impacts for a Plan that extends to 2040 is inadequate and misleading. The FEIR should describe how these zones will be changed when sea level rise is factored in and reassess the magnitude of impact for the region. Tables 2.5-16-21 show different areas affected by midcentury sea level rise inundation zone. Does the “inundation zone” account for storm surge as well as mean high tide levels? If not, the tables should be expanded to show storm surge impacts.

## 2. Land Use and Physical Development.

Chapter 2.3. The Tables below are provided showing the Plan’s impact on different kinds of acreage. The FEIR must provide mapping that shows where these impacted acres are located so that the public can ascertain whether they are correct. Our initial impression is that the numbers are wrong. If these numbers are found to be inaccurate, significant questions are raised about the accuracy of the numbers in the whole document, which should then be double checked. In particular, we request sources of

data and mapping to support the numbers provided for Marin in the following tables:

- Table 2.3-10 – *PDA & BCDC Priority Use area acres of overlap*. 110 acres could be so affected in Marin.
- Table 2.3-13 - *Protected Open Space acres potentially affected by Proposed Development, by County*. 135 such acres could be affected in Marin.
- Table 2.3-15. *Farmland acres potentially affected by proposed transportation project, by County*. 88 acres in Marin could be so affected.
- Table 2.3-16 – *Williamson Act acres potentially affected by proposed Transportation Projects, by County*. 47 acres could be so affected in Marin.
- Table 2.3-17. *Protected Open Space acres potentially affected by proposed transportation projects, by County*. 31 such acres could be affected in Marin.
- Table 2.3-18: *Forest & Timberland acres potentially affected by proposed development, by County*. For Marin, 255 acres (19% of County forest & timberland) could be affected.

ES-23 & 2.3-51, Impact 2.3-4 discusses the conversion of substantial acres of important farm land, land under Williamson Act, and Open Space. Why not take these areas out of the Plan and eliminate these impacts? What percentage of the whole Plan acreage is involved here? What percentage of housing units and GHG emissions reductions are accounted for in the proposed use of these areas that are so vital to the continuation of local agriculture?

Page 2.3-53. Where there is forest removal, the FEIR should provide figures showing the impact on CO<sub>2</sub> reduction due to loss of this resource, compared to lower GHG emissions achieved by developing these areas as PDAs.

### 3. Biological Resources.

(Page 2.9-71, *et seq.*) In this section, a minimum 1:1 ratio is proposed for restoration and preservation of impacted resources, with the caveat that local policy shall prevail. Given the general rate of success of such efforts, the 1:1 ratio is inadequate. While the Plan cannot mandate local mitigations, it should recommend realistic mitigation by proposing a higher ratio.

(Page 2.9-72 & 79) Success standards are stated for some mitigations, *e.g.*, special status communities, but not for others, *e.g.*, trees (Page 2.9-79). The Plan should consistently state success standards for all proposed biological resource mitigations to ensure their application and subsequent monitoring that is meaningful.

4. Public Utilities and Facilities.

(Page 2.12-48) The DEIR states that, on a regional basis, the major water agencies (with the exception of Solano County Water Agency) have adequate water supplies to serve expected growth under the proposed Plan. The ability to meet demand in a single dry year varies across the region, however, with some agencies anticipating a shortage in future years that will have to be made up either through conservation or developing new supplies. MCL has a particular interest in Marin Municipal Water District, whose supply sources are limited. The availability of water in Marin limits its growth potential. The District has consistently claimed a deficit by the year 2025. The DEIR, in contrast, states that land development through 2040 served by MMWD should have adequate water supplies in both regular and single drought years. The same measures are applied to all of the major water agencies. Climate change does not enter into this discussion nor does the possibility of two or more sequential drought years. For the region, about two-thirds of water supplies originate in the Sierra Nevada and Northern California and are either diverted from, pass through, or bypass completely, the Delta. In all these cases, projected decreases in the depth and location of the snowpack will influence the timing of runoff and ultimate quantity of stored water. In Marin, the possibility of sequential drought years poses a bigger threat to future water supplies. The DEIR should add analysis in this section that anticipates the consequences of climate change on precipitation patterns, including snow fall as well as sequential drought years, and their impact on regional and local water supplies.

5. Public Services and Recreation.

(Page 2.14-14) The DEIR asserts that “congestion is not a result of the transportation improvement investment strategy, but rather of regional growth” ...so “impacts on public services as a result of transportation improvements...are considered less than significant...no mitigation required.” By incentivizing more and denser housing and commercial space than currently allowed, the Plan is indeed responsible for some percentage of the increase in congestion across the region. The FEIR should offer mitigation. (See also Issues of Known Controversy, above).

Thank you for the opportunity to comment.

Very truly yours,

David Schnapf, President