

1.0 THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

1.1 THE EIR PROCESS UNDER CEQA

1.1.1 The Identification of Significant Issues

The California Environmental Quality Act (hereafter CEQA)¹ and the related CEQA Guidelines (hereafter Guidelines;² these are administrative regulations for implementing CEQA, judged by state courts to have the force of law) establish procedures to be followed by state and local agencies in analyzing and disclosing the environmental consequences of activities they propose to carry out or approve. The subject of this Environmental Impact Report (EIR) is the District's Draft Humboldt Bay Management Plan. The purpose of this EIR is to provide information which will allow the decision-makers of the Humboldt Bay Harbor, Recreation and Conservation District (District), other agencies,³ and the public to make informed decisions about the project's effects on the environment and the environment's likely effects on the project.

An Initial Study (IS) was prepared to initiate the Plan's CEQA review (see Appendix A). The IS is a consideration of a set of potential environmental effects that may result from proposed actions, based upon the Environmental Checklist included in Appendix G of the CEQA Guidelines, together with considerations of the Checklist items that assists lead agency decision-makers in identifying any "unusual" circumstances. The results of the IS preparation process divulged a potential for the Draft Plan to be associated with environmentally significant effects, indicating that an EIR would be necessary for the proposed project. Because the proposed "project" subject to CEQA review is a plan, rather than a proposal for specific actions, the environmental review process required for the plan is a "programmatic" review (see below).

A Notice of Preparation (NOP) was prepared, identifying the effects considered possible by the District to be identified as environmentally significant (see Appendix A). The NOP was distributed to local, state, and federal agencies known or expected to be interested in the Humboldt Bay Management Plan. The NOP was sent to the State Clearinghouse, which is charged with further distributing it to relevant state agencies. Copies of the NOP were also posted in the District's offices, and copies were forwarded to persons and

1 Public Resources Code section 21000 *et seq.*

2 California Administrative Code section 15000 *et seq.*

3 Other agencies that would use an EIR to meet their CEQA obligations normally would include "Responsible Agencies" that might be required to approve some aspect of the Humboldt Bay Management Plan after the Management Plan has been adopted by the Lead Agency (i.e., the District), as well as "Trustee Agencies" that bear a responsibility for "trust" resources. However, this EIR does not identify any agencies as either Responsible Agencies or Trustee Agencies for the CEQA review, since the only approval required for the Draft Plan is the adoption of the Plan by the District. It should be noted, however, that the Plan's implementation will involve a variety of actions for which other agencies will be required to issue permits or other project approvals; for those implementation elements, there will be Responsible Agencies and Trustee Agencies.

organizations that had requested notification of the CEQA review process. A copy of each response to the NOP received by the District is included in Appendix A.

It should be noted that while the IS/NOP process identified effects considered by the District to be potentially significant in the Plan's implementation, the IS/NOP also identified effects that the District judged would be unlikely to be environmentally significant. The IS/NOP indicated that the EIR (pursuant to section 15063 of the Guidelines) would not cover those effects further. The Initial Study is an integral part of this EIR, and the environmental analyses in the Initial Study are fully incorporated into the text of this document even if not identified explicitly.

In addition to following CEQA's requirements for identifying potentially significant issues, the District held two "scoping" meetings for the EIR on 28 September 2005. These meetings were conducted by the District following formal public notice, and invitations were also sent to representatives of the local, state, and federal agencies that had received the NOP. The notices were also posted within the District's offices and distributed to persons and organizations that had requested notice. The "scoping meetings" were attended by District decision-makers, and District staff recorded the proceedings. Substantive comments from the meetings were considered in developing this EIR.

CEQA assessments normally identify specific environmental changes that are considered to mark "thresholds of significance." Because the proposed action for this EIR is a planning document, and because the "projects" that may be proposed in the future to implement the Plan can only be identified generally, the assessments in this EIR are "projections" of the implementation of the Plan. That is, the EIR uses thresholds of significance expressed in terms of possible outcomes of the implementation of policies:

- The primary "threshold of significance" convention throughout the EIR is that the Management Plan's policies will be judged to produce a significant environmental effect if a proposed policy in the Plan increases the potential for future occurrence of a negative environmental effect ("impact") beyond the degree that the effect would occur if the policies recommended in the Plan were not carried out.
- A secondary "threshold" convention adopted in this document is a "reverse" criterion; if a recommended policy would alleviate or reduce an existing impact, the EIR will identify NOT adopting that policy (or a similar policy) as environmentally significant.

The assessment of the effect of the Plan for each particular issue requires an exercise in decision-maker judgement regarding the likelihood that the Plan will lead to actions that will either exacerbate or alleviate conditions that would occur without the Plan. Many of these actions are likely to be remote in time. Readers of this EIR are cautioned that the proposed "action" in this case is the adoption of statements of intent and guidance for future decisions, rather than precise physical actions in the near-term future. Future projects guided by the policies in the Management Plan will also need to undergo additional CEQA reviews.

