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VIA E-Mail ([eircomments@mtc.ca.gov](mailto:eircomments@mtc.ca.gov))

July 11, 2012

*Re: Plan Bay Area EIR*

Dear Ms. Nguyen:

The Marin Conservation League has actively monitored significant environmental issues in Marin for some 78 years, and been following the efforts of ABAG and MTC under SB 375 since the outset of their efforts. Recently this effort has been referred to as “Plan Bay Area.” In a letter dated April 24, 2012, MCL submitted comments on the “Jobs-Housing Connection Scenario,” which is also called the “preferred scenario.” In addition, we have reviewed the “Preferred Transportation Investment Strategy,” and attended the “Plan Bay Area Environmental Impact Report Scoping Meeting,” held in Marin last month. There remains considerable uncertainty about what these plans entail, and so we were quite disappointed that there was no opportunity to ask questions at the scoping meeting.

Per your invitation, we submit these comments in connection with the preparation of a draft programmatic Environmental Impact Report for Plan Bay Area. These comments address two aspects of the draft EIR: 1) what effects should be analyzed (*i.e.*, scoping comments), and 2) what alternatives to the “preferred scenario” should be considered. We will address these separately after providing some preliminary comments.

### Preliminary Comments

*CEQA Streamlining* – CEQA has proven to be a useful and effective tool in enhancing government decisions that impact the environment. In particular, CEQA has become an important part of land use decision-making. Accordingly, MCL is quite concerned about efforts to exempt projects from CEQA or which “streamline” the CEQA process could lead to faulty decision making. We understand that SB 375 itself provides the statutory framework for CEQA streamlining, and that the regional Metropolitan Planning Organization (*i.e.*, ABAG and MTC) lacks authority to change SB 375 (*see* comment on legal authority). Nonetheless, the Plan Bay Area process inherently determines, in large part, which projects are subject to CEQA exemptions/streamlining. To the extent possible, Plan Bay Area’s actions should minimize the number of projects that are not subject to the normal CEQA process, and should provide better guidance of how streamlining will work. In our comments on the preferred scenario we raised our concern that this document substantially overstates

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population growth over the upcoming decades and designates more PDAs than are needed to accommodate likely growth. The effect of this appears to be that more areas will be subject to CEQA streamlining than is justified.

Under SB375 CEQA streamlining may be tied to the existence of a “Sustainable Communities Environmental Assessment,” but it is not clear what topics would be included in an SCEA, what alternatives would be analyzed (such as greater or lesser densities or alternative mixes of housing and jobs or other uses), whether the SCEA needs to address cumulative impacts or what types of public participation would be involved, (*i.e.*, what notice and length of review times would be afforded). Moreover it is unclear whether the SCEA would be made available to the public in draft and final form, or whether it would be immune from judicial review. It is also unclear how the SCEA process will relate to the SB 226 environmental review process for infill projects, currently in final stages of rule-making. SB 226 amendments to the CEQA Guidelines will establish a parallel CEQA process, guided by a modified checklist and criteria for qualifying projects. This appears to overlap considerably with the SCEA and should be clarified.

*Poor Coordination Between Preferred Scenario and Transportation Plan* – We believe that an important objective of SB 375 was to require close coordination between land use and transportation planning. Unfortunately, our assessment is that the Preferred Scenario and the Preferred Transportation Investment Strategy (“TIS”) are poorly coordinated. Specifically, it appears to us that the TIS was developed in a vacuum without much regard to the Preferred Scenario.

*Function of the Programmatic EIR* – It is not clear how the draft program EIR will be used as a first tier document given the regional level of analysis. Unlike typical program EIRs, which may be based on local general plans or on comparable projects within a region, this one will lack the many elements that would enable a local jurisdiction to prepare second tier analyses for development in or out of a PDA. We believe that the temptation to prepare second tier documents based on this EIR will lead to a serious failure to address important CEQA questions.

*Legal Authority* – We recognize that MTC and ABAG are constrained by SB 375 and other laws which constrain what they do and propose. Some of the alternatives being considered for the draft EIR appear to be beyond their legal authority. For example, one alternative is to “Eliminate Inter-Regional Commute.” It is not entirely clear how this would be accomplished (beyond providing “major” housing subsidies), nor is it clear whether legal authority for this alternative exists, *e.g.*, whether authority exists to provide major housing subsidies. MTC and ABAG need to take a consistent approach regarding legal authority for the alternatives they consider. Specifically, they should not reject alternatives proposed by MCL and other commentators as being beyond their legal authority, while they propose alternatives themselves that lack express legal authority. Moreover, if MTC and ABAG proceed on the basis that one

outcome of this process is to seek additional legal authority that does not presently exist, they should likewise consider the possibility of legal changes suggested by commentators, for example, that legal provisions regarding CEQA streamlining should be simplified and made more restrictive.

