

## Comments from 8/21/14 LCP workshop

### Access points

- Are there plans to make Calle de los Alamos beach access senior citizen friendly? Eg. stairs with rail all the way to the bottom
- Need for an access point through Cypress Shore/Cypress Cove

### Preservation

- Preservation of coastal bluff and viewshed at Boca del Canon, as well as a point of access to the beach and the beach trail below (comment appears twice)

### Beach Trail

- Extend trail to county line
- Widen trail and finish with all weather surface, more ADA friendly and better for general use

### Parking

- More parking for public recreation uses, not commercial

### Surfing

- Concern over surf competitions at pier being “marketing ploys”

### General

- Complaint about Capistrano Shores being listed as non-residential use
- Capistrano Shores needs specific attention in LUP and on maps
- What is development plan along completed La Pata Road?
- Who owns the Prima Deshecha landfill?

## Ciampa, John

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**From:** Pechous, Jim  
**Sent:** Wednesday, August 27, 2014 5:07 PM  
**To:** Stephen Hill  
**Cc:** Gee, Denise; Ciampa, John  
**Subject:** RE: Freeway Reflected Sound Damage to San Clemente Lifestyles and Property Values

Thank you Stephen I have forwarded your comments to the LCP team to include in the public comments, you are also included in our notification list on future projects.

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**From:** Stephen Hill [mailto:sculptor20@yahoo.com]  
**Sent:** Wednesday, August 27, 2014 3:54 PM  
**To:** Pechous, Jim; LCP@san-clemete.org  
**Cc:** Paul Ayers; Karen; Kevin Storer; Nancy Ota; Michelle Chadwick; Chuck Chadwick; Rick Bauman; Philip Bean McCosh; George and Sharon Ruiz; Melanie Miale; Matthew Brady; Fred; Steven Kingston; CityHall Mail  
**Subject:** Freeway Reflected Sound Damage to San Clemente Lifestyles and Property Values

Hello Jim,

Our city council should follow a policy in the LCP that would advance our cities residential desirability to be more like Newport Beach, Corona Del Mar, Laguna Beach and San Juan Capistrano. Our San Clemente lifestyles and property values are at the bottom of the list of the So Cal Beach city residential real estate market for one very simple reason, "WE HAVE A NOISY FREEWAY RUNNING THROUGH THE MIDDLE OF OUR CITY".

The reflected sound from the freeway has destroyed the lifestyle and property value of many of our residents. Those homes that are located between the freeway and the ocean are below freeway grade therefore the sound harmlessly goes over most of them, but those homes located on the hill overlooking the freeway and city below catch the reflected sound from any sound blocking wall built on the west side of the freeway. The longer and taller the wall, the greater the acoustical impact to lifestyles and property values of our residents. The sound level as measures over the past three years on the hill, overlooking the El Camino Real onramp to the 5 fwy south, has increased from 55 dba to 65 dba since the 16' high sound blocking wall was build two years ago. This is a sound pressure / energy increase of 10 times or 1000%! At the same time the acoustical benefit to the west side residents was very minimal and only for the closest houses to the freeway. The acoustical, lifestyle and property value damage to the east side residents far outweighs any benefit to the west side residents....bad decisions, bad engineering!

There is a product that is currently available called SoundSorb that can be attached to the existing wall that will reduce significantly the reflected sound. This product is required to be installed per the "Caltrans Traffic Noise Analysis Protocol dated May 2011" on any new construction walls. IT IS IMPERATIVE THAT THE CITY OF SAN

**Ciampa, John**

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**From:** G. Strickland <gstrickland65@gmail.com>  
**Sent:** Thursday, September 11, 2014 12:49 PM  
**To:** LCP Mail  
**Subject:** LCP Workshop

Thoughts about the LCP public workshop: [LCP@san-clemente.org](mailto:LCP@san-clemente.org)

Thanks for the opportunity for local residents to learn more at the Public Workshop about the areas defined as the coastal zone. It was heartening to see common interest in protecting, preserving, and enhancing valuable coastal resources and environment essential to San Clemente. We are all so fortunate to live in such a beautiful place, and to have so many wonderful city services and facilities like the Vista Hermosa pool, creation and maintenance of wonderful coastal trails, and youth development programs such as Junior Lifeguards.

Some thoughts about the Local Coastal Plan discussion as you requested:

- Development along coastal bluffs and canyons should not be considered for proposed “fast tracking” due to the delicate nature of the topography, geology, environment, and regulation required by state law.
- Efforts are made to maintain and restore the native habitats that exist along the coast and within the coastal canyons. These unique environments that are some of the most threatened by development in the United States.
- Development along the coast and in the canyons is done with attention and special regulations that emphasize low impact and with the goal of maintaining the natural environment and topography as much as possible. It is imperative to keep the integrity of the bluffs and canyons and maintain them as the resource that we value.

- Rehabilitate and preserve coastal ESHA's using incentives for regeneration of areas previously in existence.

Thank you for this opportunity for input and for your thoughtful stewardship of our wonderful city.

Sincerely,

Gerry Strickland

8-21-14  
Lee Strother

For Consideration Under the New LCP for The City of San Clemente:

The coastal bluff viewpoint and "park" located at Boca Del Canon and La Rambla streets in southwest San Clemente is a landslide that previously supported 2 houses. Around 1962 those houses were destroyed due to a collapse of the bluff structure. A picture of those structures was used on the cover of the 1968 Special Report 98 from the California Division of Mines and Geology. A copy of this report is included here for your reference.

Our community wishes to bring this coastal viewpoint to your attention so that it can be specifically included in the LCP.

**Currently, the City of San Clemente has a Certified LUP which states under Policy VII13:**

*Development shall be concentrated on level areas (except on ridgelines and hilltops) and hillside roads shall be designed to follow natural contours. Grading, cutting or filling that will alter landforms (e.g. bluffs, cliffs, ravines) shall be discouraged except for compelling reasons of public safety. Any landform alteration proposed for reasons of public safety shall be minimized to the maximum extent feasible....*

**Policy VII.17 of the Certified LUP states:**

*New permanent structures shall not be permitted on a bluff face, except for engineered staircases or access ways to provide public beach access where no feasible alternative means of public access exists.*

**According to the Coastal Act, Section 30253 states, in part**

*New Development shall:*

- (1) Minimize risks to life and property in areas of high geologic, flood and fire hazard*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

## Brief History:

Two house collapse due to failure of the bluff 1962

City and County deem the bluff “unbuildable” and owner receives a substantially decreased tax rate for the lots.

1989 The surrounding community residents meet with City Parks Dept. to explore the possibility of establishing a designated city coastal viewpoint and park upon the property .

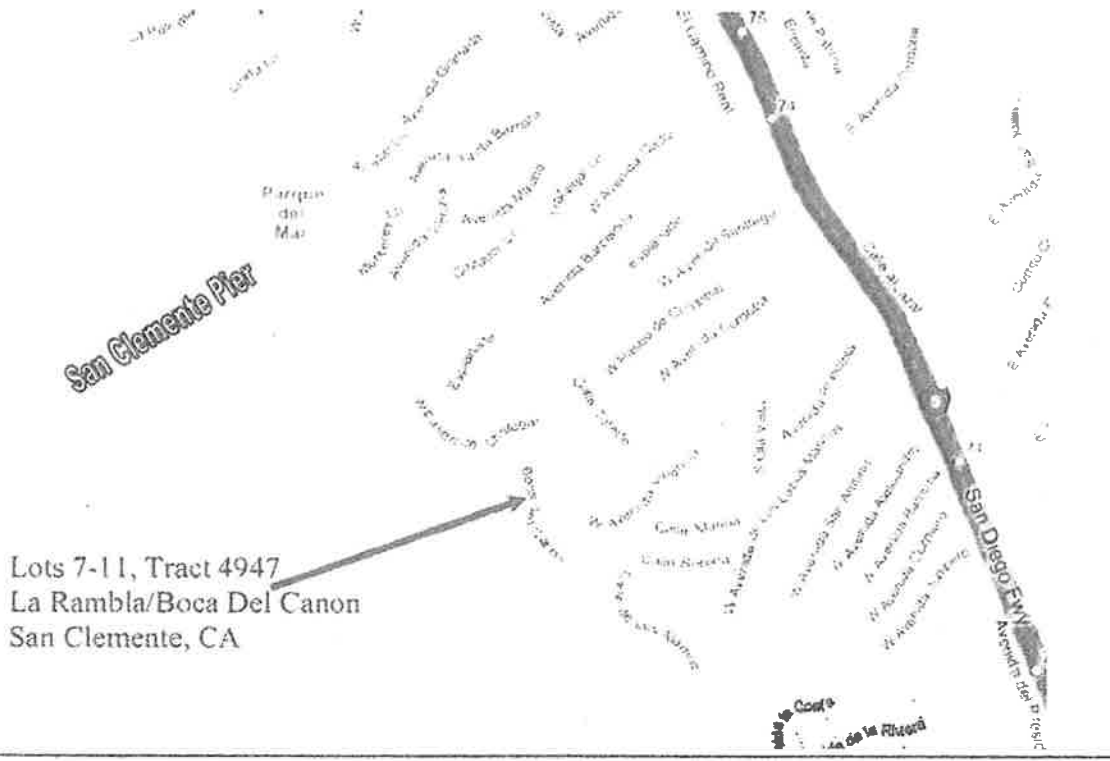
Graduating students at Cal Poly Pomona, Department of Landscape Architecture present their Senior Project reports and mock ups for the “park, “ as well as an evaluation of all coastal access/viewpoints along the length of San Clemente’s beach (Documentation is available to review)

Original owner sells lots to a developer who then realizes lots cannot be built and he sells to another development group.

This development group tried to argue against the CCC staff’s recommendation that no development be allowed on any of the lots, and so the developers countered with the placement of an enormous caisson infrastructure which they presented to the Coastal Commission hearing on 2/9/2011. Sensing that the Commissioners were prepared to reject this idea, before a vote could be made, applicants pulled their application. Please view the presentations and concerns of the Commissioners online.

This coastal viewpoint is used **daily**, 365 days a year, by countless citizens of San Clemente and beyond. Surfers come to view the waves, citizens come to access the beach, families come to take in the sunsets and Fourth of July fireworks. Children come to play, explore, create, discover and wonder and dancers come to feel free to dance in the breeze! Local residents have taken many pictures over the years that document the coming and going of the multitude of San Clemente citizens, and others, who use this important coastal viewpoint daily for the inspiration and solitude it provides, as well as a point of access to the beach and the beach trail below.

**LA RAMBLA/BOCA DEL CANON, SAN CLEMENTE, CALIFORNIA 92672**

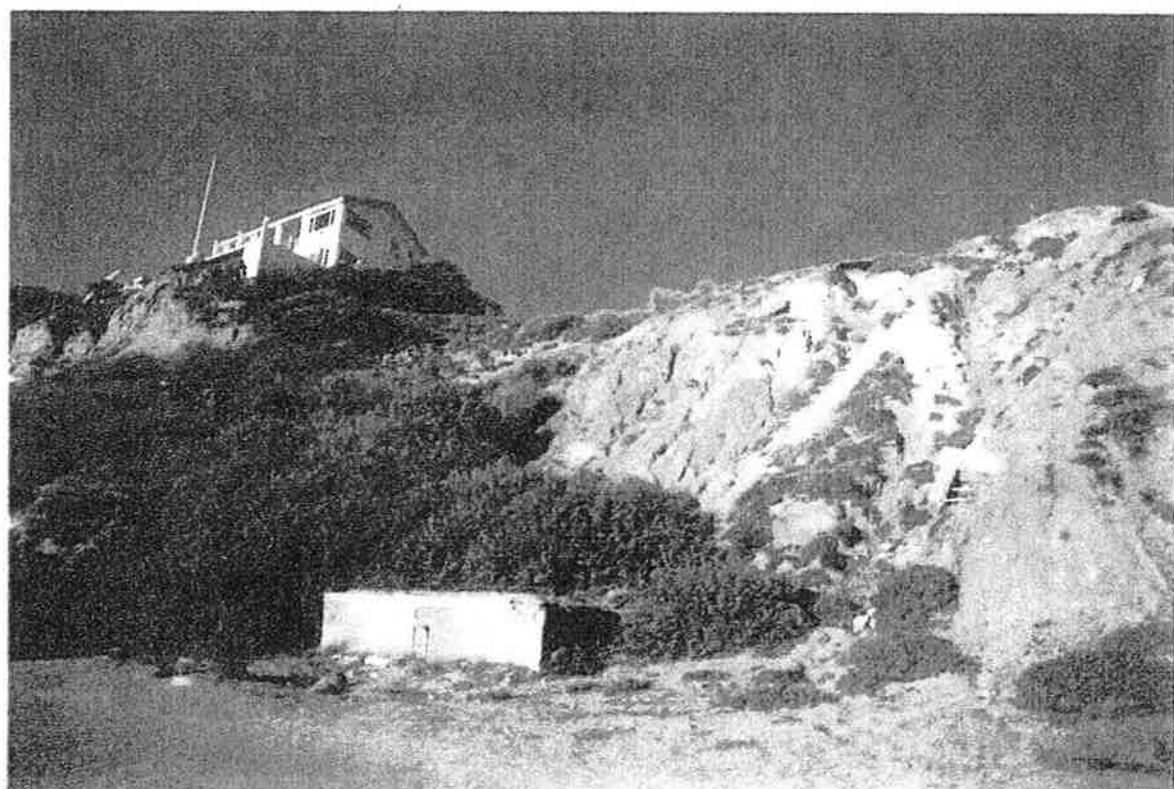
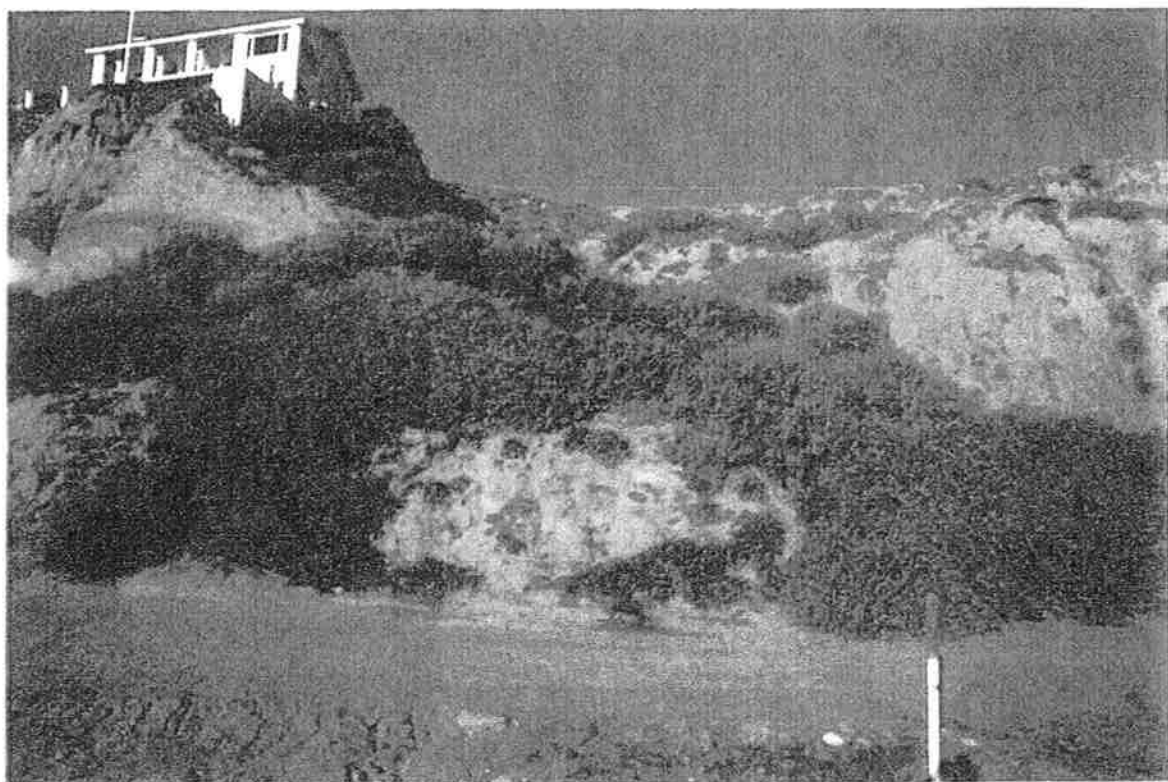


Lots 7-11, Tract 4947  
La Rambla/Boca Del Canon  
San Clemente, CA

<b>EXHIBIT# 1</b>
Page 1 of 1
Application Number: <b>5 - 1 0 - 1 2 5</b>
 California Coastal Commission







THE LOFTIN FIRM, P.C.



