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Humboldt County
3015 H Street
Eureka, CA 95501

RE: Coastal Commission Staff Comments on the Humboldt County Draft Research Memo for the Sea Level Rise Regional Planning Feasibility Study

Dear Mr. Ford, Ms. Shikany, Mr. Richardson, and Ms. Wickman,

The California Coastal Commission (Commission) staff are writing to provide feedback on the County's Draft Research Memo for the Sea Level Rise Regional Planning Feasibility Study. The Draft Research Memo is a deliverable for Task 2 of the Round 6 LCP Grant awarded to the County. Overall, Commission staff found the Draft Research Memo to be thoroughly researched, well-drafted, and a good starting place to develop a plan for regional collaboration on sea level rise adaptation.

On October 21, 2022, Commission staff participated in a group feedback meeting with local jurisdictions, where the group discussed next steps for regional coordination in the Humboldt Bay area and how, and whether, to pursue next steps for regional planning on sea level rise adaptation. During this meeting, some staff from other local jurisdictions expressed a variety of concerns about regional coordination on planning. Commission staff recognize the complexity of regional and cross-jurisdictional coordination on sea level rise adaptation planning. We also strongly encourage regional coordination because of the interconnected and cross-jurisdictional nature of critical infrastructure and other assets that are vulnerable to sea level rise in the Humboldt Bay area. A regional approach to sea level rise planning may also provide individual jurisdictions with additional flexibility on short- and mid-term strategies for protecting urban communities when viewed in the context of a broader regional plan. This coordination could take many paths, and Commission staff are generally supportive of the options raised in the County's Draft Research Memo as next steps. During our earlier meeting with the County on October 3, 2022, County staff asked for feedback on specific questions. These questions and Commission staffs' responses are below.

- **Do you have preferences on which options or combination of options work best from the options we presented?**

The answer to this question will largely depend on what the local governments and stakeholders believe are the best options for the communities in Humboldt Bay. Commission staff generally support any framework that allows local governments, stakeholders, and relevant local, state and federal agencies to come together to make decisions about sea level rise planning and adaptation. Two ideas raised in the Draft Research Memo stood out as frameworks that could potentially lead to regional decisions on adaptation, addressed below. However, multiple or a combination of many of the frameworks raised in the Draft Research Memo could lead to regional planning and adaptation outcomes, and Commission staff do not specifically endorse one option over another.

Of the options presented in the Draft Research Memo, coordinating local coastal plan (LCP) policies relating to sea level rise adaptation across LCP jurisdictions seems likely to allow local governments to create an adaptation plan or strategy applicable to the entire Humboldt Bay area. This kind of coordinated LCP plan or strategy may give local governments more flexibility on adaptation approaches than if each jurisdiction pursued its own plan. For example, the Cities of Arcata and Eureka have each proposed new sea level rise LCP policies that would allow for the armoring and protection of certain neighborhoods regardless of whether the development protected by armoring is an existing structure that predates the Coastal Act. Such policies are likely inconsistent with Section 30235 of the Coastal Act, which generally only allows armoring in certain limited circumstances, including to protect coastal-dependent uses or structures that lawfully existed when the Coastal Act took effect in 1977 and when such structures are in danger from erosion.

Over the last several years, the Commission's Local Government Sea Level Rise Working Group (LGGWG) has recognized that "neighborhood-scale" or "community adaptation" – an approach in which specific strategies are identified and implemented for smaller sections of coastline that have shared characteristics – may be a useful framework for ensuring a balanced approach to adaptation throughout a larger region. In some cases, it may be appropriate for such strategies to include armoring, at least in the short term, for sections of shoreline for which strict application of the Coastal Act might not allow armoring, but where (1) the context suggests that armoring is a more practical approach that can still appropriately minimize and mitigate impacts to coastal resources overall (e.g., within areas that are already significantly developed and armored and which are unlikely to support significant beach/habitat area even if there was no armoring); and (2) when such an approach is accompanied by appropriate mitigation for impacts and additional strategies that will ensure protection and enhancement of coastal resources elsewhere (e.g., requiring managed retreat in other places); and (3) when armoring approaches are proposed in tandem with requirements for future shoreline planning and implementation of strategies to achieve preferred long-term outcomes. The Cities of Eureka and Arcata are relatively densely developed compared to some areas of the County, which may have more areas where mitigation, managed retreat of land uses in highly vulnerable urban areas, or nature-based adaptation solutions could be viable as part of a regional adaptation strategy. Critically, a regional approach to LCP planning in the Humboldt Bay area may allow for better exploration of these and other adaptation ideas that allow local governments to think creatively about adaptation.

In addition, regional coordination on LCP policies would allow local jurisdictions to plan for adaptation of vulnerable assets and infrastructure. For example, the [Half Moon Bay LUP](#)¹ and [San Mateo LUP](#)² include coordinated policies on cross-jurisdictional transportation networks and overlapping public service districts (like sewer treatment and water providers). Among other coordinated policies, Half Moon Bay LUP Policy 3-10 and San Mateo LUP Policy 2.10 both require coordination with the other jurisdiction and consideration of the other LCP when deciding the timing and amount of new or expanded public works facilities or capacities. Although these policies are not specific to sea level rise adaptation, a similar approach may be useful when adapting shared assets and infrastructure to sea level rise.

