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**Subject: *Recirculated Notice of Preparation for the Moss Landing Community Plan Update  
Draft Environmental Impact Report (SCH # 2013041053)***

Dear Mr. Carver:

Thank you for sending the recirculated Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) for the Moss Landing Community Plan (Plan) update and related development projects (SCH # 2013041053) for our review. The proposed project for purposes of CEQA involves revisions to Chapter 5 of the North County Land Use Plan (i.e., the Moss Landing Community Plan, May 2015 draft) and the Coastal Implementation Plan (Title 20) as well as four specific development proposals (MBARI, MLML, Gregg Drilling, and Moss Landing Road street and drainage improvements). As such, the forthcoming CEQA analysis will be both a programmatic and project-specific EIR. The NOP provides an opportunity to identify coastal resource issues with the proposed project that are relevant to the Coastal Commission's statutory responsibilities in reviewing and ultimately approving the LCP update. We would like to provide the following comments for consideration in the EIR analysis, and we appreciate your willingness to accept our comments past the NOP comment deadline.

### **General Observations**

While we intend to provide more detailed comments on the proposed Plan's policy consistency with both the Coastal Act and the North County Land Use Plan (LUP), we see the EIR phase as an ideal time to understand the potential impacts of Plan fruition. For example, the EIR should study the cumulative impact the Plan would have on development buildout, including the number of new housing units, amount of commercial space, etc.; whether that development can be supported by existing infrastructure (water, sewer, traffic) and/or what infrastructure improvements would be needed in order to accommodate that buildout; what impacts that development would have (any ESHA or wetlands affected, hazards/sea level rise, etc.); and what alternatives exist.

### **Land Use**

In general, Coastal Act Chapter 3 (and where applicable, the existing North County LUP) should be the standard of review in the EIR evaluation of all of the proposed land use designation and

policy changes. Any changes from a higher priority use to a lower priority use may be inconsistent with the Coastal Act and should be considered significant under CEQA. The EIR must include an evaluation of the need for such land use changes, and whether there remains adequate land available for Coastal Act and LUP-priority land uses, such as coastal-dependent industry, public recreation, and agriculture. In addition, any policy changes to allow more intensive development than currently envisioned in the existing Plan need to be identified and analyzed against Coastal Act Chapter 3 and the existing North County LUP. For example, new Policy NCLUP-ML-2.1 allows for a total of 150 hotel/motel units based on available land and wastewater collection system capacity. This policy should be analyzed for impacts to water supply, traffic, and wastewater, among other things, including whether there is enough capacity of such public services to serve additional development, keeping in mind existing public service constraints. Similarly, the proposed expansion of the urban services line should be evaluated for same.

The NOP states that none of the proposed changes to land use designations result in the potential for increased development densities. However, some of the proposed changes have the potential for other impacts that the EIR must analyze. For example, one proposed land use and zoning change (that is not listed in the NOP) for a piece of land above the northeast edge of the Moss Landing Power Plant property would be from Resource Conservation to Agricultural Conservation. The EIR should analyze the appropriateness of this change in light of proximity of this site to the Elkhorn Slough and other resource concerns.

### **Special Treatment Areas**

The proposed Moss Landing Business Park Special Treatment Area would continue to be designated Coastal Heavy Industrial. However, proposed Section 2.4.3.3 (for Coastal Heavy Industry) provides an allowance for non-coastal dependent and non-coastal related uses, and Section 2.4.8.3 reiterates this by saying that the site is envisioned as a “mix of new coastal-dependent and coastal-related uses, including commercial uses.” This new allowance of non-coastal-dependent and non-coastal-related uses on this site is a major land use change that should be analyzed in the EIR. Coastal-dependent and coastal-related uses are priority uses in the Coastal Act, whereas commercial uses are not.

Section 2.4.8.3 also states that “Moss Landing Business Park is served by a seawater intake facility, located in the Harbor, and a seawater return via a single discharge system that runs under the harbor and Island and out into Monterey Bay.” The existing infrastructure described may be accurate, but the site does not currently have any existing coastal development permit(s) that allow for use of this system or any amount of water, so it is not currently “served” by such a system to our knowledge. Inclusion of such a statement in the governing planning document is confusing and misleading. If the site intends to re-start use of this seawater facility and the County intends to include it as part of the baseline for this site, the EIR should evaluate all of the impacts associated with use of this seawater system (including related to the marine environment, energy and greenhouse gas emissions, traffic, growth inducement, etc.) for the full

range of uses and water amounts possible for the site. Otherwise, we understand and hope that this Plan language will be modified and that this EIR will just be programmatic with an acknowledgement of a full project-specific CEQA analysis for whatever is ultimately proposed for this site.