ATTORNEYS AT LAW

**VIA U.S. MAIL AND ELECTRONIC MAIL**

February 16, 2015

Jim Pechous  
City of San Clemente  
910 Calle Negocio, Ste. 100  
San Clemente, CA 92673

RE: Local Coastal Program Land Use Plan, Proposed Language

Dear Mr. Pechous:

As you are aware, the Loftin Firm, P.C. is counsel to Capistrano Shores, Inc. (“CSI”), owners of the Capistrano Shores Mobilehome Park. Capistrano Shores, Inc., on behalf of its Members and mobilehome owners, respectfully submits the following proposed corrections, revisions, and clarifications as part of the public comment period. The content of this letter is submitted as additive, without limiting the scope of previous concerns and objections summarized in the Letter to Jim Holloway and James Ciampa dated January 6, 2015.

**Land Use Designations, Pages 2-4, 2-12, 2-15** CSI hereby objects to the City’s land use designation of Capistrano Shores Mobilehome Park as OS2, and reiterates its previous objections and communications regarding the OS2 designation of Capistrano Shores in the General Plan, which designation has been continued in this Local Coastal Program Land Use Plan.

CSI’s objections extend both to the maps designating Capistrano Shores as “Private Open Space,” on Page 2-4, and in the alternative to the definition of private open space on Page 2-12, in prohibiting private residences. An “open space” designation is inconsistent with and injurious to the 90 resident households living in Capistrano Shores, which community has been continuously occupied since the late 1950s. Further, the City’s own records show that Capistrano Shores did not receive notice of the proposed change in 1993, and that the posted notice was legally insufficient, as per the court findings in *Avenida San Juan Partnership v. City of San Clemente*, 201 Cal.App.4th 1256 (2011). A matrix of the previous objections and communications are attached as Exhibit A, and are hereby incorporated as though fully set forth in this letter.

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**Coastal Access Points Diagram, Figure 3.3, Page 3-6.**

CSI hereby objects to the designation of Capistrano Shores as an access point on Figure 3.3, on Page 3-6, insofar as Figure 3.3 does not note that Capistrano Shores is a private access point, with no public right of access. A public right of access though an existing, permitted mobilehome park would be contrary to Cal. Health and Safety Code § 18406.

**Access Management, Page 3-8**

• **Private** Access Point 2: Capistrano Shores Mobile Home Park. This **private** access is shown in Figure 3-5. **Private** Access Point 2 is not **subject to public access, as the City lacks a right of access, and the park is a presently-operating mobilehome park subject to the preemptive design requirements and limitations of the California Department of Housing and Community Development** ~~open for public use.~~ **Presently, the City does not have a right of public access** ~~The access point is through the Capistrano Shores Mobile Home Park.~~ **An Access Management program would not apply unless the park were to be redeveloped and subdivided, resulting in a change of use from a mobilehome park.**<sup>2</sup> Access is from one driveway at the intersection of North El Camino Real and Avenida Estacion. Utilization of the beach at this point is ~~by limited to residents of the mobile home park;~~ **and public pedestrians from the North Beach public beach, which is contiguous and immediately south of the mobilehome park.** **Consistent with Title 25,** the road which provides access to the mobile homes is posted as a private drive at the point where the entrance driveway crosses the OCTA railroad tracks. ~~The beach entrance adjacent to this area is quite narrow~~<sup>3</sup>. Access to this area from the public beach located to the south is impossible during high tide due to **the change in grade from an existing flood control channel owned and maintained by Orange County Public Works, OC Flood Division.** ~~a combination stone and wood bulkhead designed to protect the mobile homes from large surf.~~ There are no public

<sup>1</sup> *Comment: There is no present right to public access through Capistrano Shores Mobilehome Park.*

<sup>2</sup> *Comment: As staff is aware, Access Management can only be imposed on “an existing subdivided area which has less than 75 percent of the subdivided lots built upon, or an area proposed to be subdivided.” Cal. Pub. Res. Code § 30610.3. Thus, CSI believes this language should be clarified]*

<sup>3</sup> *Comment: “Adjacent” narrow access is ambiguous—there appears to be access along the OC Flood Control channel, across the railroad tracks, but this has a fence. Access at North Beach is not narrow.*

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amenities immediately adjacent to Capistrano Shores Mobilehome Park at the principal beach access point at North Beach. within this area of the coastline.<sup>4</sup>

**Private Beaches: Capistrano Shores Beach and Community, Page 3-32**

This development consists of a three and a quarter mile stretch of beach with 90 mobile homes developed prior to the adoption of the Coastal Act, parallel to the shoreline with revetment to protect the mobile homes and railroadhouses from storms. The mobile home park is primarily regulated by the California Department of Housing and Community Development, under the Mobilehome Parks Act, Manufactured Housing Act and California Code of Regulations, Title 25, but is regarded by the City as an existing, lawfully established non-conforming use under the City Zoning Ordinance and General Plan. **There is no public right of access through the mobilehome park. There is, however, primary access at North Beach located adjacent and contiguous to Capistrano Shores.** Access is from one driveway at the intersection of North El Camino Real and Avenida Estacion. Utilization of the beach at this point is by limited to residents of the mobile home park, and the public pedestrians from the public North Beach access immediately south of the mobilehome park. Consistent with Title 25, the road which provides access to the mobile homes is posted as a private drive at the point where the entrance driveway crosses the OCTA railroad tracks. ~~The beach entrance adjacent to this area is quite narrow.~~ Access to this beach area fronting Capistrano Shores from the public beach located to the south is impossible during high tide due to the change in grade from an existing flood control channel owned and maintained by Orange County Public Works, OC Flood Division. There are no public amenities immediately

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<sup>4</sup> *Comment: There is no present right to public access through Capistrano Shores Mobilehome Park, public beach access and amenities are plentiful at North Beach, which is immediately adjacent to Capistrano Shores. Access at high tide is limited as a result of the OC Flood flood control channel (not a small bulkhead).*

*To claim otherwise should not only preclude a finding of factual accuracy under Topanga Association for a Scenic Community v. County of Los Angeles, 11 Cal.3d 506 (1974), but would result in a veritable resolution of necessity creating a cloud over Capistrano Shores, and damages under Klooping v. City of Whittier, 8 Cal. 3d 39, 54 (1972).*

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**adjacent to Capistrano Shores Mobilehome Park at the principal beach access point at North Beach.** ~~within this area of the coastline.~~

**Coastal Act Policies, Page 3-35**

The Coastal Act policies should start with Section 30010 of the Public Resources Code, which states:

The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.  
Cal. Pub. Res. Code § 30010.

**Access Management Program Policy, Page 3-44**

***PUB-47 Access Management Program.*** For the private beach area north of Capistrano Shores and Capistrano Shores, La Ladera, Cypress Shores and Cotton's Point, an access management program shall be prepared. **If any of these areas are proposed to be subdivided, or less than 75 percent of subdivided lots are built upon, then** development the private community, is required to dedicate or offer to dedicate public access in accordance with the City LCP and State requirements....<sup>5</sup>

**Access Management Program Policy, Page 3-45**

***PUB-49 New Development Public Access Exceptions.*** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (IX.14):  
a) It is inconsistent with public safety, military security needs or the protection of fragile coastal resources; or  
b) Adequate access exists nearby; **or**

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<sup>5</sup> *Comment: Reference is Cal. Pub. Res. Code § 30610.3. It is apparent that none of these areas has an existing subdivision map with "less than 75 percent of the subdivided lots built upon", thus the only ground would be a new subdivision map.*

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**c) when constitutionally or statutorily prohibited.<sup>6</sup>**

**Access Management Program Policy, Page 3-46**

**PUB-50 New Development Public Access.** New developments lying between the first public roadway and the shoreline shall provide ~~both~~ physical ~~and visual~~ access to the coastline (IX.15).

...

**Vertical and Lateral** Access dedication requirements shall apply only to the extent permissible under the "takings" clauses of the United States and California Constitutions.). ...

**Access Management Program Policy, Page 3-47.**

**PUB-51 What is not New Development.** For purposes of this section, "new development" does not include (IX.16):

...

**e) the repair, replacement or remodeling of any manufactured home or accessory structure which is approved under the Manufactured Housing Act and/or Mobilehome Parks Act.<sup>8</sup>**

**f) the repair, replacement or rehabilitation of a mobilehome park common area, common area facilities or common area improvements.**

**Access Management Program Policy, Pages 3-47 to 3-48.**

**PUB-52 When Must Projects Provide Access.** For the purpose of determining when a project is required to provide access, the following shall be considered (IX.17):

a) Access dedication requirements shall apply only to the extent permissible under the "takings" clauses of the United States

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<sup>6</sup> *Comment: CSI believes this carve-out is consistent with the spirit of this section—rather than forcing the City down a course of action causing it to either pay “just compensation” for a taking or exaction, or otherwise undermining the entire local coastal program.*

<sup>7</sup> *Comment: Public access provisions in the Coastal Act do not authorize “visual” access.*

<sup>8</sup> *Comment: As discussed below in the “Hazards” section and nonconforming use language there, the City has erroneously applied land use legal standards without regard for the preemptive jurisdiction of the Mobilehome Parks Act, Cal. Health and Safety Code §§ 18200 et seq., and the state’s overall regime regulating mobilehomes and mobilehome parks. CSI seeks either removal of Capistrano Shores from the Access Management program section, or correction as outlined herein, to avoid future confusion.*

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and California Constitutions and not prohibited under any State or Federal statute or regulation.

- b) The provision and protection of public access to the shoreline can be considered a "legitimate governmental interest." If the specific development project places a burden on this interest, then the City may have grounds to deny the development or impose conditions on the development to alleviate the burden.

The following questions should be addressed to determine whether or not a development project places a burden on public access which would justify either requiring the dedication of public access or recommending denial of the project:

...

**6. Is there rough proportionality between the burden on the public access interest and the dedication requirement intended to be imposed?<sup>9</sup>**

**Unless the dedication requirement bears a rough proportionality to the extent of the burden of the public access interest, the dedication requirement cannot be imposed as a condition to new development.**

6.7. Does the regulation or condition preclude all reasonable economically viable use of the property?

If the answer is "yes", then the regulation or condition may be considered a "taking." If the answer is "no", then public access may be justified as a condition of approval for the development.

**Hazards & Shoreline/Bluff Development, Page 5-5.**

**5.1.2 Shoreline Development**

Coastal bluffs are the vertical landform that lines most of the San Clemente coastline. The exceptions are the locations where streams have cut into the bluffs to form arroyos, canyons, or gently sloping valleys. The coastal bluffs and canyons are the prominent

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<sup>9</sup> *Comment: CSI notes that the takings section has incorrect citation of the legal standard—in particular, it omits the Supreme Court’s “rough proportionality” standards from Dolan v. City of Tigard, 512 U.S. 374, 391 (1994), which specifically apply to exaction conditions. The standard citing to Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1015 (U.S. 1992) likely would not apply to a takings lawsuit on an exaction condition.*

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topographic feature within the Coastal Zone spanning approximately four out of the five miles of the City's coastline. The railroad tracks and revetment projection parallel the entire coastline. The majority of the development for San Clemente is located on top of the bluffs. ~~The only area in the City that has the potential to be impacted by a storm surge or sea level rise is the Capistrano Shores Mobile Home Park that is located at the north end of the City and seaward of the railroad tracks and has its own revetment protection along the coastline. This development is a legal nonconforming use that has an Open Space land use designation.~~<sup>10</sup> The City's Marine Safety, Pier, and some small structures including snack shops, shade structures and beach restrooms are also located seaward of the train tracks and would be susceptible to these same hazards. The Marine Safety building and public restrooms have small sea walls to protect them from large storms. The San Clemente Pier has been damaged from large storms, most recently it was reconstructed in 1983.

**Nonconforming Use Language/Definitions**

The Nonconforming Use language proposed in the Local Coastal Program Land Use Plan, presents the same problems that the City has sought to remedy with an amendment to its nonconforming use ordinance at City of San Clemente Municipal Code § 17.72.060(E), by reciting the standards in Title 25, 25 Cal. Code of Regulations §§ 1000 et seq. relating to the state's regulatory regime governing mobilehomes and mobilehome parks.

As that regime is preemptory, CSI is concerned that similar problems will occur with language in the Hazards section, specifically in HAZ-14 "Nonconforming Structures" and HAZ-15 "Coastal

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<sup>10</sup> *Comment: Capistrano Shores Mobilehome Park predates the Coastal Act, and arguably qualifies as "existing development" entitled to protection by shoreline devices. Here CSI feels the singular focus on Capistrano Shores Mobilehome Park is unwarranted—the proposed language is ambiguous and appears to reference to the nonconforming use status, not the status as "existing development" which predates the Coastal Act and is entitled to continuation. In particular, CSI is further concerned that this statement lacks clarity without reference to the state regulatory scheme governing the mobilehome parks. The singular focus on Capistrano Shores also ignores countless private underground facilities, parking lots, and the railroad tracks themselves, which constitute critical defense infrastructure, and which the U.S. Army Corps of Engineers notes are "Protected" as a result of the Capistrano Shores revetment protection (See, Civil Works Review Board Presentation regarding San Clemente Shoreline, Coastal Storm Damage Reduction, 12 May 2011, Col. R. Mark Toy, P.E., Page 15, Study Area 9). Further, this statement apparently presumes a significant magnitude of rise without basis in an unbiased, international pier-reviewed study.*



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Redevelopment” on Page 5-8.

**HAZ-14 Nonconforming Structures, Page 5-8.**

***HAZ-14 Non-conforming Structures.*** Structures that are located between the sea and the first public road paralleling the sea lawfully built prior to the effective date of the Coastal Act (January 1, 1977) that do not conform to the LCP shall be considered legal non-conforming structures. Such structures may be maintained and repaired, as long as the improvements do not increase the size or degree of non-conformity. Additions and improvements to such structures that are not considered Coastal Redevelopment, as defined herein, may be permitted provided that such additions or improvements comply with the current policies and standards of the LCP. Complete demolition and reconstruction or Coastal Redevelopment is not permitted unless the entire structure is brought into conformance with the policies and standards of the LCP. **The restrictions in this section do not apply to the repair, replacement or remodeling of any mobilehome or mobilehome park common area infrastructure or facility which is approved under the Manufactured Housing Act, Cal. Health and Safety Code §§ 18000 et seq. or Mobilehome Parks Act, Cal. Health and Safety Code §§ 18200 et seq.**

**HAZ-15 Coastal Redevelopment, Page 5-8**

***HAZ-15 Coastal Redevelopment.*** Coastal Redevelopment shall apply to proposed development located between the sea and the first public road paralleling the sea that consists of alterations including (1) additions to an existing structure, (2) exterior and/or interior renovations, (3) and/or demolition of an existing bluff top or beachfront single-family residence or other principal structure, or portions thereof, which results in:

(a) Alteration of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50% increase in floor area. Alterations are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP.

