

ASSOCIATION OF BAY AREA GOVERNMENTS

EXECUTIVE BOARD

RESOLUTION NO. 6-2025

WHEREAS, California Government Code Section 830.6 provides limitations on liability for public entities for conditions of public property where the public entity exercises appropriate discretion in the planning and design of public improvements. This limitation of liability is commonly known as “design immunity”; and

WHEREAS, California Government Code Section 830.6 requires public entities to establish the following three elements to invoke design immunity protections: (1) discretionary approval of a design before construction; (2) substantial evidence supporting the reasonableness of the design; and (3) a causal relationship between the design and the harm claimed; and

WHEREAS, the first element may be satisfied where the legislative body of a public entity, or the legislative body’s delegee, exercises discretionary authority to approve the plan or design of the improvement in advance of construction of the improvement; and

WHEREAS, Association of Bay Area Governments anticipates constructing a public improvement, in cooperation with the City of Palo Alto and in conformance with the Association of Bay Area Governments and City of Palo Alto Cooperative Agreement dated January 26, 2024, through its work on the Palo Alto Horizontal Levee Project; and

WHEREAS, subject to the terms below, the legislative body of Association of Bay Area Governments desires to delegate to a Metropolitan Transportation Commission employee the discretionary authority to approve the planning and design of a public improvement; and

WHEREAS, this resolution does not impact, affect, or change the legislative body’s discretion or authority to appropriate or approve project funding or to independently review and approve planning or design for the public improvement; and

WHEREAS, this resolution does not circumvent other established project planning and design processes; and

WHEREAS, this resolution is narrowly tailored to the specific project, employee, and terms set forth below and for the purpose of supporting the Association of Bay Area Governments’ design immunity protections as provided by State law; now, therefore be it

RESOLVED, that the legislative body of Association of Bay Area Governments hereby delegates to Section Director, Estuary Partnership and Principal Program

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Manager, Estuary Partnership (or successor sections and/or positions with the same or similar scope and responsibilities), jointly and severally, the authority to exercise discretionary authority on behalf of Association of Bay Area Governments to approve the designs, design amendments, and design addenda for the Palo Alto Horizontal Levee project; and, be it further

RESOLVED, that the legislative body of Association of Bay Area Governments delegates authority to Section Director, Estuary Partnership and Principal Program Manager, Estuary Partnership (or successor sections and/or positions with the same or similar scope and responsibilities) provided that any designs, design amendments, and design addenda approved by Section Director, Estuary Partnership and Principal Program Manager, Estuary Partnership (or successor sections and/or positions with the same or similar scope and responsibilities) are prepared by or previously reviewed by an appropriate licensed design professional; and, be it further

RESOLVED, that the approval of any designs, design amendments, and design addenda by Section Director, Estuary Partnership and Principal Program Manager, Estuary Partnership (or successor sections and/or positions with the same or similar scope and responsibilities) is limited to the acceptance or approval of the designs based upon an appropriate licensed design professional's representation that such designs are in general conformance with applicable statutes, codes, standards, and guidelines for the purposes of California Government Code Section 830.6 and otherwise, the responsibility and liability for the completeness, accuracy, and conformance of such will continue to reside with the Engineer of Record, Engineering Firm of Record, or public agency that prepared the design; and, be it further

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RESOLVED, that Section Director, Estuary Partnership and Principal Program Manager, Estuary Partnership (or successor sections and/or positions with the same or similar scope and responsibilities) shall document this resolution and any approvals exercised by Section Director, Estuary Partnership and Principal Program Manager, Estuary Partnership (or successor sections and/or positions with the same or similar scope and responsibilities) in the project file for the Palo Alto Horizontal Levee Project.

The foregoing was adopted by the Executive Board this 20th day of March, 2025.

Belia Ramos
President

CERTIFICATION OF EXECUTIVE BOARD APPROVAL

I, the undersigned, the appointed and qualified Clerk of the Board of the Association of Bay Area Governments (Association), do hereby certify that the foregoing resolution was adopted by the Executive Board of the Association at a duly called meeting held on the 20^h day of March, 2025.

Frederick Castro
Clerk of the Board