The policy-based assessment in this EIR is extended into considerations of mitigation for identified significant effects. To the extent possible the EIR identifies an addition, deletion, or modification of policy text for the Draft Management Plan as mitigation for potential impacts that might occur because of the Draft Plan's proposed policies. The aim of this approach is to produce a "self-mitigating" Plan, in which any potential adverse

effects that may result from Plan policies are avoided, reduced, or offset by other policies in the Plan. The desired net outcome is a set of “directions” to the District that either does not cause adverse environmental effects, or which specifies an approach to the bay’s management that offsets unavoidable effects.

The preliminary IS review, in combination with a consideration of the responses to the NOP and the “scoping” sessions, identified the following as subjects for which the Draft Plan’s policies might lead to potentially significant (if indirect) effects as a consequence of Plan implementation, indicating that these topics would need to be considered in a programmatic fashion in this EIR:

- Aesthetic effects, primarily because of potential effects on visual resources, but also including potential noise-related effects
- Air quality effects, primarily relating to nonattainment status for PM10 in the North Coast Air Basin; in addition, potential odor-releasing implementation projects
- Biological effects on the Humboldt Bay ecosystem, on sensitive fish, plant, and wildlife species and their habitats, and on wetlands and riparian areas, including erosion, sedimentation, and water quality effects
- Potential effects on cultural resources and Native American interests in the bay vicinity
- Geological and stability concerns that could result from seismically related ground failure; potential tsunami inundation hazards
- Potential concerns arising from the transportation or use of hazardous chemicals; potential mobilization of toxic materials in bay sediments
- Hydrological and flooding-related effects resulting indirectly from implementation projects and from changing environmental conditions during the Plan’s lifetime
- Possible water quality effects resulting from implementation project construction
- Possible indirect effects on public services, utilities, and traffic/circulation infrastructure
- Potentially significant cumulative effects

1.1.2 Substantive and Procedural Requirements for EIRs

The heart of CEQA’s requirements is a process that is meant to ensure that appropriate evidence is compiled and considered. The purpose of this EIR is to demonstrate the following: (1) the District considered the environmental implications of the adoption of the Draft Humboldt Bay Management Plan and its subsequent use as guidance for the District’s management of Humboldt Bay; (2) the District considered and identified feasible measures within its own jurisdiction to avoid, minimize, or offset (i.e., mitigate) possible significant effects associated with the Plan’s implementation; and (3) the District met CEQA’s procedural and substantive requirements in approving and adopting the Humboldt Bay Management Plan. What is required of the District in this context is not complete avoidance of effect or perfection in following the process, but a good-faith effort to identify and mitigate potentially significant effects that might occur as a consequence of Plan adoption.

The standard to which the District will be held in its CEQA reviews is the “substantial evidence” test, which requires that the District demonstrate that it had information relevant to the potential environmental consequences of the Plan’s policy framework, and that District’s decision-makers considered that information prior to adopting the proposed Plan. Section 21080(e) of CEQA defines “substantial evidence” this way:

“(1) For purposes of this section and this division, substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. (2) Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.”

This EIR does not include direct assessments of the proposed Plan’s economic and social effects. Sections 21080(e), 21100(d), and 21151(b) of the California Environmental Quality Act all refer specifically to “physical impacts” on the environment. In interpreting and implementing these requirements, the Guidelines (Section 15131) identify potential economic and social effects as topics to be used only to assist in delimiting the degree of significance of physical effects. Section 15131(a) states explicitly that “(e)conomic or social effects of a project shall not be treated as significant effects on the environment.” This definition of “significant effect” is carried through into section 15382 of the Guidelines, which states:

“ ‘Significant effect on the environment’ means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.”

This Draft EIR will be circulated for review by and comment from members of the public and staff from federal, state, and local agencies. The public review period (45 days) will end on the date specified in the transmittal letters accompanying the Draft EIR. All comments will be reviewed pursuant to section 15088 of the CEQA Guidelines, and responses to all substantive comments will be included in the Final EIR pursuant to section 15132(d) of the CEQA Guidelines.

Before the District makes any decision regarding this project, it will consider the entire contents of the Final EIR, which will include the Draft EIR, all comments, and the District’s responses to the comments. CEQA sets forth procedural requirements regarding findings, notices, and (if necessary) certain statements. Section 15090 of the CEQA Guidelines requires that the Final EIR be certified as complying with both the substantive and procedural requirements.