(b) Demolition, renovation or replacement of less than 50% of a major structural component where the proposed alteration would

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result in cumulative alterations exceeding 50% or more of a major structural component, taking into consideration previous alterations approved on or after the date of certification of the LUP; or an alteration that constitutes less than 50% increase in floor area where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area taking into consideration previous additions approved on or after the date of certification of the LUP.

**Coastal Redevelopment shall not apply to the replacement or remodeling of any mobile home or mobilehome park common area infrastructure or facility which is approved under the Manufactured Housing Act, Cal. Health and Safety Code §§ 18000 et seq. or Mobilehome Parks Act, Cal. Health and Safety Code §§ 18200 et seq.**

**Sea Level Rise**

**Storm surges/Sea Level Rise, Page 5-2**

The City's comments on Sea Level Rise are ambiguous and as a result, appear to be incorrect or inflammatory. For example: "...most of the ice caps have melted, most of the glaciers have retreated, and the sea level has risen". In short, even the most aggressive estimates of ice cap melting and glacial retreat consider them partial (and less than half).<sup>11</sup>

**HAZ-49 Sea Level Rise Protection, Page 5-17.**

**HAZ-49 Sea Level Rise Protection.** Require shoreline development and necessary bluff retention devices to be sited and designed to take into account predicted future changes in sea level. New structures shall be set back a sufficient distance landward or be designed to eliminate or minimize, to the maximum extent feasible, **catastrophic loss of a structure**, ~~hazards associated with anticipated sea level rise, as established by Federal or State authorities, over the expected economic life of the structure.~~ (C-

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<sup>11</sup> *Comment: There is no scientific basis to conclude "most," as in degree, when even the most severe estimates, such as from the Natural Resources Defense Council, term it "partial" and place the melting at less than half. Further, the comment on rise is incorrect as to Southern California since 1980: "trends along the west coast of North America estimated from tide gauge measurements, confirmed by satellite altimetry since 1992, indicate that coastal sea levels have remained approximately stationary since about 1980" Bromirski, P. D., A. J. Miller, R. E. Flick, and G. Auad (2011), Dynamical suppression of sea level rise along the Pacific coast of North America: Indications for imminent acceleration, J. Geophys. Res., 116, C07005.*

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4.05).<sup>12</sup>

**HAZ-51 Sea Level Rise and Development, Page 5-17.**

**HAZ-51 Sea Level Rise and Development.** New shoreline development and bluff /shoreline retention devices shall be sited and designed to take into account predicted future changes in sea level. ~~In particular, an acceleration of the historic rate of sea level rise shall be considered and based upon up-to-date scientific papers and studies, agency guidance, and reports by national and international groups such as the National Research Council and, in particular, guidance and reports from process-based models with a “likely” confidence interval (a 66% probability of occurring), such as those presented by~~ the Intergovernmental Panel on Climate Change. New structures shall comply with all of the provisions of the LCP and set back a sufficient distance landward to eliminate or minimize, to the maximum extent feasible, hazards associated with anticipated sea level rise over the expected economic life of the structure.<sup>13</sup>

**Sea Level Rise shall not apply to the replacement or remodeling of any mobile home or mobilehome park common area infrastructure or facility which is approved under the Manufactured Housing Act, Cal. Health and Safety Code §§ 18000 et seq. or Mobilehome Parks Act, Cal. Health and Safety Code §§ 18200 et seq., and implementing regulations at Title 25, 25 Cal. Code of Regulations §§ 1000 et seq.**

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<sup>12</sup> *Comment: It appears that catastrophic loss is the primary concern, and by setting a standard, a reasonable factual discussion could ensue. Punting to “hazards...as established by Federal or State authorities” deprives applicants of certainty.*

<sup>13</sup> *Comment: There is a conflict referring to both of the NRC and IPCC standards, and the acclaimed “Intergovernmental Panel on Climate Change” should be sole citation. Further, acceleration is an ambiguous term without a timeframe, and should be stricken.*

*Relative to the past 100 years, the international community believes that it is highly likely global sea level rise will accelerate over the next hundred years. However, others like the Bromirski, et al. paper cited above, (picked up by the NRC) make theoretical arguments for extreme acceleration in a nearer term, based on models which the IPCC specifically rejects--which produces projections up to twice as large as process-based models, and for which “there is no consensus in the scientific community about their reliability, and there is thus low confidence in their projections.” Applicants and staff should not be forced to reconcile studies that the international scientific community regards with “low confidence”.*

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**HAZ-52 Sea Level Rise Information, Page 5-17.**

**HAZ-52 Sea Level Rise Information.** The most recent and<sup>14</sup> accurate scientific information on the effects of long-range sea level rise shall be considered in the preparation of findings and recommendations for all geologic, geotechnical, hydrologic and engineering investigations. Support scientific studies that increase and refine the body of knowledge regarding potential sea level rise in San Clemente, and possible responses to it.

**HAZ-53 Impacts of Sea Level Rise, Page 5-17 to 5-18.**

**HAZ-53 Impacts of Sea Level Rise.** The City shall research and respond to the Impacts of Sea Level Rise

1. Continue to gather information on the effects of sea level rise on the City's shoreline, including identifying the most vulnerable areas, structures, facilities, and resources; specifically areas with priority uses such as public access and recreation resources, (including the California Coastal Trail), the railroad, and existing and planned sites for critical infrastructure.

Any vulnerability assessment shall use best available science and multiple scenarios with a "likely" confidence interval (a 66% probability of occurring), including the "best available scientific estimates of expected sea level rise from process-based models, such as by the ~~Ocean Protection Council, National Research Council, Intergovernmental Panel on Climate Change, and the West Coast Governors Association...~~

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<sup>14</sup> *Comment: Recency is independent of accuracy. A recent study, which relies on an inaccurate model, should not be entertained.*

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Thank you for your consideration of Capistrano Shores, Inc.'s requests above. Prior to the Planning Commission's consideration of the proposed language, representatives from the CSI Board of Directors request to meet with you, Mr. Ciampa, and Mr. Makshanoff to discuss. Mr. Eric Anderson will coordinate on behalf of the Board of Directors; please contact him with your availability, at [eanderson@caposhores.com](mailto:eanderson@caposhores.com), or (949) 351-9642.

Sincerely,

THE LOFTIN FIRM, P.C.



Alexander S. Manis, Esq.

cc: James Ciampa, City of San Clemente (via email)  
James Makshanoff, City of San Clemente (via email)  
Honorable Chair and Commissioners, City of San Clemente Planning Commission  
City Clerk  
Peter Howell, Esq., Rutan & Tucker (via email)  
Ajit Thind, Esq., Rutan & Tucker (via email)  
Client

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ATTORNEYS AT LAW

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SAN CLEMENTE  
PLANNING DIVISION

***VIA U.S. MAIL AND ELECTRONIC MAIL***

January 6, 2015

Jim Holloway  
City of San Clemente  
910 Calle Negocio, Suite #100  
San Clemente, CA 92673

John Ciampa  
City of San Clemente  
910 Calle Negocio, Suite #100  
San Clemente, CA 92673

RE: Comments to City's Proposed Local Coastal Program

Dear Mr. Holloway:

The Loftin Firm, P.C., as counsel to Capistrano Shores, Inc., a California non-profit mutual benefit corporation ("CSI") which owns the Capistrano Shores Mobilehome Park located at 1880 N. El Camino Real, San Clemente, CA 92672, provides this letter as comment to the topics and materials provided at the City of San Clemente's initial Local Coastal Program Workshop held on August 21, 2014, and the City's initial draft of the Local Coastal Program ("LCP") Land Use Plan, dated December 24, 2014

Access and Access Management Programs

Without explanation, and without regard to the previous Local Coastal Program, the City's draft Local Coastal Program language now misrepresents that there is a present right or entitlement to coastal "access" within the vocabulary of the Coastal Act, at Capistrano Shores Mobilehome Park:

Access Point 2: Capistrano Shores Mobile Home Park [sic] This Access is shown in Figure 3-5. Access Point 2 is not open for public use. The access point is through the Capistrano Shores Mobile Home Park. Access is from one driveway at the intersection of North El Camino Real and Avenida Estacion. Utilization of the beach at this point is limited to residents of the mobile home park. The road which provides access to the mobile homes is posted as a private drive at the point where the entrance driveway crosses the OCTA railroad tracks. The beach entrance adjacent to this area is quite narrow. Access to this area from the public beach located to the south is impossible during high tide due

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to a combination stone and wood bulkhead designed to protect the mobile homes from large surf. There are no public amenities within this area of the coastline.  
City of San Clemente Local Coastal Program, Page 3-8 (December 24, 2014).

This statement is without factual or legal basis. Since inception, mobilehome spaces at Capistrano Shores have been side-to-side, without beach access. As there is no extra space between the homes, Title 25, 25 Cal. Code of Regulations §§ 1000 et seq. lot requirements would preclude dedication access adjacent to any space of the mobilehome park, or if exacted, would result in a “taking” of an individual resident’s space (and home). Further, the “private drive” is established by deed reservation and easement to ensure resident access without obstruction or interference, consistent with Title 25. Any expectation of public access through the park would be risky for pedestrians, drivers, and interfere with resident right to access their homes. Finally, the conclusory statement that the existing stone and wood bulkhead obstructs access is without support, and presumes that there otherwise would be access at high tide.

We also note that Capistrano Shores was not conditioned to include public access at its initial local agency approval. Thus, the right to require public access across, over or through the Park has expired. Cal. Health and Safety Code. § 18406.

Finally, Figure 3-5 is narrowly cropped, ostensibly to avoid showing that public parking area and public access to North Beach, “one of the principal beach access points in San Clemente” is immediately adjacent to Capistrano Shores Mobilehome Park. City of San Clemente Local Coastal Program, Page 3-9 to 3-10 (December 24, 2014). The proximity of North Beach directly contradicts the Local Coastal Program statement that there are no public amenities, and any implication that there is some deficit in public access.

In previous versions of the LCP, and even in the LCP Workshop on August 21, 2014, we note that the City of San Clemente displayed a “Coastal Access Points” diagram, similar to Figure C-1 from the Coastal Element of the General Plan, which denotes access at Capistrano Shores, and an Access Management Program on Page C-15 of the Coastal Element. As Capistrano Shores has objected since at least 2010, it is incongruous to single out a mobilehome park for an access management program. Access management programs seek an exaction from “subdivision[s]”. Cal. Pub. Res. Code § 30610.3. Capistrano Shores is not “an existing subdivided area which has less than 75 percent of the subdivided lots built upon, or an area proposed to be subdivided.” Cal. Pub. Res. Code § 30610.3.<sup>1</sup> Any such exaction would violate the strict fee limits in Title 25, such as 25 Cal. Code of Regs. § 1020.7. We have also historically noted that it would be impossible to purchase access without evicting a resident; lots in Capistrano Shores are side-by-side across the

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<sup>1</sup> Cal. Pub. Res. Code § 30610.3 reads in relevant part: “Whenever the commission determines (1) that public access opportunities through an existing subdivided area, which has less than 75 percent of the subdivided lots built upon, or an area proposed to be subdivided are not adequate to meet the public access requirements of this division and (2) that individual owners of vacant lots in those areas do not have the legal authority to comply with public access requirements as a condition of securing a coastal development permit for the reason that some other person or persons has legal authority, the commission shall implement public access requirements as provided in this section.”

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full reach of the property, and Title 25 lot coverage and setback requirements make it impossible to provide public access on a lot with a home.<sup>2</sup>

Accordingly, we object to the language regarding access at Capistrano Shores Mobilehome Park at 3-8, the statements reproduced on 3-32, as well as any spurious separation between an “Area A” and “Area B”, on 3-25, and specifically considering that Capistrano Shores and “North Beach” actually share an entrance and intersection at Avenida Estacion and Avenida Pico. We further object to the access management program language, in so far as it includes Capistrano Shores Mobilehome Park, on City of San Clemente Local Coastal Program, Pages 3-44 to 3-49.

Land Use: Nonconforming Uses.

In the City of San Clemente Local Coastal Program draft dated December 24, 2014, the City language does not differentiate between separate state regulatory schemes, much less the difference between a “structure” and personal property such as mobile homes:

HAZ-14 Non-conforming Structures. Structures that are located between the sea and the first public road paralleling the sea lawfully built prior to the effective date of the Coastal Act (January 1, 1977) that do not conform to the LCP shall be considered legal non-conforming structures. Such structures may be maintained and repaired, as long as the improvements do not increase the size or degree of non-conformity. Additions and improvements to such structures that are not considered Coastal Redevelopment, as defined herein, may be permitted provided that such additions or improvements comply with the current policies and standards of the LCP. Complete demolition and reconstruction or Coastal Redevelopment is not permitted unless the entire structure is brought into conformance with the policies and standards of the LCP.

HAZ-15 Coastal Redevelopment. Coastal Redevelopment shall apply to proposed development located between the sea and the first public road paralleling the sea that consists of alterations including (1) additions to an existing structure, (2) exterior and/or interior renovations, (3) and/or demolition of an existing bluff top or beachfront single-family residence or other principal structure, or portions thereof, which results in:

(a) Alteration of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation,

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<sup>2</sup> Additionally, we note the North Beach trailhead, parking lot, and beach access are directly South of Capistrano Shores, while the railroad and traffic engineering on El Camino Real prevents safe pedestrian access through to the Northerly reach of Capistrano Shores.



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or a 50% increase in floor area. Alterations are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of certification of the LUP.

(b) Demolition, renovation or replacement of less than 50% of a major structural component where the proposed alteration would result in cumulative alterations exceeding 50% or more of a major structural component, taking into consideration previous alterations approved on or after the date of certification of the LUP; or an alternation that constitutes less than 50% increase in floor area where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area taking into consideration previous additions approved on or after the date of certification of the LUP.

City of San Clemente Local Coastal Program, Page 5-8 to 5-9 (December 24, 2014).

In the past, the City of San Clemente has relied on an identical ambiguity to enforce its nonconforming use ordinance at City of San Clemente Municipal Code § 17.72 against residents and homeowners in Capistrano Shores, despite the existence of preemptive state regulation which expressly permits the replacement of mobile homes, consistent with the Mobilehome Parks Act, Cal. Health and Safety Code §§ 18300 et seq. and the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §§ 5401 et seq.

CSI requests that the proposed nonconforming use policy or language in the Local Coastal Program be revised so as to distinguish between structures and personal property like mobile homes, and to allow for development<sup>3</sup> consistent with the Mobilehome Parks Act, Cal. Health and Safety Code §§ 18300 et seq. and Title 25, 25 Cal. Code of Regulations §§ 1000 et seq. Otherwise, we submit that such a nonconforming use policy or language would be preempted by the aforementioned state law. See, e.g. *Sequoia Park Associates v. County of Sonoma*, 176 Cal. App. 4th 1270 (2009).

Further, we hereby incorporate our previous communications, including without limitation, to the City of San Clemente Community Development Department, Planning Commission, and City Council, from 2012 to present, confronting the City's unlawful application of local zoning

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<sup>3</sup> Additionally, we note that the City's policy statements and written material on Coastal Zone land uses reference "development" "new development" or "developments" in a way that is ambiguous, and does not respect the differences in authority between local police power, as well as the Coastal Act. The City's land use authority over vested "development" is a narrower scope than the California Coastal Commission's (the "Commission") interpretation of "development" subject to, and within the policies of the Coastal Act. See, e.g. *California Coastal Commission v. Quanta Investment Corp.*, 113 Cal.App.3d 579 (1980). In fact, the Coastal Commission is advancing opinions of "development" which include temporary placement of personal property. If the City intends to extend its coastal policies to "vested" uses, or other applications which are otherwise ministerial, then CSI strongly objects to the position.