*Employment/Housing Assumptions* – While superficially it makes sense that housing and jobs should be close, the reality is not that simple for a number of reasons. Many, if not most, households have more than one working adult, and they often work in different locations. Does the modeling account for this? If one household member is an accountant working in the SF financial district and another is a retail clerk working in Marin, where is the best location for them? Moreover, many types of jobs have high turnover. For example, the retail, restaurant, and construction industries are dominated by short-term jobs. Does the modeling recognize that the people who work in these industries may not move as often as they change jobs? Is it realistic to think there can be a strong link between these types of jobs and housing? Restaurant workers often cannot use public transit because of late hours. Likewise construction workers continually have to go to different sites. How does Plan Bay Area address these worker patterns? Overall, people change jobs more frequently than they move.

*Transit Funding* – The strategy of rewarding communities for making PDA designations with transit funding could have the perverse effect of promoting unwarranted growth. Simply put, it appears that a disproportionate amount of funding will be directed to growing communities, while mature communities, such as Marin, will be deprived of their fair share of transit funds. This is especially unfair in view of Plan Bay Area’s recognition that growth should be channeled into other areas. Funding for Marin’s transit systems should not be diminished simply because Marin is not a growth area.

*The “No Action” Alternative* – Further explanation of the “no action” alternative would be helpful. The PDAs have already been established by local jurisdictions – indeed, ABAG emphasizes this fact as proof that it is not interfering with local control. If “No Action” is no different than what is already embedded in existing general plans and zoning, how does this alternative differ from the preferred scenario? Plan Bay Area says that the “No Action” alternative means “no PDAs.” Does this mean that communities which have already made PDA designations would be required to reverse those designations?

*PDAs vs. TPPs* – The preferred scenario refers extensively to PDAs and makes little mention of TPPs. Other documents prepared by Plan Bay Area seem to emphasize TPPs. In this letter, following the usage of the preferred scenario, MCL has focused on PDAs. Nonetheless, many of our comments (for example, those related to CEQA “streamlining” and PDA variability) apply with equal force to TPPs.

### Scoping Comments

*Population Projections* – In prior comments, MCL pointed out the likelihood that

the population and job growth projections used in the preferred scenario are excessive. In summary, the projected numbers do not square with historic trends and assume that there will be no economic recessions for thirty years. We believe it is obvious that the assessment of environmental impact will differ if different population/job growth numbers are used. Specifically, there are potential adverse effects if plans are made to accommodate growth that never occurs, and these adverse effects could vary among the alternatives. Forcing communities to alter their general plans and to rezone land to accommodate excess growth could give developers the upper hand in choosing where and when to build projects. This could encourage sprawl, especially given the prospect that these projects will be fully or partially exempt from CEQA. We urge that the draft EIR assess impacts of all alternatives under a variety of population growth scenarios.

*PDA Variability* – Plan Bay Area has made a point of noting that there is quite a bit of variability among the PDAs. For example, a PDA in an urban core served by extensive existing transit, such as downtown Oakland, is substantially different than a PDA in a remote area such as Cloverdale, which may, sometime in the future, be served by public transit. Likewise, a PDA designation may be based on the belief that the area will be served by transit sometime in the future. For example, we understand that the Cloverdale PDA is based on the assumption that SMART may, at some future date, be extended there. This assumption is questionable. The differences in PDAs need to be taken into account, and the draft EIR should not treat all development in all PDAs as being the same.

*Sea Level Rise* – There is a very strong scientific consensus that the sea level will continue to rise as a result of global warming. Plan Bay Area will not stop that from happening. The draft EIR should account for the likelihood of sea level rise. The analysis should include the indirect impacts of methods now being studied to protect (adapt) those large urban areas, some of them within PDAs, that are in low-lying areas at the margin of the Bay and are vulnerable to sea level rise. These may include restrictive development policies such as avoidance of future investment in such areas, more stringent approaches, such as structural barriers, or “soft” methods, such as expansion of vegetated marsh to buffer future storm surges.

*Public Funding* – The preferred alternatives for housing, jobs and transportation require large inputs of direct (*e.g.*, subsidies, grants, etc.) and indirect (*e.g.*, tax breaks, etc.) public funding. Yet both direct and indirect sources of public funding are under extreme pressure, and their continued availability is at risk. What impacts are associated with the risk that funding sources will dry up? For example, does it make sense to maintain a Cloverdale PDA if no money is available to extend SMART there?

*The “Paradox of Densification”* – As to each of the alternatives, the EIR needs to characterize the effects of compact infill development projects that, while designed to encourage reduced commutes, could also result in diminished level of service and pose an array of problems due to increased local traffic congestion and pollution.

*Air Quality* – As to each of the alternatives, the EIR should address increased health risks within transit corridors due to concentrations of particulate matter and other air pollutants. Housing should be avoided in areas where these pollutants are concentrated. The EIR should assess health risks in relation to any residential projects, particularly affordable housing, that might be accommodated within PDAs that lie within that margin of exposure.

*Impacts on Agricultural Lands, Open Space and Existing Uses* – For each of the alternatives, the impacts on agricultural lands and open space converted to transportation and urban uses should be analyzed. In addition, impacts caused by land use disruption and displacement of population and housing, and the adverse consequences of displacing existing small businesses with new mixed-use, high density residential development should be discussed. Also, please include analysis of the relative benefits of reusing existing housing stock as one means of meeting affordable demand as an alternative to constructing new multifamily developments.