### **Desalination**

The Plan includes a new policy (NCLUP-ML-3.4) that treats desalination proposals as an essential public service vital to the economic health of the region and that such projects “shall not be precluded by past or future development that has caused congestion on State Route 1” and that “the County of Monterey may approve desalination facilities in Moss Landing with full knowledge that doing so may contribute to continuing traffic congestion on State Route 1.” We find this proposed policy to be inconsistent with the Coastal Act, particularly Section 30254, which only allows new or expanded public works facilities to accommodate the needs generated by existing and planned development, and not induce additional growth beyond that which can be served by other public services. The policy appears to suggest the opposite, including that desalination facilities are meant to provide water service to new development regardless of whether existing traffic and wastewater services can accommodate it. Given the well-documented traffic problems through the Moss Landing corridor, the County must consider or require traffic mitigation for the additional development potentially allowed by a desalination project, as well as analyze the other potential coastal resource impacts desalination and increased growth would have. The EIR should evaluate the potential traffic and other public service impacts of such a policy, as well as alternatives (including a policy that solely allows desalination to serve existing development and/or Coastal Act priority development) using an example of a full-scale desalination project in Moss Landing.

This and other new proposed policy language in the document are supportive of desalination regardless of potential impacts and ownership. Proposed policy NCLUP-ML-4.11, related specifically to desalination, references and requires consistency with Monterey Bay National Marine Sanctuary standards for new or expanded desalination facilities, but does not mention or require consistency with other applicable agencies that permit and regulate desalination facilities. The EIR should evaluate the Plan’s new support for desalination against the many applicable agency requirements, including that of the Coastal Commission, Regional Water Quality Control Board, State Lands Commission, and others. The proposed language also seems to suggest that desalination is desirable regardless of ownership. The EIR should evaluate the new policy support for desalination against the County’s own ordinance (10.72.030.B) requiring desalination facilities to be owned and operated by a public entity. In general, if the Plan is going to encourage more seawater use and desalination, the EIR needs to fully evaluate the impacts of potential seawater intake projects, potential technologies, potential seawater amounts, etc.

### **Water**

The Plan includes proposed language regarding the Pajaro/Sunny Mesa Community Services District's (PSMCSD) stated inability to provide enough water for new development that increases water demand within their service area (Section 4.3.2.3). However, Policy NCLUP-ML-4.6 then mandates that the County "shall not deny development applications that are consistent with the plan solely because of limitations – otherwise in effect – on the use of groundwater set forth in the water resource policies of Section 2.5.3.A of the North County Land Use Plan, provided: a. The water purveyor...is able and willing to supply potable water...; and b. All reasonable and feasible conservation measures are taken to reduce freshwater consumption in the proposed development." The existing North County LUP policies in 2.5.3.A are strong mandates that require protection of groundwater resources for coastal priority agricultural uses, and limiting groundwater use to the safe yield level. These governing policies, along with the PSMCSD's stated inability to provide more water to new uses if they result in an overall increase in water demand, make proposed NCLUP-ML-4.6 a policy with potential for significant irreversible impacts on water supply. The EIR should evaluate exactly how much water use would be required by all proposed new uses, including the three specific development proposals (MBARI, MLML, and Gregg Drilling) so that the full scope of this proposed policy is clear. In addition to evaluating this policy against the existing North County LUP water policies, the EIR should also evaluate this new policy against Coastal Act Section 30250, which requires location of new development in areas that are able to accommodate it, or in other areas where it can be served by adequate public services. In general, we are concerned with proposed language in the Plan that provides development expectations when water supply is a real limiting factor.

### Wastewater

The proposed Plan eliminates the existing sewer allocation plan (SAP). The SAP originated from coastal development permit P-78-772, issued to the Moss Landing County Sanitation District (MLCSD) in 1980 by the Coastal Commission. In that approval, the Commission found that because of limited capacity at the Castroville Sewage Treatment Plant, the available 105,000 gallons per day of wastewater needed to be prioritized by use. As such, the SAP, and subsequently, the certified LUP, prescribed the following priority uses for wastewater treatment:

- a) Existing uses within the service area.
- b) Moss Landing State Beach, Salinas River State Beach.
- c) New or expanded coastal-dependent industries within the service area.
- d) New or expanded essential public services, basic industries or recreational uses excluding the Struve Road area, or minimum other uses on vacant parcels in the service area.
- e) All other uses.