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ordinances in direct conflict with state and federal law, including without limitation the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §§ 5401 et seq., the Mobilehome Parks Act, the Manufactured Housing Act, Cal. Health and Safety Code §§ 18000 et seq., and Title 25. The lack of addressing this critical component renders the documents significantly incomplete, particularly as to the property of CSI.

Shoreline Development, and Coastal Hazards and Shoreline Protection: Adoption of Draft Guidance.

The City has, without explanation, concluded that “[t]he only area in the City that has the potential to be impacted by a storm surge or sea level rise is the Capistrano Shores Mobile Home Park that is located at the north and of the City and seaward of the railroad tracks and has its own revetment protection along the coastline. This development is a legal nonconforming use that has an Open Space land use designation.” This statement raises several concerns for CSI, but most notably in the assumptions for the City’s sea level rise comments.

In the City of San Clemente Handout titled: “Coastal Hazards and Shoreline Protection,” August 21, 2014, Page 2, and in City of San Clemente Local Coastal Program, Page 5-17 and 5-18 the City adopts statements of current science and policies from the California Coastal Commission’s Draft Sea-Level Rise Policy Guidance (“**Sea Level Rise Policy**” or “**SLRP**”), a document which disclaims any analysis of property rights implications. Sea Level Rise Policy, 20-21. As such, we object to the use of the SLRP in a regulatory document affecting property rights, like the City of San Clemente Local Coastal Program.

At present, no revisions to the SLRP have been circulated. It appears there are no changes in response to several local jurisdictions’ comments with challenges to the science behind the prodigious estimates of rise and erosion, as well as the Commission’s controversial view of the Coastal Act. Both local jurisdictions and private individuals note that the SLRP takes an approach averse to the private property rights of beachfront homeowners. Local jurisdictions up and down the coast note that the Commission’s “protection” and “retreat” policies in the guidelines pose the risk of takings claims.<sup>4</sup> The City of Ventura explains this concern in detail:

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<sup>4</sup> See Letter from Community Development, City of Newport Beach to California Coastal Commission, dated February 13, 2014, regarding Public Comment for Coastal Commission Draft Sea Level Rise Guidance, Pg. 2; Letter from Development Services, City of Oxnard to California Coastal Commission, dated February 14, 2014, regarding Public Comment for Coastal Commission Draft Sea Level Rise Guidance, Pg. 2-3; Letter from Pismo Beach Community Development Department, City of Pismo Beach to California Coastal Commission, dated February 13, 2014, regarding Public Comment for Coastal Commission Draft Sea Level Rise Guidance, Pg. 2; Letter from Planning, Neighborhoods & Economic Development Department, City of San Diego to California Coastal Commission, dated February 11, 2014, regarding Public Comment for Coastal Commission Draft Sea Level Rise Guidance, Pg. 1; Letter from Community Development Department, City of Santa Barbara to California Coastal Commission, dated February 13, 2014, regarding Public Comment for Coastal Commission Draft Sea Level Rise Guidance, Pg. 2, 5; Letter from Planning Manager, City of Ventura to California Coastal Commission, dated February 14, 2014, regarding Public Comment for Coastal Commission Draft Sea Level Rise Guidance, Pg. 3; Letter from Public Planning and Development Department, County of Santa Barbara to California Coastal Commission, dated February 13, 2014, regarding Public Comment for Coastal Commission Draft Sea Level Rise Guidance, Pg. 2; Letter from Resource Management Agency, County of Ventura to California Coastal Commission, dated February 13, 2014, regarding Public Comment for Coastal Commission Draft Sea Level Rise Guidance, Pg. 2, 6. **We incorporate all these attached communications as objections, as though set forth fully herein.**  
Shared:Capistrano Shores:450 LCP:Correspondence to City of San Clemente regarding LCP 1-5-2014 final.doc:

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Legal Constraints - Inherent in local land use regulation is a framework of legal decisions that present constraints to local authority. Many of the policy recommendations put forth as measures to be taken to protect communities from sea level rise such as rezoning, rolling easements, and transfers of development rights convey legal liability to local jurisdictions for encroachment on private property rights, long established by the courts. This is a particular obstacle in communities with long established development along their entire coastal zone and for whom projects will not mainly comprise 'new' development. As such, these measures present an obstacle to the feasibility of sea level rise planning at the local level.

To the extent the Guidance puts forth these regulatory recommendations it should also include a discussion of regulatory and legislative solutions at the state level that will remove obstacles such as liability for takings which it specifically excludes. Until such obstacles are discussed in the Guidance and a program of legislative and regulatory measures set in place on behalf of local jurisdictions, these measures are legally infeasible and should be stricken from required recommendations on LCP updates and CDPs.

Letter from Dave Ward, Planning Manager of City of Ventura to California Coastal Commission, dated February 14, 2014, Page 3.

Beyond the regulatory questions, however, these same local governments questioned the substantial ranges in sea-level rise projections. The County of Los Angeles notes that the Commission is using outdated information: “[t]he Intergovernmental Panel on Climate Change 4th Assessment Report (IPCC AR 4) referenced in the Guidance Document is outdated. The new IPCC AR 5 was released last fall, and contains more conservative assessment projections.”<sup>5</sup> The City of Half Moon Bay writes “...there is far too much variation in SLR projections... This difference of over 10 inches is of such a significant magnitude that it is almost incomprehensible...”<sup>6</sup> The Mayor of the City and County of San Francisco agrees:

However, we are concerned that by presenting only the extremes of the NRC 2012 sea-level rise ranges (1.6-11.8 inches by 2030, 4.7-24 inches by 2050, and 16.6-65.8 inches by 2100) in several places throughout the Draft SLR Guidance, these numbers may be misconstrued by the public, media, and/or decision makers as de facto standards, contrary to the intent of the Draft SLR Guidance.

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<sup>5</sup> Letter from Department of Beaches and Harbors, County of Los Angeles to California Coastal Commission, dated February 13, 2014, regarding Public Comment for Coastal Commission Draft Sea Level Rise Guidance, Page 2.

<sup>6</sup> Letter from City Manager, City of Half Moon Bay to California Coastal Commission, dated January 8, 2014, regarding Public Comment for Coastal Commission Draft Sea Level Rise Guidance, Page 1.

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These figures are considered by climate scientists and in the NRC Report to *represent less likely though possible* rates of sea level rise, which means they should be considered by local governments, but not to the exclusion of more likely scenarios.

Letter from Office of Mayor, City and County of San Francisco to California Coastal Commission, dated February 12, 2014, regarding Public Comment for Coastal Commission Draft Sea Level Rise Guidance, Page 2 (emphasis added).

As noted by several cities, the SLRP fails to reconcile that “trends along the west coast of North America estimated from tide gauge measurements, confirmed by satellite altimetry since 1992, indicate that coastal sea levels have remained approximately stationary since about 1980”.<sup>7</sup> Despite this, the California Coastal Commission chooses to adopt the National Research Council’s 2012 Report titled *Sea Level Rise for the Coasts of California, Oregon and Washington: Past Present and Future* (the “NRC Report”). The Coastal Commission says first, decisively, “mean sea level in California has been suppressed due to factors such as offshore winds and other oceanographic complexities” and then admits Bromirski is merely “postulat[ing].” *Sea Level Rise Policy* at 29. A closer read of the Bromirski Study shows even greater speculation, that “if” a change persists in wind stress patterns related to the Pacific Decadal Oscillation, the surface waters for the Pacific “may result” in a resumption in sea level rise near the global mean. *Bromirsky Study* at 12. The IPCC dismisses studies theorizing increases in rise based on Pacific Decadal Oscillation, as “these results are not conclusive.”<sup>8</sup>

The NRC Report and SLRP predictions far exceed what the international community finds reliable or likely. In 2013, the Intergovernmental Panel on Climate Change, whose 2007 estimates are cited throughout the NRC Report and the Commission’s SLRP, adopts an estimate of 2100 sea level rise range from 10.23 to 32.28 inches with consideration of glacial and ice sheet loss, as opposed to the 16 to 65.8 inches proposed by the California Coastal Commission. The IPCC continues, determining that “there is currently insufficient evidence to evaluate the probability of specific levels above the assessed likely range.”<sup>9</sup>

However, the IPCC specifically attacks “semi-empirical” studies—like that analysis cited by and used in the NRC Report, and discussed at length in the Commission’s Sea Level Rise Policy. Specifically, according to the IPCC “semi-empirical model projections of global mean sea level

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<sup>7</sup> Bromirski, P. D., A. J. Miller, R. E. Flick, and G. Auad (2011), Dynamical suppression of sea level rise along the Pacific coast of North America: Indications for imminent acceleration, *J. Geophys. Res.*, 116, C07005. (“Bromirski Study”).

<sup>8</sup> IPCC, 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. *Id.* at 26. “Several studies have suggested these variations may be linked to climate fluctuations like the Atlantic Multi-decadal Oscillation (AMO) and/or Pacific Decadal Oscillation (PDO, Box 2.5) (Holgate, 2007; Jevrejeva et al., 2008; Chambers et al., 2012), but these results are not conclusive.” *Id.* at 289.

<sup>9</sup> IPCC, 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. (“IPCC 2013”) *Id.* at 289, 1140.

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rise are higher than process-based model projections (up to about twice as large)” but **“there is no consensus in the scientific community about their reliability and there is thus low confidence in their projections.”** Unfortunately, neither the NRC report, nor the Commission’s Sea Level Rise Policy address these critiques--only acknowledging the IPCC’s 2007 process-based model projections as a reliable starting point for many of the “semi-empirical” methods.

Despite this, the Commission presumes local jurisdictions will impose the high-end of the range of sea level estimates. SLRP, 123-124.<sup>10</sup> Further, rather than adjust the start date based on the date of a study, the Commission postulates: “[a]ll of the latent sea-level rise might occur quickly, providing sea level conditions consistent with the future projections. Thus, when the needed sea level value is a projection of the future sea level that will be experienced by a proposed project for a proposed planning situation, there is no need to adjust the 2012 NRC projections for a different project starting year.” SLRP, 124. In this statement, the Commission adopts Bromirski’s hypothesis, without citation and discussion of the speculation by Bromirski.<sup>11</sup>

The Commission appears to be suggesting that local jurisdictions adopt a resolution of necessity to “take” vested shoreline protection structures. *See, Klopping v. City of Whittier*, 8 Cal. 3d 39, 54 (1972).

“LCPs can specify priority areas where shoreline protection structures should be removed, including areas where structures threaten the survival of wetlands and other habitat, or beaches, trails, and other recreational areas. Through the LCP, removal might be accomplished by offering incentives for removal to property owners and by incorporating removal of public structures into Capital Improvement Plans. Conditions can also be added to CDPs that require removal of shoreline protection structures after certain thresholds are passed.”  
SLRP, 155.

This language appears to spark the concern of local jurisdictions. For example, the County of Los Angeles writes:

### Page 25, C-10. Maximize natural shoreline values and

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<sup>10</sup> The NRC Report acknowledges: “[t]he projections of future sea-level rise have large uncertainties resulting from an incomplete understanding of the global climate system, the inability of global climate models to accurately represent all important components of the climate system at global or regional scales, a shortage of data at the temporal and spatial scales necessary to constrain the models, and the need to make assumptions about future conditions (e.g., greenhouse gas emissions, large volcanic eruptions) that drive the climate system. As the projection period lengthens, uncertainty in the projections grows.” NRC Report, 101.

<sup>11</sup> The sole element in the NRC Report that may be of use would be the estimates of “vertical land motion”, which the IPCC regards as “not related to climate change.” IPCC, 2013, 289. **However, by the NRC’s estimates, this amounts to a mere 3.93 inches over 100 years:** “[t]he total vertical land motion from all of these geological processes and human activities can be estimated from Global Positioning System (GPS) measurements... The coast south of Cape Mendocino is sinking at an average rate of about 1 mm per year” NRC Report, 3. Other elements, such as the Pacific Decadal Oscillation and El Nino are included within IPCC modeling, (IPCC 2013, 806, 971-972, 1253) and the IPCC points out “There is still considerable uncertainty on how long large-scale patterns of regional sea level change can persist, especially in the Pacific where the majority of tide gauge records are less than 40 years long.” IPCC 2013, 288.

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**processes; avoid the perpetuation of shoreline armoring** - This is contrary to Sections 30235 of the Coastal Act, which states, "Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply". These coastal protection structures have proven to be effective in Los Angeles County and the East Coast, in the prevention of erosion and protection of coastal facilities. Removing them would hamper public safety, infrastructure, public facilities and private property.

..  
**Page 51 and 54 - Limit or prohibit use of bluff retention or shoreline protection for new development / Require property owners to waive the right to shoreline protection in the future** - Coastal Act, Section 30253, allows for protection of new development, including the protection of "special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses", and the Guidance Document should reflect this.

Letter from Department of Beaches and Harbors, County of Los Angeles to California Coastal Commission, dated February 13, 2014, regarding Public Comment for Coastal Commission Draft Sea Level Rise Guidance, Page 2-3.

Elsewhere, the risk of a taking is apparent to the City of Oxnard, should the SLRP be applied to existing development:

"The SLR Guidance does not provide different guidance for existing entitled versus new development. Instead, the SLR Guidance includes a recommendation that local agencies obtain legal advice regarding specific takings situations. At a minimum, the SLR Guidance should incorporate sections of the Coastal Act which distinguish between existing versus new development..."

Letter from Development Services, City of Oxnard to California Coastal Commission, dated February 14, 2014, regarding Public Comment for Coastal Commission Draft Sea Level Rise Guidance, Pg. 2.

Water Quality Protection

To the extent that the City of San Clemente Local Coastal Program, including without limitation Water Quality starting at Section 4.1.4, and at 4.3.4 may consider regulation of road surfacing,  
Shared:Capistrano Shores:450 LCP:Correspondence to City of San Clemente regarding LCP 1-5-2014 final.doc:

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irrigation, or other areas for applicable to the interior of an established mobilehome park, on behalf of Capistrano Shores Mobilehome Park, we object pursuant to the preemption in the Mobilehome Parks Act, Cal. Health and Safety Code §§ 18300 et seq. and Title 25, 25 Cal. Code of Regulations §§ 1000 et seq. City of San Clemente Local Coastal Program, Page 4-9, 4-19 to 4-23 (December 24, 2014).

Scenic, Historical, and Cultural Resources: View Corridors

In the City of San Clemente Local Coastal Program draft dated December 24, 2014, Section 6, specifically 6-3 through 6-8, and in the City of San Clemente Handout titled: "Scenic, Historical, and Cultural Resources" August 21, 2014, lists as a public resource: "Designated Scenic View Corridors from Publicly-Owned Properties along or through public rights-of-way." City's language continues, proposing: "Protection of public scenic view corridors," "Identification of highly scenic coastal areas," "Land use and zoning designations corresponding with protection of scenic and visual qualities," "measures to ensure that new development will not block views," and "utiliz[ing] opportunities to reexamine and adjust the boundaries of the scenic and special areas that warrant protection." Further, on City of San Clemente Local Coastal Program, Page 6-6, the City shows a wider view corridor over Avenida Pico, and a new public view corridor for the Coastal Canyons, both ostensibly covering Capistrano Shores Mobilehome Park.