- **Were there regional sea level rise frameworks or funding options potentially not explored in our document that you think should be considered?**

Overall, the Draft Research Memo was thoroughly researched, and we do not have many new options to add. We would, however, encourage the County to consider the phased and neighborhood scale adaptation ideas discussed above and at recent LGWG sessions.³ In addition, Section II.B. of the Draft Research Memo may want to consider the formation of a climate resilience district pursuant to [SB 852](#)⁴ (Government Code § 62300 *et seq.*). This recent legislation authorizes local governments and special districts to form climate resilience districts to raise and allocate funds for capital projects that address sea level rise, extreme heat and cold, wildfire and flood risk, and drought. Eligible projects to address sea level rise that are specifically referenced in the legislation and which may be appropriate in the Humboldt Bay area include levies, erosion control, and wetland restoration efforts. Lastly, Section II.B. may also want to consider the Humboldt Bay Harbor and Conservation District as a special district. This section explores the augmentation of an existing special district or formation of a new special district but does not consider how the Humboldt Bay Harbor and Conservation District (also a special district) may fit into regional adaptation efforts. We appreciate, however, the Draft Research Memo's discussion of OneShoreline San Mateo County Flood & Sea Level Rise Resiliency District as an example of a special district addressing sea level rise adaptation in a regional manner. This district, although relatively new, is intended to create a regional, unified vision for sea level rise adaptation and coordinate planning and implementation of adaptation projects across jurisdictions. Commission staff would support a similar model in the Humboldt Bay area that creates a unified vision for sea level rise adaptation and facilitates cross-jurisdictional coordination.

- **How would a PWP work, and do you see any benefits of using PWPs in the Humboldt Bay region, given the extensive area of retained jurisdiction?**

A public works plan (PWP) is particularly suited for planning large scale or multi-part infrastructure or adaptation projects. A PWP could potentially streamline the permitting

¹ <https://www.half-moon-bay.ca.us/DocumentCenter/View/3784/Full-Combined-2020-HMB-LCLUP>.

² <https://www.smcgov.org/planning/local-coastal-program>.

³ The [December 3, 2021 LGWG Work Products](#) explored phased and regional approaches to sea level rise adaptation that may be relevant to the Research Draft Memo. LGWG 2021 Work Products available at <https://documents.coastal.ca.gov/reports/2022/8/F4/2021-Work-Products.pdf>.

⁴ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB852.

process for regional and phased sea level rise adaptation strategies in the Humboldt Bay area, and give local governments more say over implementation of strategies in areas of the Commission's retained jurisdiction. Different approaches to sea level rise adaptation in the Humboldt Bay area could even be supported by multiple PWPs for various areas and types of projects. Recently, the Commission has certified PWPs for vegetation management projects for fire resilience purposes across regions which could be used as a model for using PWPs for sea level rise adaptation.

An overview of the PWP process is helpful for understanding the steps necessary for certification of a PWP. A PWP may be submitted to the Coastal Commission for review in the same manner prescribed for the review of LCPs (Coastal Act § 30605). A PWP for activities in an area without a certified LCP (including areas where the Commission has original jurisdiction) must be found consistent with Chapter 3 of the Coastal Act, while a PWP in an area with a certified LCP must be found consistent with the certified LCPs of jurisdictions affected by the PWP (Coastal Act § 30605). Accordingly, certification of a PWP sometimes requires an LCP amendment so that the PWP can be found consistent with a local government's certified LCP. After a PWP is certified and before any development commences, the public agency with a certified PWP must submit a notice of impending development (NOID) with data showing that a particular project is consistent with the certified PWP (Coastal Act § 30606). Title 14, Section 13359 of the California Code of Regulations (CCR) govern the Coastal Commission's review process for a project proposed under a certified PWP.⁵

For a PWP to be an appropriate permitting process for sea level rise adaptation projects, the proposed adaptation measures must be the type of activity that can be authorized by a PWP. Coastal Act § 30114 defines the "public works" that can be the subject of a PWP as including certain kinds of water, sewage, and other utilities; public transportation facilities; all publicly financed recreational facilities; all projects of the State Coastal Conservancy; and any development by a special district, among other activities. Of note, the Draft Research Memo identifies several existing special districts (in addition to the special districts we recommend the County consider) and the possibility of creating a new special district for regional adaptation planning. Under Section 30114(c), these special districts could implement a PWP focused on sea level rise adaptation that includes a broad range of development activities.