The updated Plan acknowledges that Moss Landing wastewater no longer flows to the Castroville Sewage Treatment Plant, but instead is now treated at the Monterey Regional Water Pollution Control Agency (MRWPCA) regional wastewater treatment plant in Marina, which, according to the draft Plan, can treat approximately 280,000 gallons per day from Moss Landing.

The Plan states that this is sufficient to accommodate proposed new and expanded uses in Moss Landing, including the addition of the Moss Landing Business Park to the urban service area. The priority uses are thus proposed to be eliminated from the draft Plan. However, no evidence is provided that supports the claim of adequate capacity, and it is not clear that it is appropriate to eliminate the Coastal Act-priority uses for available wastewater capacity. Priority uses for public services such as wastewater remain important in the Plan in the event of future constraints on the regional system and treatment plant. For example, the proposed Monterey Peninsula Water Supply Project (MPWSP) in Marina proposes to use the existing outfall at the MRWPCA plant to discharge brine from the desalination process. The EIR should analyze the availability of outfall capacity at the MRPWCA for Moss Landing given the MPWSP and any other potential and expected future users at the regional plant.

### **Hazards and Sea Level Rise**

The Plan proposes a new section on shoreline erosion and sea level rise and bases the proposed discussion on shoreline change in Moss Landing on a 2007 study done for MBARI's long term development plan. The Plan includes a new figure (ML-14) that delineates the maximum landward extent of vegetation on the Island, which appears to also be the 2007 study's presumption of the maximum extent of shoreline erosion. We are concerned that the Plan proposes to rely on this 2007 study as the basis for shoreline erosion and sea level rise assumptions on the Island, as it is only one study (prepared for an Island landowner) and is likely to be somewhat outdated at this point. And the proposed Figure ML-14, with a fixed setback line, presents problems related to the widely accepted ever-evolving nature of sea level rise. We are concerned that the only two new proposed policies related to shoreline erosion and sea level rise (NCLUP-ML-5.1 and 5.2) seem to contradict each other. The first mandates armoring of the Harbor and coastal-dependent and coastal-related uses for as long into the future as feasible regardless of impacts to beaches and dune habitats, while the second requires planning for orderly shoreline retreat that promotes the conservation of beach, dune, slough, and other natural habitats. First, a blanket requirement for armoring for as long as possible into the future regardless of other impacts is not Coastal Act consistent nor in sync with current Commission actions related to shoreline development, and second, these two proposed policies, when read together, effectively confuse future sea level rise planning for Moss Landing.

In general, we highly recommend that the County follow the Coastal Commission's sea level rise draft policy guidance in updating the Plan. The guidance includes a section specific to updating LCPs (beginning on page 65) that the Commission hopes will inform the issue of sea level rise at the local level. The draft policy guidance can be found here:

[http://documents.coastal.ca.gov/assets/slr/guidance/May2015\\_PublicReviewDraft.pdf](http://documents.coastal.ca.gov/assets/slr/guidance/May2015_PublicReviewDraft.pdf)

For purpose of the EIR, it should evaluate the range of potential sea level rise (and use the projections stated in the 2012 National Research Council report, currently identified by the Commission to be the best available science in this regard) in Moss Landing and associated impacts over time on existing and proposed shoreline development. If shoreline

retreat/relocation is envisioned (at least as proposed Policy NCLUP-ML-5.2 indicates), the EIR should evaluate potential planned retreat locations and the various environmental impacts of relocating existing development to those places.

### **ESHA**

The proposed Plan includes a new figure (ML-13) that shows mapped environmentally sensitive habitat area (ESHA) and buffer areas, but does not describe how this figure was developed or how the ESHA and buffer areas were identified. In general, because resources change over time, species and habitats may become rare or listed at any time, buffers vary based on different needs and circumstances, etc., we consider it problematic to include such a figure in the Plan. While maps may be used as a tool to identify potential ESHA areas, ESHA and buffer determinations should be made on the ground at the time of a development proposal that warrants such determinations. The existing North County LUP ESHA Policy 2.3.2.5, which requires field surveys to determine precise locations of ESHA when development is proposed, is sufficient and appropriate for Moss Landing.

For purposes of the EIR, it should include biological surveys of all areas proposed for all future development and should describe how dunes and other habitats were delineated for purposes of impact analysis.