The City's proposed language and diagrams continue and expand ambiguous usage from previous documents. On behalf of Capistrano Shores, Inc., we object to that the City of San Clemente's classification of Avenida Pico as a scenic view corridor, and new "Coastal Canyons" view corridor. Based on the City's own standards in C-3.02, and definition of "Scenic Corridor" under the City of San Clemente General Plan Glossary, Avenida Pico lacks scenic value given the absence of "visual linkages between the resources and amenities of San Clemente." Avenida Pico suffers from a grade and road alignment causing limited sight distance, the obstruction of resources from existing natural topography, and present, vested structures, sound-walls, as well as limited potential enjoyment with heavy vehicle usage on Avenida Pico in direct conflict with the sparse bicycle traffic. Further there is a readily-accessible public beach with parking, obscured from view at North Beach at the and Coastal Trail. Furthermore, we note that the beach adjacent to Capistrano Shores Mobilehome Park should be considered a "Significant Public View," as it excludes "areas that are largely developed..." City of San Clemente Local Coastal Program, Page 7-9.

Should the City persist and propose that the Avenida Pico View Corridor should effect a height restriction over mobilehomes or otherwise encumber Capistrano Shores Mobilehome Park, we again object pursuant to *County of Santa Cruz v. Waterhouse*, 127 Cal. App. 4th 1483 (2005), as well as the Mobilehome Parks Act, Cal. Health and Safety Code §§ 18300 et seq. and Title 25, 25 Cal. Code of Regulations §§ 1000 et seq. "The Legislature's goal of promoting uniformity in mobilehome construction and installation standards can only be achieved through centralized regulation of the MPA, alleviating variances in local regulation. Without such centralized regulation, a mobilehome owner would be subject to the specific and particularized whims of a local county or municipality, **and would in effect be hampered in his or her ability to move the mobilehome within the state.**" *County of Santa Cruz v. Waterhouse*, 127 Cal. App. 4th at 1496 (emphasis added). This jurisprudence stands for the principle that height restrictions are

Shared:Capistrano Shores:450 LCP:Correspondence to City of San Clemente regarding LCP 1-5-2014 final.doc

**THE LOFTIN FIRM, P.C.**

Jim Holloway

City of San Clemente

**January 6, 2015**

Page 11 of 11

inapplicable to mobilehome parks, and preempted by the statutes and regulations of the Department of Housing and Community Development.

Conclusion

On behalf of Capistrano Shores Mobilehome Park, we object to the above-referenced language mischaracterizing and targeting Capistrano Shores in access and access management, we object to the view corridor ostensibly encumbering Capistrano Shores, we object to sea level rise comment presuming a disproportionate impact on Capistrano Shores, and we object to nonconforming use restrictions that fail to distinguish between mobilehomes and structures.

Additionally, given the multiple references to Capistrano Shores in the proposed Local Coastal Program Land Use Plan, Capistrano Shores' unique status as a mobilehome park, and related concerns of personal property, and Mobilehome Parks Act-related preemption, CSI requests a "seat at the table" throughout the LCP process: continuing notice, consideration, and the courtesy of a direct dialog—both regarding the City's intentions and proposed amendment in response to those concerns enumerated above, and continuing with derivative concerns and items identified for future study (like sea level rise) throughout the City's proposed Local Coastal Program.

We further join with the chorus of local government objections to the Commission's Sea-Level Rise Policy, and look with a critical eye to its projections which more than double the newest IPCC projections, and which rely on science the international community finds unreliable. The Commission appears to be conscripting local governments to downzone coastal property, and take vested shoreline protective devices and armament—with little concern to the impact on private coastal property.

Regards,

THE LOFTIN FIRM, P.C.



Alexander S. Maniscalco, Esq.

cc: Client  
City of San Clemente, Coastal Advisory Committee  
City of San Clemente, Planning Commission  
City of San Clemente, City Council  
City of San Clemente LCP: [LCP@San-Clemente.org](mailto:LCP@San-Clemente.org)  
California Coastal Commission  
Ajit Thind, Esq., City of San Clemente: [athind@rutan.com](mailto:athind@rutan.com)  
Peter Howell, Esq., City of San Clemente: [phowell@rutan.com](mailto:phowell@rutan.com)

Encls.

Shared:Capistrano Shores:450 LCP:Correspondence to City of San Clemente regarding LCP 1-5-2014 final.doc:



## Attachments

**Office of the Mayor**  
City & County of San Francisco



**Edwin M. Lee**

February 12, 2014

California Coastal Commission  
c/o Sea-Level Rise Working Group  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

via email: [SLRGuidanceDocument@coastal.ca.gov](mailto:SLRGuidanceDocument@coastal.ca.gov)

**Re: Comments on the California Coastal Commission's Draft Sea Level Rise Policy Guidance**

Dear Sea-Level Rise Working Group:

The City & County of San Francisco (CCSF) appreciates the opportunity to review and comment on the California Coastal Commission's Draft Sea Level Rise Policy Guidance document, announced for review on October 14, 2013. As a City we are both a permitting authority and land manager for our coastal resources. In this dual-role, we share the Commission's commitment to stewardship of these public resources. Climate change poses significant challenges to vital infrastructure, public health and safety, and resource management. Planning for climate change also challenges us to come up with new ways of making decisions – while we can no longer rely upon past practice, the nature of the future is also difficult to discern with precision.

The Coastal Commission's Draft Sea Level Rise Policy Guidance ("Draft SLR Guidance") is a landmark document as it is among the first detailed technical guidance documents seeking to assist local government in planning for the effects of sea level rise. The Draft SLR Guidance is a well-written, detailed explanation with step-by-step guidance on adaptation planning. It will be of great assistance to local governments in preparing for and responding to the effects of sea-level rise. In light of our awareness of the document's import, we have two specific comments we'd like to offer.

**Comment No 1: Best Available Science and Sea Level Rise Projections.** The Draft SLR Guidance urges local governments and permit applicants to consider local hazard conditions, project lifespan or planning horizon, sensitivity to sea-level rise related hazards, adaptive capacity, and risk tolerance in developing sea-level rise adaptation strategies for any particular plan or project. Appendix B provides two methodologies for developing local hazard conditions appropriate for specific projects and planning efforts. While this type of local-specific and case-by-case approach will add considerable complexity to our planning and project development and review processes, the CCSF agrees that the methodologies provided in the Draft Guidance are superior to adopting a "one size fits all" approach to this issue. In fact, the CCSF feels strongly that this type of site and project-specific analysis is required to ensure responsible land use and

infrastructure planning and regulation. However, we are concerned that by presenting only the extremes of the NRC 2012 sea-level rise ranges (1.6-11.8 inches by 2030, 4.7-24 inches by 2050, and 16.6-65.8 inches by 2100) in several places throughout the Draft SLR Guidance<sup>1</sup>, these numbers may be misconstrued by the public, media, and/or decision makers as de facto standards, contrary to the intent of the Draft SLR Guidance. These figures are considered by climate scientists and in the NRC Report to represent *less likely though possible* rates of sea level rise, which means they should be considered by local governments, but not to the exclusion of more likely scenarios. The more likely scenarios are in fact included in numerous places in the NRC Report, are labeled “projections,” (e.g. 5.7 ± 2.0 inches by 2030, 11.0 ± 3.6 inches by 2050, and 36.2 ± 10.0 inches by 2100). The projections are an important part of the report’s science conclusions. We therefore suggest revising the Draft SLR Guidance to eliminate references to the extremes of the ranges only and, where sea-level rise numbers are presented, to include both the NRC Report projections and the ranges. We feel that these revisions would further support local governments’ ability to successfully implement the more nuanced and complex analytical methods recommended in the Draft Guidelines.

Note: The CCSF notes and incorporates by reference additional comments on related matters being submitted by the San Francisco Public Utilities Commission.

**Comment No 2: Updating San Francisco’s Local Coastal Program to accommodate sea level rise without jeopardizing interim projects with critical coastal permitting needs.** The Draft SLR Guidance further establishes the desire of the Coastal Commission to secure updates to Local Coastal Programs (LCPs). The CCSF shares the Commission’s desire to update our planning documents to help us best prepare for climate change. To achieve this goal, the City will work to address sea level rise in our LCP. That said, even a minor update to our planning documents, demands engaging in needed public dialog that is time-consuming and unpredictable. It should be noted that CCSF has many projects underway that are in the public interest and may need Coastal Development Permits prior to the completion of an LCP update, including implementation of recommendations for the management and protection (i.e., wastewater facilities south of Sloat Boulevard) of San Francisco’s Ocean Beach which are outlined in the 2012 Ocean Beach Master Plan. Other wastewater projects include various upgrades and/or improvements to the Oceanside Plant and the Westside Pump Station. See Attachment A for a brief outline of these anticipated projects. The San Francisco Zoo is working on an Ocean and Coastal Center in conjunction with NOAA and SFPUC. Largely because of these concerns, CCSF has not yet initiated an update to our LCP.

In this regard, we are seeking the following from the Coastal Commission:

**2a:** Assurance that if the CCSF engages in good-faith effort to update our LCP, necessary Coastal Development Permits sought by CCSF while the LCP update is underway will be processed in a timely way under the current regulatory structure and will not be delayed while the updated LCP is being considered and/or in process.

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<sup>1</sup> Use of the extreme ranges alone, without the more likely projections, are included in the first paragraph of the Executive Summary, Table 1 and elsewhere throughout the draft document.

**2b: Assistance with the identification of funding resources for CCSF's future update to the LCP.**

Again, the City & County of San Francisco appreciates the opportunity to work with the California Coastal Commission on the issue of climate change and sea level rise. We provide our comments and concerns with a deep commitment to work with the Coastal Commission on the best possible solutions to these issues for the people of San Francisco.

If you have any questions regarding these comments, please contact AnMarie Rodgers, Manager, Legislative Affairs at the San Francisco Planning Department at (415) 558-6395 and [anmarie.rodgers@sfgov.org](mailto:anmarie.rodgers@sfgov.org).

Sincerely,



Roger Finn  
Senior Advisor

**Attachment A: SFPUC Wastewater Enterprise Project List**

<b>Oceanside Plant</b>	<b>Start</b>	<b>End</b>
Fine Screen and Grit Removal Enhancements	26-Mar-15	20-Jan-17
Odor Control Optimization	01-Jul-16	30-Jun-17
Condition Assessment Repairs	01-Jul-16	30-Jun-17
Oxygen/Aeration System Replacement	none	none
Digester Gas Handling Utilization Enhancements	01-Oct-14	01-Apr-16
<b>Westside Pump Station</b>		
Westside Pump Station Redundant Force Main Improvements	04-Jan-16	30-Jun-17
Westside Pump Station Reliability Improvements	02-Jul-15	30-Jun-17



# CITY OF DANA POINT

PUBLIC WORKS – ENGINEERING SERVICES

33282 Golden Lantern, Suite 212

Dana Point, Ca 92629

949.248.3575

([www.danapoint.org](http://www.danapoint.org))

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February 14, 2014

California Coastal Commission  
c/o Sea-Level Rise Working Group  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

**SUBJECT: CCC Draft SLR Policy Guidance  
City of Dana Point Comments**

The City of Dana Point Public Works and Engineering Department has completed its review of the draft policy. Based on our review, we are providing the following comments that we hope to discuss prior to the next publication.

- The publication and comments for the draft policy are occurring in 2014, which is approximately one-half of the 30 year projection. What are the current results of documented sea level rise versus the estimated rise? The estimated rise for our coastline (South of Cape Mendocino) is 1.6-12 inches.
- The range for 2030, 2050 and 2100 are so vast that the implementation will be very difficult. Such a large range seems to indicate the need for additional study.
- The estimated ranges for 2030, 2050 and 2100 need to be more defined per regions of the coast. For example Southern California should have more defined range.
- Based on the previous 100 year sea level rise of 8", the proposed 1.6"- 12" rise in the next 30 years (actually 15 years to date) needs additional detail for such a large range.
- The resulting improvements required by sea level rise i.e, additional beach nourishment and harbor breakwater improvements should have a streamlined process through the Coastal Commission and Local Coastal Program.

- Impacts to the Local Coastal Program Implementation need to be clearer. Recommended values or design values for sea level rise should be included in the report.
- Impacts to Wave Run-up or Coastal Hazard Studies are unclear. Recommended values or design values for sea level rise should be included in the report.

If you have any questions regarding these comments, please contact Public Works Department at [REDACTED] or any of the contacts below.

Brad Fowler  
Director of Public Works

[REDACTED]

Matthew Sinacori  
City Engineer

[REDACTED]

Matthew Kunk  
Senior Engineer

[REDACTED]

Brandon Boka  
Certified Engineering Geologist

[REDACTED]



## CITY OF HALF MOON BAY

City Hall • 501 Main Street • Half Moon Bay • CA • 94019

RECEIVED  
JAN 09 2014  
CALIFORNIA  
COASTAL COMMISSION

January 8, 2014

California Coastal Commission  
c/o Sea-Level Rise Work Group  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Subject: Comments on the Draft Sea-Level Policy Guidance Document

Dear Coastal Commissioners,

We are responding to your request for comments on the Draft Sea-Level Rise Policy document that you have circulated for review. We certainly understand the need to consider the consequences of climate change and particularly the potential impacts on coastal communities resulting from sea-level rise (SLR). With that said, the draft policy document gives rise to a number of seriously troubling uncertainties on the coastal plan certification and implementation process. Some major areas of concern that are certain to be problematic include, but are by no means are limited to:

- 1) Discrepancies in Sea Level Rise projections
- 2) Highly technical baseline analysis of coastal conditions called for in the Local Hazard Condition Analysis
- 3) Unpredictability associated with certifying Local Coastal Plans (LCP) and Implementation Plans (IP) in conformance with these policies
- 4) Fiscal impacts on coastal communities and especially small coastal communities in complying with these complex regulations

**1) Discrepancies in Sea Level Rise Projections:** We fully acknowledge that the science of projecting or estimating sea level rise is extremely complex. However there is far too much variation in SLR projections (2000-2030 is between 1.56 to 11.76 inches). This difference of over 10 inches is of such a significant magnitude that it is almost incomprehensible. Furthermore, projections beyond 2030 (there are discrepancies between Tables 1 and 6) only compound this problem. We do not understand why there are, or is a need for different base year estimates for the same year of 2000. We have to be cautious about being overly conservative in projecting SLR that forces development and coastal infrastructure further from the shoreline at the expense of those that want to enjoy the coastal environment in accordance with the core principles of the Coastal Act.



2) Complicated Analysis Required in Developing the Local Hazard Condition Analysis: This requires highly technical and specialized analysis. More importantly, these analyses are quite often professionally and scientifically subjective and disagreement among experts will occur. These same disagreements resulting from subjective evaluations currently occur in determinations of habitat and levels of environmental significance. This chronic problem will only continue to get worse with a new plan element and field of analysis in the development of the Local Hazard Condition Analysis.

3) Unpredictability in Coastal Commission Certification Process: There is no clear standard of review when determining the adequacy or acceptability in the certification process of coastal amendments. In theory, no one disputes the importance in addressing environmental factors associated with SLR and its impact on resources, development and infrastructure on coastal communities. In practice and in current operation, there is no limit to the amount of information that is requested in the certification process. This extremely time consuming and protracted process will only add an entirely new area of analysis where confusion and disagreements over interpretation between city and Coastal Commission staff will continue to occur in the certification process of Local Coastal Programs and Implementation Plans.

4) Fiscal Impacts are significant: Staff time and resources, and especially those of small communities like ours, are already constrained and heavily impacted in administering our Local Coastal Program. We have placed nearly full time emphasis in completing the certification process for several critically important and long overdue LCP amendments. The SLR policies will increase the amount of staff time and effort that will need to be devoted to the certification process, adding further delay to the backlog.