*Energy* – The discussion of energy consumption should include both renewable and non-renewable energy. Although the intent of Plan Bay Area is to decrease dependence on non-renewable energy (notably fossil fuels), no energy source is without impacts. Sources such as nuclear and hydroelectric facilities do not produce greenhouse gases, nor are they classified as renewable. Where do they fall in this analysis? Wind and solar sources are deemed desirable but also may result in local environmental impacts which should be described and evaluated. Efficiency and conservation do not appear in this analysis except with reference to consistency (“inconsistency”) with energy conservation plans or policies. Again, the issues are worded in such a way as to predispose the “No Project” alternative as “bad” for the environment. (See the above preliminary comment on the “No Project” alternative.)

*Noise* – Noise analyses tend to focus on construction-related noise. Post-construction noise should be considered in the draft EIR, in that development patterns are intended to shift toward transit corridors and concentrated urban centers, both of which can be sources of noise. The standard should not be limited to indoor noise levels, which can often be mitigated. Outdoor levels cannot be similarly mitigated.

*Earthquakes* – There are many instances of urban development placed on fill overlying seismically unstable fill and mud around San Francisco Bay. Engineering methods have improved over the decades, but the Loma Prieta earthquake reminded us of the vulnerability of existing development on such lands (San Francisco Marina) to seismic hazards. Where PDAs occur on filled lands, or where new development might occur outside PDAs but along transit corridors or community centers on such lands, the analysis should emphasize the need for appropriate engineering.

*Biological Resources* – While many direct impacts on biological resources appear

to be covered in the list of issues to be evaluated, the indirect impacts associated with increases in population and spillover of human activities into open space and sensitive habitats are not mentioned. These impacts, and how they will be mitigated, should be considered in the EIR.

*Surface Water Impacts* – The EIR analysis should address the effects on water quality of surface waters due to runoff from the “hardscape” and intense uses of denser, compact urban development. It should also address the potential for further loss of above-ground creeks and other natural water features through urban core areas, which could otherwise serve as continuous habitat corridors.

*Visual Resources and Cultural Resources* – The EIR can have no more than a highly generic discussion of both visual and cultural resources in the Bay Area. We do not believe that this Program EIR will be useful as a first tier document for local developments with specific resources and policies.

*Water Supply* – Supplying water to the growing Bay Area population will have its own set of environmental impacts. While the Bay Area receives its water from a wide variety of sources, use of each of these sources has its own set of problems. For example, a great deal of water is taken from the Delta, which substantially impacts fish populations. Likewise, substantial population growth in Marin could require construction of an energy-intensive desalination plant. The draft EIR should analyze where the water to serve the increased population will come from and the environmental impacts of increasing water supplies. The analysis should assume increased rainfall variability and its impacts on water supply.

Alternatives For Evaluation During the EIR Process – MCL believes that the EIR alternatives identified by ABAG and MTC are neither realistic nor helpful in understanding how best to deal with growth in the Bay Area. Accordingly, we suggest that the following alternatives be considered. Each of the following alternatives is intended to promote more rational land use planning, while maintaining local land use control. By suggesting these alternatives MCL does not mean to imply that it endorses any of them; simply that they appear to be sufficiently credible alternative approaches that warrant study and comparison.

*Promoting Growth Based on PDA Ranking* – As Plan Bay Area has repeatedly pointed out, not all PDAs are created equal. Given the vast differences in the PDAs, we suggest that a ranking system be employed (much as transit projects are ranked), and that growth (and funding) be channeled, where possible, to the highest ranked PDAs. For example, growth in PDAs in urban cores, such as San Francisco and Oakland, which are currently served by extensive public transit, is preferable to growth in outlying PDAs, such as those in Sebastopol, Sonoma or Cloverdale.

*Focus Development Around BART* – BART serves a major portion of the Bay Area and efforts to expand service to San Jose/Silicon Valley are underway. BART is, by far, the most

effective regional transit system in getting people out of their cars. In addition to serving almost all major Bay Area employment centers, it also provides access to civic centers, ball parks, shopping, cultural centers (such as museums, opera, ballet or symphony), universities, etc. Focusing development around BART could be a far more effective approach in reducing VMT.

*Exempt the North Bay from the Plan* – The Preferred Scenario presumes that most growth in Bay Area jobs and housing will occur in San Jose, Silicon Valley, San Francisco and the East Bay. The North Bay, *i.e.*, Marin, Sonoma, Solano, and Napa, collectively have a relatively small population and a relatively small base of jobs. The North Bay has unique patterns of development, unique transit systems and unique economies. Rather than lumping the North Bay together with the rest of the Bay Area, it should be treated separately.

*Dramatically Increase Gas Prices* – Market forces can be extremely efficient in allocating resources. A dramatic increase in the gas tax would do more to reduce VMT than any planning effort.

Thank you for your consideration of our comments.

A handwritten signature in blue ink that reads "Susan Stompe". The signature is written in a cursive, flowing style.

Susan Stompe, President