### **Recreation and Public Access**

Proposed Figure ML-16 shows only one proposed parking area at the north end of Sandholt Road, but this location is not discussed in the text. The text describes proposed parking at two locations on Jetty Road, including a 100-space parking area, but these are shown as existing parking on the figure. And then Policy NCLUP-ML-6.12 states that up to 150 improved parking spaces could be provided at the end of Jetty Road with a turnaround or loop, but this is also not shown as proposed on the figure. All of these proposed parking scenarios should be evaluated in the EIR for impacts to dune and wetland habitats, and moreover, specific parking parameters for Jetty Road may not be appropriate in the Plan, as it is unclear how this proposed amount of parking was determined, and whether or not coordination with State Parks on these parking configurations has occurred. Policies should be broad to encourage retention of existing parking, support of new parking as space allows while acknowledging the presence of ESHA, and adaptation as necessary to respond to erosion and sea level rise.

Proposed language in the Plan states that Moro Cojo Slough represents a potential recreational opportunity. The EIR should analyze the range of potential recreational opportunities associated with Moro Cojo that this language encourages and the potential impacts to habitat, visual resources, etc.

### **Moss Landing Harbor District**

Section 2.5 states that the only plans and policies that are included in the Plan related to the Moss Landing Harbor District's (MLHD) specific development plans are those within the County's jurisdiction and not the Coastal Commission's jurisdiction. However, Figures ML-7 and ML-8 seem to encompass all of the MLHD's land and water areas. Furthermore, these figures are difficult to read and it is not clear what is existing and what is proposed. In addition, specific development projects may not be appropriate to include in this planning level document because it pre-supposes that everything in the plans is LCP consistent (and it does not provide flexibility, and restricts the MLHD and the County to very specific projects). If the County intends to keep these specific development plans in the document, the EIR would need to evaluate the impacts of each element at a project-specific level.

### **Transportation**

The transportation section of the Plan includes substantial project-specific details for proposed and planned improvements. These improvements include one or more grade-separated overcrossings over Highway 1, traffic circles, consolidation of intersections, traffic signal at Dolan Road, and Dolan Road realignment, among other things. Such detail is not necessarily appropriate in this planning level document (as just described above), and if the County intends to keep these details in the Plan, the EIR would need to evaluate the impacts of each improvement at a full project-specific level.

### **Proposed General Development Plans**

We are pleased to see that the project specific details for MBARI, MLML, Gregg Drilling, and the Moss Landing Road street and drainage improvements have been removed from the Plan. However, we note some inconsistencies with these projects and proposed (and existing North County LUP) policies. For example, the Gregg Drilling project involves an 80-foot tall wind turbine in a prominent location in the Highway 1 viewshed. But the visual resources section of the Plan includes a number of policies (such as proposed NCLUP-ML-5.11 and 5.14) that require protection of scenic views and design review so as to avoid adverse impacts on significant public views. And the North County LUP includes other policies (such as 2.2.2.1) that require protection of views to and along the ocean and shoreline from Highway 1. An 80-foot tall wind turbine in a low-lying harbor area near the shoreline that is visible from Highway 1 and almost all surrounding viewpoints would be incompatible with the visual character of the area and raises consistency issues with these policies. The EIR should note and evaluate internal inconsistencies such as this.

### **Alternatives**

Finally, the Alternatives analysis in the EIR should include a discussion of alternatives that best meet all Coastal Act Chapter 3 requirements, including for ESHA, hazards, public services, and visual resources. We are concerned that the Plan contains language and policies that commit to certain project outcomes instead of looking first at Coastal Act-required mandates. For example,

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the Plan assumes desalination regardless of impacts; assumes all desired development can occur despite a lack of freshwater; assumes existing uses like seawater intakes and outfalls; and assumes protection of development regardless of sea level rise. The Plan should be a broad-level document that provides a planning framework consisting of broad visions and goals of the future of Moss Landing, and then provide a series of policies, all emanating from and consistent with Chapter 3 of the Coastal Act, that will serve as regulatory standards to which new development within Moss Landing must conform. Although much of the project-specific detail has been removed from the current draft of the Plan, it still appears that the document is a hybrid of both the broad regulatory policy document described above, as well as a Master Plan-type document that includes specific envisioned projects and categorically designates those preordained projects as consistent with the Plan. Instead, these specific projects should be moved to a new “Recommended Projects” section, for example, with language articulating the overall vision of what the County would like to see, but all in broad terms and clearly stating that such projects must still be found otherwise consistent with all applicable LCP policies and standards.

Thank you for the opportunity to provide comments on the NOP for this EIR. If you have any questions or would like to discuss the project or these comments, please feel free to contact me at (831) 427-4863 or [katie.butler@coastal.ca.gov](mailto:katie.butler@coastal.ca.gov). We intend to provide additional specific policy comments on the most recent draft of the Plan in the near term future, and we look forward to continuing to work with you on this important planning document.

Regards,



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cc: State Clearinghouse