We applaud your proactive approach at addressing climate change and sea level rise. In light of the factors discussed above, we find the program unwieldy, and it needs to be substantially simplified with clear and objective standards provided for predictability in completing amendments that eliminates the subjective and seemingly directionless negotiation process in securing certification of coastal plan amendments. Thank you for the opportunity to provide our suggested improvements to the process. We look forward to working with Coastal Commission staff in addressing these problems and developing reasonable, clear and effective policies and programs.

Sincerely,

  
Laura Snideman,  
City Manager

cc: Mayor and City Council  
Carole Groom, County Supervisor & Coastal Commissioner  
Tony Condotti, City Attorney  
Bruce Ambo, Planning Manager



# CITY OF NEWPORT BEACH

## COMMUNITY DEVELOPMENT

February 13, 2014

**Via Electronic Mail and United States Mail**

Steve Kinsey, Chair  
Honorable Commissioners  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

California Coastal Commission  
c/o Sea-Level Rise Work Group  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

**Re: Comments to the Draft Sea-Level Policy Guidance Document**

Dear Chair Kinsey and Honorable Members of the California Coastal Commission:

This comment letter is provided to you on behalf of the City of Newport Beach. The threat of sea-level rise is of major importance to Newport Beach. Although our land area is less than twenty-four square miles, we have over forty-five miles of shoreline. Our shoreline communities, visitor-serving industry, world-class small-craft harbor, and natural habitats could potentially sustain damages costing billions of dollars to repair. Therefore, we support the California Coastal Commission's efforts to prepare a draft Sea-Level Rise Policy document ("Guidance Document").

It is prudent that the Guidance Document acknowledge that there is a high degree of scientific uncertainty as to the extent of sea-level rise and that the science is still evolving (Principles 2 and 3). We support the provision that the Coastal Commission will re-examine the best available science at least every 5 years or as needed with the release of new information on sea-level rise. It is equally important that the Coastal Commission also periodically re-examine and reassess this document to determine its value in providing practical guidance to agencies, local governments, and the public.

We acknowledge that the Guidance Document expands on provisions in the Coastal Act on avoiding significant coastal hazard risks (reflected in Principles 4, 5, and 8). Section 30253 of the Coastal Act reflects sound planning practices of minimizing risks to life and property in hazardous areas. And, while not specifically called for by Coastal Act Sections 30253 (or Sections 30235; 30001, 30001.5), it is also a sound planning practice to avoid areas with high geologic, flood, and fire hazards. However, if sea-level rise projections hold true, many coastal urbanized areas that will be subject to inundation. Using the "best available science on sea-level rise," as ascribed by the

Guidance Document, over 4000 properties could be subject to flooding in Newport Beach on the Balboa Peninsula, Balboa Island, and West Newport. This is not a simple matter of siting development to avoid a hazardous area. Entire communities will be at risk and avoidance is not an option. Under such scenarios, the interpreted Coastal Act's emphasis against protective devices will have to be reconsidered. Clearly, a more comprehensive approach is needed to address the wide range of coastal settings in the state. A differentiation between developed, urbanized areas and undeveloped, rural areas would be a good place to start.

Similarly, Principle 10's call for "the least environmentally damaging feasible alternatives and minimize hard shoreline protection" is appropriate. However, "feasible" needs to be emphasized when determining the least environmentally damaging shoreline protection alternative. The least environmentally damaging alternative could have minimal environmental impacts, but the costs associated with it would make that shoreline protection project infeasible. This is particularly true for the repair and maintenance of existing shoreline protective devices.

The provision for protection of public beach and recreational (Principle 9) properly addresses publically-maintained public access facilities. However, there is no guidance for the numerous public access facilities where a property owner, community association, corporation, or private organization has agreed to assume responsibility for maintenance. Additional guidance is needed for these situations and for the protection of the private developments that make these public access facilities possible.

Above all, the City is concerned that the Guidance Document will become a de facto regulatory document and mandated for implementation by local agencies as part of new or amended local coastal programs. Case in point, although the Guidance Document states that it is not a regulatory document, the Adaption Measures (Site Development Standards, Mitigation, Shoreline Management and Protection programs etc.) appear poised to become the threshold of review for new and amended LCPs under the guise of minimizing hazard risks. If so, the Guidance Document's recommendations for addressing sea-level rise will be regulatory and mandated for implementation by local agencies as part of new or amended LCPs. Of critical concern is the Guidance Document's failure to address how sea-level rise may involve private property rights and takings issues in specific cases. (Guidance Document, Page 20). It is not the issue of sea-level rise that gives rise to a takings claim, rather, it is mandatory imposition of strategies ranging from protection, accommodation, and retreat to land use decisions that may result in the taking of private property. To the extent that the Coastal Commission will rely on local agencies to implement the recommendations of the Guidance Document, we respectfully request that the Commission clarify its intention to guide development based on existing available science as opposed to setting standards by which hazard minimization is addressed. Therefore, we respectfully request that the

Guidance Document be revised to confirm that it is not a regulatory document, and will not be implemented as such.

With such an unequivocal commitment, the Coastal Commission would provide coastal cities with sufficient flexibility to implement the recommendations set forth in the Guidance Document where appropriate and based on regional and site-specific circumstances. For instance, the Guidance Document provides an approach for addressing sea-level rise that may only be appropriate in areas that have not been highly urbanized. This is especially the case where the Guidance Document provides good suggestions to promote a comprehensive assessment and development of policies for hazard avoidance mitigation by developing shoreline management plans and beach nourishment plans. Clearly, the Guidance Document's encouragement to perform adaptive planning at the regional level and to establish a transfer of development credits program are helpful suggestions for areas that have not been urbanized. However, in highly urbanized areas, coastal resources can be very limited and options for managed retreat may not exist.

In this same vein, the Guidance Document should clarify its intent as distinguishing development within, and adjacent to, harbors and the open seas. The Guidance Document presents some ambiguities for the protection of harbors from potential flooding due to sea-level rise. As you must be aware, harbor flood defenses include jetties, seawalls, groins, tide gates, storm water pump systems, groundwater dewatering systems, and elevated finished floor elevations. However, these harbor flood defenses are only effective when working together. These flood defense measures, especially the public and private seawalls, act as a unit to protect residential, commercial and industrial properties and facilities around in coastal zone including boat yards, fuel stations, marine supply facilities, recreational facilities, tourist-serving facilities, houses, hotels, and restaurants. These flood protection defenses allow for commercial and recreational boating and fishing activities, as well as safe beach access for residents and visitors. It is important to note that these defense measures allow all property owners to participate in federal flood insurance program. We believe that the Guidance Document should be revised to reflect that several items in the Guidance Document would not be applicable in urbanized areas or to the maintenance, replacement or protection measures of property and facilities in, around and adjacent to a harbor's flood protection facilities.

Principle 12 correctly calls for addressing sea-level rise impacts in a regional context. However, there is a missed opportunity here to call for collaboration and cooperation between local agencies in addressing sea-level rise on a regional basis. One city's efforts to address sea-level rise would be meaningless if there is no coordination with neighboring cities. Therefore, there is an opportunity here for the Coastal Commission to facilitate not only vertical cooperation (State to City), but also horizontal cooperation (City to City).

The vision statement in your newly-adopted strategic plan calls for a California Coastal Commission that “works collaboratively local governments, other agencies, and an engaged and knowledgeable public.” Rather than impose guidance from the top down, the Guidance Document provides a perfect opportunity for regional coordination among local governments and stakeholders (Principle 15) that will continue to have the ultimate responsibility for addressing sea-level rise. As this is a long-range planning document, there is ample time for Commission staff to meet directly with representatives of local governments and collaborate on a document that will provide practical guidance on addressing the consequences of sea-level rise. The City of Newport Beach is willing to take the lead in forming a local government working group that will sit down with Commission staff to complete the Guidance Document.

Thank you for the opportunity to comment on the Guidance Document and we look forward collaborating on it further.

Sincerely,



  
Kimberly Brandt, AICP  
Director

## Development Services

Planning Division

214 South C Street  
Oxnard, California 93030  
(805) 385-7858  
Fax (805) 385-7417



February 14, 2014

Ms. Hilary Papendick  
California Coastal Commission  
c/o Sea-level Rise Work Group  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105  
Also via E-mail: [SLRGuidanceDocument@coastal.ca.gov](mailto:SLRGuidanceDocument@coastal.ca.gov)

**Re: California Coastal Commission Draft Sea-Level Rise Policy Guidance  
City of Oxnard Comments on Administrative Draft**

Dear Ms. Papendick:

The City of Oxnard (City), Planning Division, is in receipt of the California Coastal Commission (CCC) Draft Sea-Level Rise (SLR) Policy Guidance (SLR Guidance) dated October 14, 2013. We appreciate the opportunity to comment on the SLR Guidance. We are beginning the process of comprehensively updating our LCP to address sea-level rise, and we recognize the importance of the SLR Guidance to the processing of Coastal Development Permits (CDPs) in the interim. During our review of the SLR Guidance, we have identified several concerns listed below:

**1) *Guidance versus Regulation:***

Greater clarity is needed within the SLR Guidance to define its regulatory intent. In our view, it is premature to require jurisdictions to implement SLR Guidance when we are just starting to prepare a costly and time-consuming LCP update to comprehensively address SLR with extensive local public input to develop local adaptations. We suggest an interim period of three to five years during which routine CDPs, such as residential and commercial development within already developed areas that are subject to FEMA and other wave run-up and storm surge analyses, will not be appealed by the CCC only for lack of SLR Guidance-directed analysis. In this interim period, the CCC could define what major public works and large-scale new development should include SLR analysis and adaptations as consistent as possible with the Draft or Final SLR Guidance.

**2) *Funding and Uncertain Process:***

While it is important that the SLR Guidance be implemented through the LCP update process, limited funding and the need to develop local SLR expertise and an uncertain Coastal Commission review process could create significant implementation delays. Jurisdictions in the process of preparing a SLR LCP update should be granted some

leeway with other CCC-required permitting or amendment applications in recognition of the considerable effort the SLR update will take in local staff and community resources.

### **3) *New versus Existing or Redevelopment Projects:***

The SLR Guidance should more clearly distinguish between policies that apply to existing versus new development, consistent with the Coastal Act. The SLR Guidance Document should directly address the legal takings issue in the event that implementing the SLR guidance leads to a denial of all uses on a private parcel that previously had entitlements. The SLR Guidance does not provide different guidance for existing entitled versus new development. Instead, the SLR Guidance includes a recommendation that local agencies obtain legal advice regarding specific takings situations.

At a minimum, the SLR Guidance should incorporate sections of the Coastal Act which distinguish between existing versus new development:

- Coastal Act Section 30235 states "revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply."
- Coastal Act Section 30253 states "new development shall neither create nor contribute significantly to erosion... or in any way require the construction of protective devices that would substantially alter landforms along bluffs and cliffs."

The difference between Sections 30235 and 30253 are the words "existing" versus "new" development. The Coastal Act requires the CCC to protect existing structures; whereas it does not require the CCC to approve new development placed in a hazardous area.

### **4) *Expected Project Life / Design Life / Time-Delimited CDP:***

According to the SLR Guidance as we understand it, an applicant will be required to define a time-certain project lifespan that becomes the basis for the SLR scenario against which the project is evaluated and for which, in essence, a time-delimited CDP is issued. We ask the CCC to consider the establishment of a new type of CCC permit, a Time-Certain CDP that may be renewed based on future best SLR science. A Time-Certain CDP should include a requirement to remove the project at the end of its permit life, presuming the ocean is lapping at the foundation.

The SLR Guidance suggests that a minimum of 75 to 100 years should be considered as the design life for primary residential or commercial structures. The expected or

proposed project life would be used to determine the amount of sea-level rise the project site could be exposed to during the lifetime of that particular development. Instead, we suggest requiring the use of industry-practice appraisal or engineering protocols based on the expected lifespan of specified structural elements before major repair or replacement is required. A local jurisdiction must have a means to review and, if needed, correct an applicant's lifespan based on objective, readily available, quality information.

The SLR Guidance should address that some uses may have an indefinite lifespan, such as a habitat restoration, and what SLR scenario to use for an indefinite permanent project.

And, undoubtedly, time-limited permittees will eventually want to extend their permits, SLR permitting, and the SLR Guidance should include direction that incorporates continuing development of SLR science. A process should exist, similar to extending Subdivision Tract maps during economic downturns, to systematically extend time-delimited CDP's if future SLR is trending lower than expected, or by some similar State-certified criteria.

**5) Regional Vulnerability Assessments and SLR Adaptation Planning:**

Principle No. 12 and No. 16 suggest that local governments conduct vulnerability assessments and adaptation planning at the regional level. To accomplish this, the local government would evaluate sea-level rise impacts throughout an entire littoral cell or watershed, determine how those impacts affect the LCP jurisdiction or project, and recommend adaptations that minimize impacts generated by sea-level rise. What if the neighboring city is doing the same task and arrives at different adaptations? There needs to be a way to avoid duplicate and inconsistent efforts by several jurisdictions.

Except where necessary for critical infrastructure, the SLR Guidance should minimize requirements for inter-jurisdictional planning, as such requirements are likely to increase costs and timelines for LCP updates. Perhaps counties or MPO's should be required to address critical regional coastal issues that span jurisdictions rather than have several cities developing separate analyses and adaptations for the same facility, such as an estuary levee system or county/city coastal highway.

Logically, inter-jurisdictional planning and cooperation is needed to minimize SLR impacts to infrastructure or natural resources that span multiple jurisdictional boundaries. However, although there may be benefits associated with addressing cumulative impacts on a regional basis, the SLR Guidance document is unclear when it describes a study that includes "regional impacts and any cumulative impacts within a larger planning context in a LCP or other larger-scale analysis."

**6) Clarify CEQA and Effects of the Environment on the Project**

The thought of completing a CEQA analysis for a SLR LCP update and its adaptations is daunting. CEQA would seem to require a worst case scenario, based on the existing



rule of "fair argument," and then CEQA requires all feasible mitigations. Will CEQA push all SLR updates to the maximum adaptation regardless of takings issues and economic impacts? How will local jurisdictions know with certainty what environmental analysis is acceptable to the CCC for its equivalent review process? We encourage the CCC to consider an exemption for SLR LCP updates, similar to CEQA statutory exemptions for preparation of general plan amendments required by the Delta Protection Commission (PRC 21080.22), Urban Water Management Plans (WC 10652), or categorical exemption 15307, procedures to protect the natural environment.

Finally, the *Ballona Wetlands Land Trust v. City of Los Angeles* case is not resolved as to whether CEQA pertains to the impact of the environment on a project. Clearly, SLR is overwhelmingly the impact of the ocean on projects, not much in the reverse. Depending on how the California Supreme Court rules on this case, jurisdictions may find themselves in a paradox of not being able to use CEQA to adopt their LCP update because CEQA does not apply, but having to provide a CEQA analysis to the CCC as part of the certification application. We suggest the CCC seek a legislative solution that clearly directs the environmental review process, or provides an exemption.

The City of Oxnard appreciates this opportunity to comment on the SLR Guidance document, as all local jurisdictions will continue to rely on the engagement of the CCC and its staff for guidance on SLR. The SLR Guidance is an important step in the process of creating new policies and regulations that effectively address sea-level rise. We look forward to future work with the CCC and its staff to address SLR within the Oxnard LCP.