The Draft Research Memo states that "for a PWP project located in retained jurisdiction, the Commission still requires a Commission-issued CDP which effectively negates the primary benefits of a PWP, namely avoiding project-by-project review and the need for multiple CDPs." The Commission has historically required a CDP for PWP activities within its retained jurisdiction based on Section 30605 of the Coastal Act, which states that the Commission reviews PWPs in the same manner as LCPs, and Section 30519, which states that the Commission retains permitting authority for development within tidelands and other "retained jurisdiction" areas after an LCP is certified. However, Commission staff is open to

⁵ The [North Coast Corridor Public Works Plan/Transportation and Resource Enhancement Program](#) (NCC PWP/TREP) is an example of a PWP that creates a framework within which proposed projects can be analyzed and implemented over a specific time period under a coordinated plan for a transportation infrastructure and related activities within a particular corridor. Local governments submitted LCP amendments at the same time as the NCC PWP/TREP for certification.

exploring the legal complexities as to whether there could be flexibility in this approach and whether a PWP could cover activities within the Commission's retained jurisdiction rather than requiring a CDP before a project commences. This question would be best explored in the context of a specific PWP proposal or concept.

- **What thoughts do you have on the Coastal Commission potentially transferring some of its retained permitting authority over tidelands, submerged lands, and public trust lands to local governments?**

Although we understand local governments' desire to have more control over the permitting of adaptation projects in areas of the Commission's retained jurisdiction, we would recommend pursuing other options for regional sea level rise planning and adaptation. The transfer of the entirety of the Commission's permitting authority over former tidelands and other areas in the Commission's retained permitting jurisdiction would require a Coastal Act amendment, which is a lengthy and uncertain process.⁶ There are also other ways to accomplish the goal of giving local governments additional control over adaptation strategies within the Commission's retained jurisdiction. As a key measure, Commission staff encourages local governments to adopt certified LCP policies for areas within the Commission's retained jurisdiction. The Commission can use certified LCPs as guidance when making decisions within areas of its retained jurisdiction and has often done so, and the Commission has on various occasions (most recently through its participation in the SLR LGWG) affirmed its support for adaptation planning efforts that reflect local conditions and goals within the larger Coastal Act context. The use of sea level rise LCP policies applicable to areas in the Commission's retained jurisdiction as guidance when making decisions about adaptation projects and other development would give local governments additional input on adaptation strategies in these areas. Although the LCP would be used as guidance and not the standard of review, the Commission's certification of the LCP policies as consistent with the Coastal Act would include findings that would provide a basis for future Commission decisions. An MOU with the Coastal Commission is another mechanism that potentially could give local governments assurance about this process, as discussed below and in the Draft Research Memo. A PWP addressing regional sea level rise adaptation could also give local governments additional control over the implementation of adaptation measures in the Commission's retained jurisdiction, as discussed above and in the Draft Research Memo.

- **Would an MOU between the Commission and local governments be possible/helpful for more guidance on how the Commission will apply the Coastal Act and use LCPs as guidance for adaptation projects?**

The Draft Research Memo states that an "MOU between local LCP agencies and the Commission could serve as a way for the Commission to be more strongly committed to implementing LCP sea level rise policies on Humboldt Bay since the Commission only uses LCPs as guidance when considering authorization of development." The Memo further notes that while an MOU could not bind the Commission, it would at least be an expression

⁶ The Coastal Act does allow for the delegation of permitting authority over public trust lands to local governments in certain circumstances. Section 30613(a) of the Coastal Act allows a local government to have permitting jurisdiction over lands subject to the public trust if the Commission determines that the lands are (1) filled and developed, and (2) located within an area which is committed to urban uses.

of commitment by the Commission to help ensure interpretation of Chapter 3 policies in consideration and support of LCP policies, and make future Commission findings supporting LCP sea level rise policies on Humboldt Bay easier to make. Commission staff are supportive of exploring options such as an MOU that expresses the Commission and local governments' commitment to working together on sea level rise adaptation and lays out principles and steps for coordination. Although we do not believe that the Commission has previously entered into any MOUs precisely like this, the Commission has entered into MOUs with a number of other state agencies including [Caltrans](#),⁷ the State Coastal Conservancy, [State Parks](#),⁸ and the State Lands Commission on interagency coordination. Many of these MOUs state principles of agreement for interagency coordination on specific issues or projects. The Commission has also entered into MOUs and Memorandums of Agreement (MOAs) with other entities, such as applicants and federal agencies. For example, the [MOA between the Commission and the Energy Commission](#) (2005),⁹ clarifies the roles and duties of each Commission during review of proposed projects at existing coastal power plant sites, and has a primary focus of ensuring that the Energy Commission's review process provides the information necessary for timely submittal of reports required from the Coastal Commission during that review.

In conclusion, the County's Research Draft Memo is thoroughly researched and raises important considerations and opportunities for regional coordination on sea level rise adaptation planning in the Humboldt Bay area. Commission staff looks forward to continuing to work with the County and other partners on these important adaptation planning efforts. Please feel free to reach out to me at the above address, or via email or phone (707-826-8950 ext. 204), if you have any questions about this letter or wish to discuss further.

Sincerely,

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⁷ <https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/ser/2021-sami-mou-a11y.pdf>.

⁸ https://www.opc.ca.gov/webmaster/media_library/2021/04/MSLT_MOU_with_signatures_Final.pdf.

⁹ <https://documents.coastal.ca.gov/reports/2005/4/Th5a-4-2005.pdf>.