If the District acts to approve the proposed Humboldt Bay Management Plan, and if environmentally significant effects are identified during the EIR process, Guidelines section 15091 requires that written findings be made by the District explaining how the significant effects were reduced, avoided, or offset. If all of the effects cannot be reduced, avoided, or offset to a level of insignificance, the District must make specific findings regarding the social, economic, or other considerations which override the residual potentially significant environmental effects (see CEQA Guidelines, sections 15092 and 15093).

The CEQA Guidelines (section 15020) establish the lead agency's obligations to avoid or minimize environmental damage by incorporating mitigation measures that would substantially lessen significant environmental effects. The Guidelines [section 15126.4] require that mitigation measures be identified for each significant environmental effect identified in the EIR, if such measures exist. The District has the affirmative obligation to adopt mitigation measures for each significant environmental effect identified in this EIR, unless findings are made pursuant to Guidelines section 15091 that such mitigation measures are infeasible and a Statement of Overriding Considerations is prepared pursuant to Guidelines section 15093.

"Mitigation," as used in this EIR, generally follows the CEQA meaning defined in the Guidelines, section 15370:

" 'Mitigation' includes: (a) avoiding the impact altogether by not taking a certain action or parts of an action; (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) rectifying the impact by repairing, rehabilitating, or restoring the impacted environment; (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and (e) compensating for the impact by replacing or providing substitute resources or environments."

However, because the proposed action covered by this EIR is the adoption of a plan, the primary mitigation approach adopted for this EIR involves identifying changes in the planning framework that address the necessary impact mitigation. For example, if the EIR identifies a potentially significant environmental consequence of a proposed policy, the primary mitigation approach used in the EIR is to identify a modification of the policy that avoids, reduces, or offsets the potentially significant effect, or to identify an additional policy element that reduces or offsets unavoidable effects from policies that are deemed to be essential for the bay's management.

As noted above, the degree of significance of the environmental effects of the project will be measured by the "substantial evidence" standard. "Substantial evidence" means that the EIR contains enough relevant information, and reasonable inferences based on the information, to support the EIR's conclusions, even though other conclusions might also be made (Guidelines section 15384).

1.2 USES OF THIS EIR DOCUMENT

1.2.1 Current Review of the Draft Management Plan

This EIR is a disclosure document intended to provide the lead agency (i.e., the District), other responsible and trustee agencies, and the general public with an assessment of the potential effects of implementing the Humboldt Bay Management Plan. The purpose of the EIR is to provide information so that the District can consider the potential environmental consequences of the policies identified in the Draft Plan. The information in the EIR does not control the District's decisions concerning the Plan, although the District must respond to potentially significant effects by making the required findings under sections 15091 and 15093 of the CEQA Guidelines.

CEQA Guidelines section 15082(b) requires that "responsible" and "trustee" agencies which will have subsequent review or approval responsibilities for a proposed action must

identify their concerns, and that the lead agency must address those concerns in the EIR. The responsible and trustee agencies must then use the EIR to meet their own CEQA review responsibilities (Guidelines section 15096). In addition, Guidelines section 15124(d) requires that the EIR identify the intended uses of the EIR, including a list of the agencies expected to use the document and a list of approvals for which the EIR will be used. However, the District is not aware of any other agency approvals or adoption decisions for the Management Plan.

This EIR may support some or all of the following District uses and activities:

- Decisions by the District regarding any District approvals for management actions in Humboldt Bay. These actions could include programs implemented to carry out the policies in the Plan, agreements with other agencies to develop programs called for in the Plan, or the development of additional policy approaches as called for in many of the Plan's policies.
- Decisions by the District with respect to applications considered by the District. That is, the District will use the environmental assessment this EIR as a basis for considering the environmental effects of applications to the District for permits requested by applicants to the District.
- The EIR may be used as a source of environmental information by local agencies that are jointly concerned with managing lands or activities within the Humboldt Bay watershed. These agencies include various offices within the governments of the County of Humboldt, the City of Eureka, and the City of Arcata.
- This EIR may serve as an information source for state agencies that will consider management actions by the District. The agencies that may play such a role include the California State Lands Commission (CSLC), California Coastal Commission (CCC), the California Department of Fish & Game (CDFG), the North Coast Regional Water Quality Control Board (RWQCB), or other state agencies that also have mandated regulatory or trust responsibilities for Humboldt Bay's resources.
- The EIR may serve as a source of information for federal agencies that require environmental review documents pursuant to federal law for activities that they wish to approve or carry out, including the U. S. Army Corps of Engineers (USACE or Corps), the U. S. Environmental Protection Agency (USEPA or EPA), the National Marine Fisheries Service (NMFS) of NOAA, the U. S. Fish and Wildlife Service (USFWS), or other federal agencies having mandated regulatory or trust responsibilities for Humboldt Bay's resources.
- The EIR may serve as an information source for consideration of intergovernmental relations between the District and the Wiyot Tribe for Wiyot lands in Humboldt Bay as well as for other discussions of common interests and concerns.