Sincerely,



Christopher Williamson, PhD, AICP  
Principal Planner, Planning Division  
Development Services Department

cc: Karen Burnham, Interim City Manager  
Grace Magistrale Hoffman, Deputy City Manager  
Martin Erickson, Deputy City Manager  
Matthew Winegar, Development Services Director



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BUILDING - PARKING - PLANNING - RECREATION

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February 13, 2014

California Coastal Commission  
c/o Sea-Level Rise Work Group  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Re: Comments to the Draft Sea-Level Rise Policy Guidance Document

Dear Sea Level Rise Working Group:

I am responding on behalf of the City of Pismo Beach to your request for input on the Draft Sea-Level Rise Policy Guidance document. We appreciate this opportunity to comment.

Let me start by stating we fully understand the need to address the consequences of climate change in a proactive manner, especially the impacts on coastal communities and their infrastructure from sea-level rise (SLR). We deal with coastal erosion on a daily basis and dedicate significant time and resources evaluating how best to protect structures, public access and recreational amenities, public safety features, and critical city infrastructure in compliance with our Local Coastal Program (LCP). Given our ongoing efforts and experience we feel elements of the Sea-Level Rise Guidance Policy require additional attention and it needs to take into consideration an approach that gives great weight to information and data that specifically addresses SLR at the local level. In addition, the document needs to do so in manner that acknowledges the limited resources of many small agencies like ours. We also trust that you will also take to heart our concern for establishing a process that could make updating or amending our local coastal program arduous and uncertain. Following is a listing of our concerns followed by comments regarding each:

- Sea Level Rise Projections;
- Analysis Required For Local Hazard Condition Analysis;
- Certification Process; and
- Fiscal Impacts.

## **Sea Level Rise Projections**

Although the document provides projections on sea level rise, these are broad and do not take into consideration the various geological processes and sand sources for the specific area subject to our LCP. We know that the science of projecting or estimating sea level rise is complex and, as noted in the document; additional analysis is needed to address the conditions unique to specific areas of the coast.

Based on experience, we feel we need to be cautious about being overly conservative in projecting SLR that forces development and coastal infrastructure further from the our shoreline because it is largely developed and our citizens expect high quality City services. Some of the approaches for addressing sea level rise seem appropriate only in areas that have not been highly urbanized, such as adaptive planning and establishment of development credit transfer programs. These seem helpful in undeveloped areas; however, in an urbanized City like Pismo Beach, these may not be the most suitable approach. Obtaining community support for LCP amendments that do not take these factors into account will be difficult.

Studies that evaluate and develop local conditions are costly and time consuming, not to mention they are at times controversial because their results and conclusions affect private property and existing structures. We feel it would be important for the Commission to develop sea level rise at the Regional level, with input on the process from local agencies, rather than at the State level as this would account for local conditions and be a cost savings for communities with limited resources. It would also provide a level of certainty in the process because sea level rise estimates would be conducted in the same manner up and down the coast. If left wholly up to the individual agencies, there could be as many methods for developing these projections as there are agencies, which in turn will be costly for the Commission and lengthen the review process.

The Guidance document does not address how sea-level rise may involve private property rights and takings issues in specific cases. Mandatory requirements ranging from protection to retreat could result in the taking of private property. Addressing sea level rise through a managed retreat approach typically involves establishing thresholds that trigger demolition or relocation of structures threatened by erosion. Therefore, this approach would require instituting relocation assistance and/or buy-back programs to help with relocation costs or compensate property owners when their property becomes unusable. These are issues that need further attention and given greater weight in this document, so that Cities are better able to address them when developing amendments.

Although the Guidance Document states that it is not a regulatory document, it appears to be ready to be used as the standard of review for future LCP modification applications. If this is the case, then it needs to include a clear standard of review, so that agencies can appropriately develop amendments to their LCP.

### **Analysis Required For Local Hazard Condition Analysis**

In addition to the complex analysis required to develop local sea level rise projections, analysis and development of a Local Hazard Condition program needs a highly technical and specialized skill set. Again, a costly venture for communities with limited resources and competing demands for services. At times, such analyses are scientifically subjective and disagreement among experts, among others, can occur. These disagreements, although good discourse, lead to uncertainty in the process and raise the potential for un-controlled costs and dedication of a significant amount of staff time. More data and information specific to this section of the California coast could address this.

### **Certification Process**

In practice there is no limit in the number of corrections or additional information that can be requested of agencies in LCP amendment or update process. The result can be a costly process that many small agencies cannot afford. To help address this, we would encourage the Commission to give LCP amendments that address SLR priority review and encourage a comprehensive list of corrections or comments during the review process in order to minimize multiple submittals. We would also encourage early consultation be a component of this process so that corrective measures can be identified and addressed prior to submittal of the formal application. This has served us well with other LCP amendment applications and we believe it will be beneficial for this process as well.

### **Fiscal Impacts**

As you can see, a common thread through this letter is references to resource constraints. Staff time and resources, especially those of small communities like ours, are limited and administering the Local Coastal Program requires a great deal of attention. The processes identified in this guidance document will require the dedication of additional resources and the fiscal impacts to the community are uncertain. We would encourage the Commission to be mindful of this and think of ways to minimize strains on local resources.

### **Conclusion**

Coastal Communities play a very important role in the promotion and maintenance of access to the State's coastline and in implementing the Coastal Act. While we applaud the efforts to develop a Guidance Document that can be used as a resource to help coastal communities prepare for the challenges of sea-level rise, we hope that this does not become the basis for lengthened and costly LCP or project review process.

We thank you for the opportunity to comment and provide our input on the document and process. We look forward to working further with Coastal Commission staff in

addressing our concerns and developing reasonable, clear, and effective policies and programs that can be incorporated into the Guidance Document.

Sincerely,



Jon Biggs, City of Pismo Beach  
Community Development Director

C:

Honorable Mayor and Member of the City Council  
City Manager  
City Attorney



## THE CITY OF SAN DIEGO

February 11, 2014

### **California Coastal Commission Staff Comments on Sea Level Rise Policy Guidance**

The City of San Diego appreciates the opportunity to comment on the Commission's draft Sea-Level Rise Policy Guidance document. We realize other jurisdictions may have made similar comments, but we would like to identify several issues that are of concern to us or that we hope the final document will address more fully.

#### Coordination with other State agencies

- The SLR Policy Guidance document states that it works with other agencies and documents such as the General Plan Guidelines which are currently in draft form. Since our Local Coastal Program Land Use Plans (LUPs) are our community plans (part of the Land Use Element of our General Plan) we strive for internal consistency in implementing a variety of State policies and expect that documents and policies coming from multiple State agencies will be compatible with each other so local jurisdictions are not left trying to carry out conflicting State policies or laws. The GP Guidelines draft is not currently posted on the State website so we will be looking for consistent direction between State documents when we are able to review the GP Guidelines.
- We would appreciate understanding how CEQA legislation or Guidelines might change based on the adoption of this Guidance document
- We have concern about how suggested LCP changes that exclude or limit housing opportunities in the impacted area might be viewed by HCD or other organizations that review the City's capacity and efforts to provide adequate affordable housing. Our concern relates to balancing State priorities and the internal consistency of our General Plan.

While the Guidance document acknowledges there is no discussion about sea level rise involving property rights and takings, we believe that local jurisdictions are due more assistance on this topic, or at least an issues framework, since every coastal city and county will be dealing with the same responsibilities to some degree.

The Guidance document states that different approaches will need to be taken in different areas of the coast. Our highly urbanized community will need different tools than those used along an open portion of the coast. Examples of tools are provided for coastal areas with resource-based characteristics, and we hope that there will be practical tools for highly-

#### **Planning, Neighborhoods & Economic Development Department**

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urbanized areas. The overlay zones that are discussed in the document seem to presume equal results wherever it is used; however a highly-urbanized community may see no change from the application of an overlay. Also, transfer of development rights to other non-impacted properties is often not a viable option in a highly-urbanized jurisdiction.

We are looking forward to be able to access the **SCC Southern CA SLR Map Tool** which **was identified as being** "in development" in recent staff presentations. We are also interested in seeing a more developed discussion about the concept of limiting the life of structures in future impact areas since that is a generally unfamiliar concept.

Finally, Section 4.1 entitled Planning and Locating New Development indicates that the section contains recommended LUP language. We believe the section actually contains a significant amount of regulatory language that we would more appropriately consider for inclusion in our Land Development Code rather than in our LUPs. We are concerned that having regulatory language in 4.1 implies that this language could be proposed for inclusion into LUPs by the Coastal Commission staff by virtue of it being in that section. We hope that language in the Guidance document will reflect the Coastal Act and clearly state that a jurisdiction should incorporate policy language in its LUPs to implement Chapter 3 of the Coastal Act, and that appropriate regulatory language to carry out LUP policies should be placed in implementing ordinances (and not in LUPs).

Thank you for the opportunity to comment on the draft SLR Guidance document. We look forward to reviewing the final version that you are sending to the Commission for adoption later this year.

[REDACTED]

Betsy McCullough AICP  
Planning, Neighborhoods & Economic Development  
City of San Diego

cc: Nancy Bragado, Deputy Director  
Bill Fulton, Director



# City of Santa Barbara

## Community Development Department

[www.SantaBarbaraCA.gov](http://www.SantaBarbaraCA.gov)

February 13, 2014

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### RE: DRAFT SEA-LEVEL RISE POLICY GUIDANCE DOCUMENT

Ms. Papendick:

Thank you for providing the opportunity to review the California Coastal Commission's (CCC) *Draft Sea-level Rise Policy Guidance Document*. Once completed, this document will be an important tool for coastal communities throughout California that are working to address climate change and sea level rise (SLR) through updated policies and actions. The City of Santa Barbara supports the goals of this guidance document, and commends the Coastal Commission for leading this effort. The City does however have a number of comments and concerns with this guidance document, and emphasizes that this document and all comments provided are for guidance assistance purposes only, and not regulatory standard setting.

#### General Comments:

##### Consistent Working Assumptions

The City is concerned with the practical functionality and lack of direction on which of the SLR assumptions are used for planning purposes. Following the first Ocean Protection Council (OPC) recommendations (2011), State agencies (such as State Lands Commission and Coastal Commission) began coalescing around specified levels within the SLR model ranges to use for planning purposes (16 inches in 2050, 55 inches in 2100). This provided direction, predictability and consistency among agencies, and met the intent of the original 2008 Governor's Executive Order S-13-08 that led to the OPC, which was to provide direction and consistency among agencies in SLR assumptions to be used for planning.

The most recent OPC estimates (2013), based on the 2012 National Research Council (NRC) report features an even broader range of SLR values (2-12 inches in 2030, 5-24 inches in 2050 and 17-66 inches in 2100), but neither the OPC nor CCC have identified specific assumptions within these ranges for practical planning use. The result is that individual projects require analysis of at least two distinct scenarios to cover the high and low end of the scale. And, there is no direction as to how local jurisdictions should weigh the factors to decide which SLR assumptions to ultimately use for project review. The result is a cumbersome process that is both extensive and extremely expensive. Although the present state of science is still uncertain and can be anticipated to be changeable and uncertain over time, more specific guidance should nonetheless be provided.



#### Consistent Methodology

The process steps in the OPC estimates (2013) and draft CCC guidance documents require local jurisdictions and individual technical analysts to identify which SLR estimates to use, and which scenarios to require. This is inherently problematic, as methodologies and assumptions will likely vary between jurisdictions, research efforts, and the CCC, leading to unpredictability during the review process. For example, there are currently six distinct SLR vulnerability assessments being conducted in the Santa Barbara area. Without a consensus on which assumptions to use, it is likely that the outcomes of these efforts will vary, decreasing the regional value and practical applicability of these projects. Further, if a local agency chooses particular methodologies and assumptions and the Coastal Commission later disagrees with them during an appeal process, extensive delay added costs would result.

#### Reasonable Planning Horizons

Evaluating sea-level rise scenarios in 2100 poses additional issues. Eighty-six years is an unrealistic planning horizon, rooted in speculation. No current City plans or documents span that horizon. As a result, the City suggests that the 2100 planning horizon be eliminated or at a minimum not required for use in any permitting. Instead, all project level analysis should be consistent with the length of the permitted life of the project.

#### Regulatory Takings

Many of the actions in the guidance document have significant legal impacts, but a discussion of case history and mediation measures is not detailed. For instance, reducing development life is a sea-level rise mitigation measure mentioned multiple times during the CDP process. The City is concerned that this will be viewed as a regulatory "taking," and the CCC guidance document does not provide direction on the legality of implementing such actions. This document should also mention that state land boundaries and coastal jurisdiction boundaries will change with SLR. As a result, an expanded discussion of regulatory takings is needed.

#### Adaptation Measures

Overall, the City supports the range of adaptation measures outlined. However, the adaptation strategies should also provide considerations for short-term solutions pertaining to storm events, and what the community can do to prepare for, and survive such events. Retreat and relocation strategies are important actions to consider, but near-term events are often far easier to predict, and plan for mitigation. For instance, many of the City's coastal facilities and infrastructure were damaged by storm events, wave run-up and flooding during the storms of 1983. It is predicted that climate change will increase the frequency of extreme weather events, and with increased high water lines due to sea-level rise, flooding vulnerabilities and storm damage are anticipated to increase. As a result, it seems likely that another storm event like the one in 1983 will occur, and therefore, actions should be made to address existing facilities and infrastructure.

#### Need for Public Input and Regional Collaboration

The 6-step approach for LCP updates lacks a public input component. The City suggests that consideration for local input be provided after adaptation measures are identified (Step 4). A consideration in the planning process should also include regional collaboration and the involvement of local special districts (water, sewer, fire, etc).

#### Use of the Document

The City encourages the CCC to edit the document for a broader audience with information that can be easily disseminated, particularly in Section III, which discusses the science behind sea-level rise.

## **Specific Comments:**

### CDP Costs and Exemptions

The City is concerned with the fiscal implications of the multi-step approach required for LCP updates and CDPs, and the requirement for increased project-level analysis. While this increased analysis may be justifiable for LCPs and large new development projects, this approach would make many minor projects and routine maintenance efforts cost-prohibitive. The City specifically requests that the CCC consider exemptions to SLR analysis for repair and maintenance of public works facilities, with an emphasis to protect and ensure continuous operation of critical infrastructure. Public safety exemptions should also be considered for private maintenance and repair projects.

### CDP Mechanics

Step One of the 5-step CDP process states that projects should be adjusted for local conditions, but no direction is provided indicating which conditions matter, and how these conditions affect the process. Under Step 2.1 - *Analyze relevant sea-level rise impacts*, further detail is needed about the mechanism with which project life may need to be shorted due to erosion analysis (e.g. would a structure be required to be demolished if implementing a protective devise is the only method to save the development?).

Step Three needs to detail how a municipality should consider adjacent future projects that may exacerbate SLR or inundation area during the review process. With the exception of the "New Development" heading, the sections of Step 3.1 – *Analyze coastal resource impacts and hazard risk*, do not lend themselves to evaluating a CDP for a development project. Instead, these sections focus on the evaluation of the overall impacts of SLR on resources in general. The Water Quality section states that the elevation of the groundwater table should be identified, but does not clarify the methodology for this analysis or who should conduct it (e.g. does this require a hydrologist?).

Step Three of the example CDP project includes a component regarding bluff-top residential development. This section states that all relevant resources should be evaluated for SLR impacts both with and without project implementation. It may prove onerous to require an applicant to evaluate both of these scenarios.

Step Five includes a monitoring component. A provision should be added to address the specifics for how the monitoring requirements should be implemented.

### Flood Elevations

Further guidance is needed to address how finished flood elevations / base flood elevations should be evaluated when considering consistency with existing Flood Control District and FEMA requirements. Likewise, the guidance document points to increased monitoring as a methodology to evaluate SLR hazards, and "triggers" are proposed as a mechanism to justify the modification of development life, but specific thresholds and detailed guidance are not provided.