1.2.2 Future Phases of Management Plan Implementation

The precise timing and scope of actions that may occur for most of the policies in the Draft Humboldt Bay Management Plan are uncertain. Because the Plan does not explicitly identify most future implementation actions, it will be necessary for the District to conduct an additional CEQA screening for many (perhaps essentially all) future proposals to implement the Plan. The District anticipates that the information contained in this document will provide a baseline for considering possible environmental

consequences of future management activities, as well as baseline information for reviews by other agencies in the Humboldt Bay region. The environmental reviews of each of the future proposals will tier to the assessments in this EIR.

This specific CEQA context is covered by section 15165 of the CEQA Guidelines, which addresses “Multiple and Phased Projects:”⁴

“Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency shall prepare a single *program EIR* for the ultimate project as described in section 15168.” (quoted in relevant part; emphasis added)

Guidelines section 15168 specifically defines the application of a “program EIR” to a phased project. Section 15168(a) defines the applicability of this process:

“A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and ... (which) ... are related ... (as) ... logical parts in the chain of contemplated actions.”

Section 15168(c) identifies the process to be followed by the lead agency when using the program EIR to meet CEQA obligations for subsequent actions in “the chain of contemplated actions:”

“(c) Use With Later Activities. Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

“(1) If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration.

“(2) If the agency finds that pursuant to section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.

“(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.

“(4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.

“(5) A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.”

In summary, this EIR functions as a “program EIR,” as identified by the California Environmental Quality Act. The EIR defines programmatically the effects of the future elements that are not clearly defined at this time. To the extent that future implementing

⁴ The context of this EIR is very similar to the context covered by CEQA Guidelines Section 15166, where an EIR is prepared as part of a General Plan process. The Management Plan functions for the District in much the same fashion that a General Plan functions for a local agency that regulates land use, but the Management Plan is not a document subject to state General Plan requirements and CEQA Guidelines Section 15066 is not applicable.

actions have effects consistent with those described in this program EIR, the future actions will not require additional CEQA documents. The District will conduct a preliminary CEQA evaluation of the future implementing actions (e.g., applying for permits to carry out an action identified in the Plan), and may be required to prepare additional CEQA documents. Those documents will be expected to “tier to” and incorporate the contents of this EIR to the maximum extent possible.

1.3 SCOPE AND CONTENT OF THIS DOCUMENT

Following this introduction to the basic scope of CEQA, EIRs, and the application of CEQA to this EIR’s context, Chapter 2.0 of this document identifies the objectives of the Management Plan, and describes the alternatives considered by the District.

The majority of the topic-oriented analysis in this EIR is included in Chapters 3.0 through 15.0. The physical environment is covered in Chapters 3.0 through 7.0, including geological and tsunami-related concerns (Chapter 3.0), hydrology and hydrodynamics (Chapter 4.0), erosion and sedimentation (Chapter 5.0), water quality (Chapter 6.0), and air quality (Chapter 7.0).

The Management Plan’s potential effects on the biological environment are addressed in Chapters 8.0 through 11.0. Chapter 8.0 addressed the bay ecosystem as a whole, and its functions in an ecosystem-based management context. Chapter 9.0 considers the wetland context of the bay, including the relationships among the bay and other aquatic ecosystem elements. Chapter 10.0 specifically addresses eelgrass (*Zostera marina*) as a significant ecosystem element in the bay’s management. Chapter 11.0 is a broad consideration of effects on sensitive species and their habitats, including plants and wildlife, and with a relatively in-depth consideration of fish and their habitats.

The Draft Plan’s relationships to the human environment are covered in Chapters 12.0 through 15.0. Chapter 12.0 is a broad consideration of the relationships among Management Plan elements and the “built environment” of the bay, including considerations of the interrelationships among the Management Plan and the plans of other agencies as they relate to the bay. Chapter 13.0 is a consideration of recreation and coastal access. Cultural resources, particularly considerations of the Plan’s relationship to Native American lands and activities, are covered in Chapter 14.0. Chapter 15.0 includes a consideration of aesthetic concerns (particularly visual resources and noise) related to the Plan’s policies.

Chapter 16.0 identifies the people with direct responsibility for the content of this document. Chapter 17.0 lists the specific sources of information cited in the text for information and/or judgments of significance.

Appendix A includes the Initial Study, the Notice of Preparation (NOP), and responses to the NOP. This EIR does not incorporate a physical copy of the Draft Management Plan, but the Plan is incorporated by reference as if fully included in this document.⁵

⁵ The “CEQA Draft” of the Management Plan may be downloaded from the District’s website, at the following URL: http://www.humboldt-bay.org/con_rec/management_plan.htm.