### Critical Infrastructure

In order to protect the City's critical operations, the City must plan ahead and identify the adaptive capacity, consequences of SLR, and evaluate land use planning options and constraints as proposed in the SLRPG. The City appreciates that critical infrastructure such as

wastewater treatment plants and transportation infrastructure have been specifically incorporated for consideration in Section IV of the SLRPG.

*Section 4.1 Planning and Locating New Development* suggests changes to an updated LCP in order to address the kinds, locations, and intensity of uses allowed in the coastal areas at increased risk of coastal hazards. This section proposes updated development standards and redevelopment restrictions. As the Commission is aware, the City's El Estero Wastewater Treatment Plant is currently considered a non-conforming use with respect to the City's LCP. Such additional development restrictions as suggested in Section 4.1 could severely restrict or delay the City's ability to upgrade critical systems at El Estero to maintain compliance with State and Federal air and water quality standards and permitting requirements. The City suggests an exemption to this development restriction for wastewater treatment plants located in the Coastal Zone. This is necessary in order to continue safe and reliable operation of this critical piece of City infrastructure. In addition, provisions should be made to expedite the review process of all critical infrastructure projects.

*Section 4.3 Public Access and Recreation* suggests changes to an updated LCP that would add policies to address impacts to transportation plans. Such policies would establish new alternative transportation routes for areas at risk from SLR, to ensure that continued alternative transportation and parking is available. As described above, many of the City's primary transportation routes are in the Coastal Zone. The City appreciates the Commission's inclusion of alternative transportation route planning in the event of SLR. However, the Commission's draft coastal retreat policy includes converting coastal property vulnerable to sea rise to open space. The City is concerned how such a policy would affect critical infrastructure such as public roads.

*Section 4.6 Water Quality* proposes updates to the LCP, which would include policies that would establish a long-term strategy for saltwater intrusion in aquifers. The City supports policies which establish long-term strategies, while not limiting the City's various pumping alternatives for this critical resource.

*Section VII. Next Steps* lists Goals and Objectives from the CCC's recently completed Strategic Plan for 2012-2018. Objective 3.2 – *Assess Coastal Resource Vulnerabilities to Guide Development of Priority Coastal Adaptation Planning Strategies* including several actions, especially 3.2.2 and 3.2.3, which encourage interagency coordination and collaboration to address public infrastructure vulnerabilities. The City is in strong support of such policies as public agency partners such as Caltrans, the Department of Water Resources, and others are critical for assessing coastal resource vulnerabilities.

*Appendix C, Table 17. Site Development Standards and/or Mitigation* identifies infrastructure-service protection as a category where "...LCPs can identify critical infrastructure to hazards from sea-level rise, and can include criteria for managed relocation of at-risk facilities and direction to ensure continued function of critical infrastructure given sea-level rise and extreme storms." The City is in support of the implementation of any and all measures that ensure continued function of critical infrastructure.

#### Conclusion

The City's primary concerns with this guidance document are: 1) The need for consistent working assumptions among agencies to use for SLR planning purposes; 2) The need for additional technical direction; 3) The need to reduce the potential financial burden of executing project-specific SLR assessments; 4) The legality of certain adaptation actions including the

Draft SLR Policy Guidance Document  
City of Santa Barbara Comments  
February 13, 2014

potential for regulatory takings; 5) The lack of short-term adaptation actions; and 6) Further consideration of critical infrastructure.

Thank you again for providing the opportunity for the City of Santa Barbara to provide feedback on this truly important guidance document. For any future questions, please contact my staff member John Ledbetter, Principal Planner via email - [REDACTED] or phone - [REDACTED]

Sincerely,

[REDACTED]

Bettie Weiss  
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February 14, 2014

CITY OF  
**VENTURA**

Ms. Hilary Papendick  
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Re: California Coastal Commission  
Draft Sea Level Rise (SLR) Policy Guidance  
Response to Administrative Draft

Dear Ms. Papendick:

Thank you for the opportunity to review and comment on the California Coastal Commission Draft Sea Level Rise Policy Guidance ("Guidance"). Like many coastal cities up and down California, the City of Ventura has a keen interest in the potential for detrimental impacts due to sea level rise on natural amenities, public infrastructure and private property owners in our community. We recognize the significant step the Coastal Commission (CCC) is taking to draft policy guidance on this important topic, but have several concerns as to the course taken in doing so. The City of Ventura would like to highlight several issues of concern that may serve as obstacles to local jurisdiction implementation of sea level rise and which we would request be addressed by the CCC.

The Draft Sea Level Guidance is issued as an advisory guidance document to consider when affected coastal jurisdictions update or amend their Local Coastal Plans (LCP) or submit Coastal Development Permits (CDP) for approval. While the Guidance does not mandate that local jurisdictions initiate an update of their LCPs for SLR, nor stipulate that use of the Guidance by local jurisdictions is mandatory, reference is made by the CCC as to compliance of the document with the agency's mandates via the California Coastal Act (CCA) and that it will serve as the basis of Coastal Commission review of local LCPs and CDP projects. Furthermore, the Guidance states the Coastal Commission will continue an existing practice of submitting sea level rise analysis requirements on LCPA and CDP applications. The Sondermann Ring Partners mixed-use project at the Ventura Harbor and the Ventura Downtown Specific Plan LCPAs have been two such projects. Thus, the Guidance serves as more than an advisory document where its recommendations will serve as the basis for an ongoing practice of applying sea level rise analysis, conditions and mitigation prior to receiving certification of LCP amendments and CDP projects.

Unfortunately, the Guidance does not adequately address some of the more common obstacles to implementing an additional requirement on local planning processes and administering such requirements to local jurisdictions may prove to be premature without additional measures at the State level.

**Local Unfunded Mandate** - Without a costly comprehensive certified LCP update to address such matters, CCC administration of the Guidance has the potential to penalize both LCP amendments and CDPs on a project-by-project basis. The impact of performing required sea level rise analysis will prove costly to local jurisdiction staff resources and project applicants. Furthermore, for the most part, local jurisdiction staffing lacks the expertise to perform such analysis without retaining outside experts at additional cost, rendering the Guidance an unfunded mandate to local jurisdictions. The Guidance states that the CCC will seek competitive grant funding for local jurisdictions to perform sea level rise planning as part of its next steps. However, without a budgeted stream of funding to local jurisdictions to do so, it constitutes a premature requirement with which they may not be able to comply. As of this writing, the Governor's budget proposal excludes the \$3 million previously allocated to the CCC to provide assistance and review to local jurisdictions for LCP updates. Without the prior allocation to CCC, the ability of the agency itself to provide effective assistance to local jurisdictions will be comprised.

As such, the Guidance, in particular the 'Next Steps' program should come attached with a guaranteed funding source and assistance resources to local jurisdictions to implement the Guidance and eliminate the fiscal obstacle to LCP updates.

**Local Community Support** – In addition to the cost of preparing a LCP update specifically for purposes of incorporating SLR planning, another factor that may play into the ability of some jurisdictions to implement the Guidance is simple lack of community support to pursue such an effort. Without approval at the local level, an LCP update would not be forthcoming to the CCC for certification. Given the cost of plan preparation, uncertainty of the CCC certification process and potential impact to private property owners from many of the recommended sea level rise mitigation measures, jurisdictions lacking proactive community support will be reluctant to do so in the absence of clear signals that a sea level rise policy proposal would be able to pass the local approval process let alone the uncertainty typical of review and actions by the CCC. Furthermore, the Guidance lacks requisite analytic anchors and guarantees that certified plans will remain unchallenged on the basis of their SLR analysis as subsequent projects are submitted for review and approval.

At a minimum, the Guidance should specifically address special issues of certification that arise where the base recommended science will be reassessed over time and propose a program that will ensure project review consistency for local projects. For example, the SLR standard should be "locked in" for a time period by the LCP updates and CDP filing dates, regardless of an extended CCC review and approval process.

**Legal Constraints** – Inherent in local land use regulation is a framework of legal decisions that present constraints to local authority. Many of the policy recommendations put forth as measures to be taken to protect communities from sea level rise such as rezoning, rolling easements, and transfers of development rights convey legal liability to local jurisdictions for encroachment on private property rights, long established by the courts. This is a particular obstacle in communities with long established development along their entire coastal zone and for whom projects will not mainly comprise 'new' development. As such, these measures present an obstacle to the feasibility of sea level rise planning at the local level.

To the extent the Guidance puts forth these regulatory recommendations it should also include a discussion of regulatory and legislative solutions at the state level that will remove obstacles such as liability for takings which it specifically excludes. Until such obstacles are discussed in the Guidance and a program of legislative and regulatory measures set in place on behalf of local jurisdictions, these measures are legally infeasible and should be stricken from required recommendations on LCP updates and CDPs.

**Ambiguity Regarding Adequacy of Analysis** - The Guidance recommends the use of 'Sea Level Rise for the Coasts of California, Oregon and Washington: Past, Present and Future' by the National Research Council (NRC, 2012) as the best available science to be used when assessing future sea level rise for local areas. Additionally, while recommending the NRC report as the best available science, the CCC also puts forward other resources to consult, including the Coastal Resilience Ventura effort, in which the City of Ventura is a participant. The Guidance also states that the science will be reassessed at regular intervals of approximately 5 years for adequacy. What the CCC does not address is the degree to which reliance upon this study or other recommended resources in the Guidance will constitute sufficient analysis by local jurisdictions when conducting recommended sea level rise studies and thus ensure a level of predictability for local jurisdictions and applicants in the project review process.

Furthermore, the recommended SLR analysis approximates the life of a proposed project of upwards for a minimum of 75 or 100 years, while the planning horizon for most local general plans and LCPs is a 20 to 25 years. Such an extension of the planning horizon for a LCPA or CDP would present difficulties in instances where the LCP is a portion of a local general plan and the analysis in its accompanying EIR.

The Guidance should include minimum technical requirements by which a local jurisdiction can be assured of adequacy of required sea level rise projections and impact analysis and the time period within which approved data sources are considered valid by the CCC. If other recommended sources are also adequate for the required analysis, such as existing local studies, CCC should include a pre-certification of the adequacy of those sources by which local jurisdictions are offered assurances to avoid multiple revisions to studies and costly delays to project reviews.

Ms. Hilary Papendick  
February 14, 2014  
Page 4


***Issues of Local Concern*** – Closely associated with the issue of planning horizon in local comprehensive land use plans is public infrastructure planning. Any updates to the LCP would also be expected to occur with a similar planning horizon to the local general plan, and would be expected to be eventually incorporated therein. These comprehensive planning efforts would also necessarily include an analysis of required infrastructure and subsequent adjustments to the local Capital Improvement Program on the same timeline. As a local jurisdiction with one of seven wastewater treatment plants along the Pacific coast outside the San Francisco Bay, the City of Ventura is concerned that the requirement to perform a regional risk assessment to the year 2100 does not accommodate the functional limits of local comprehensive planning time horizons.

The Guidance should allow for an adaptive management approach to public facilities (as well as some development project approvals) such that consistency with local planning horizons can be considered for them.

The City of Ventura also benefits from the use of seven existing groins along its coastline to manage beach erosion. Where the Guidance document states that it would like to avoid perpetuation of shoreline armoring, the City is concerned that maintenance by the managing agency of these structures will be discouraged and may eventually be disallowed. The Guidance document should provide criteria by which such measures would be taken.

Once again, thank you for the opportunity to provide comments on the Draft SLR Guidance document and we look forward to continued dialogue with the CC to address the issue of SLR in local planning efforts.

Sincerely,



Dave Ward, AICP  
Planning Manager, City of Ventura





Caring for Your Coast

**Gary Jones**  
Acting Director

**Kerry Silverstrom**  
Chief Deputy

**John Kelly**  
Deputy Director

February 13, 2014

California Coastal Commission  
c/o Sea-level Rise Work Group  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Dear Commissioners:

### **COMMENTS ON CALIFORNIA COASTAL COMMISSION DRAFT SEA-LEVEL RISE POLICY GUIDANCE**

The County of Los Angeles Department of Beaches and Harbors (DBH) appreciates the opportunity to comment on the California Coastal Commission Draft Sea-level Rise Policy Guidance document (Guidance Document), and the extended time allowed to submit comments from January 15 to February 14, 2014. DBH respectfully submits the following comments to the Guidance document.

- 1. Page 20. Purpose and Scope of Guidance Document** - The Guidance Document states that the purpose of the document is not that of "regulatory." However, the document's title and recommendations to amend LCPs infer "policy" and "regulation" instead of guidance. DBH recommends that the document clearly states that it is a guidance document and that it stays consistent throughout.
- 2. Page 22. Use Science to Guide Decisions** – Published documents prepared by different agencies, such as the National Research Council (NRC) SLR, projecting SLR cover large geographic areas and with varying results. It would be very difficult to utilize the recommended NRC SLR document, or any other current scientific document for that matter, to project local conditions. To do this, local public agencies would need to extensively use public funds, possibly at the expense of other public services, to project SLR along their coastlines. The Guidance Document should be revised to include the flexibility to use studies pertinent to local conditions.
- 3. Page 24, 25, B-8, and 54. Property owners should assume risks associated with new development in hazardous areas** – The Coastal Act does not prohibit the construction of seawalls. Section 30253 of the Coastal Act states that "New development shall minimize risk to life and property in areas of high geologic,



flood, and fire hazard". Minimization of risks can include the use of revetments, seawalls, and retaining walls and the Guidance Document should reflect this.

4. **Page 25, C-9. Provide for maximum protection of public beach and recreational resources in all coastal hazard planning and regulatory decisions** – Stated options should include repairing and replacing structures such as groins that serve to protect public beaches from erosion, therefore maintaining a recreational asset and public access.
5. **Page 25, C-10. Maximize natural shoreline values and processes; avoid the perpetuation of shoreline armoring** - This is contrary to Sections 30235 of the Coastal Act, which states, "Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply". These coastal protection structures have proven to be effective in Los Angeles County and the East Coast, in the prevention of erosion and protection of coastal facilities. Removing them would hamper public safety, infrastructure, public facilities and private property.
6. **Page 26, C-13. Require mitigation of unavoidable public coastal resource impacts related to permitting and shoreline management decisions** - Mitigation fees are already required as part of the Coastal Development Permit, Regional Water Quality Control Board, CEQA, and Federal permit processes. Because there are already mitigation fees in place, adding more fees could discourage projects that protect public beaches and enhance the public's access to the coast. Instead there should be no mitigation fees for projects of this type.
7. **Page 28 and 29, A. Best available science on sea level rise** – The Intergovernmental Panel on Climate Change 4<sup>th</sup> Assessment Report (IPCC AR 4) referenced in the Guidance Document is outdated. The new IPCC AR 5 was released last fall, and contains more conservative assessment projections. Should the IPCC AR 5 be used instead of IPCC AR 4 to account for local projections?
8. **Page 30-34, B and C Physical Impacts of Sea-Level Rise/Consequences of Sea-Level Rise for Coastal Resources and Development** - The Guidance Document should emphasize that local jurisdictions affected by all physical impacts should utilize, to the maximum extent possible, offshore sand sources and develop a nourishment program, as suggested on Page 54, to mitigate erosion and protect recreational areas and facilities.

- 9. Page 51 and 54 – Limit or prohibit use of bluff retention or shoreline protection for new development / Require property owners to waive the right to shoreline protection in the future - Coastal Act, Section 30253, allows for protection of new development, including the protection of "special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses", and the Guidance Document should reflect this.**

We appreciate the opportunity to provide input. Should you have any questions, you may contact me at (310) 305-9522 or by email at [gjones@bh.lacounty.gov](mailto:gjones@bh.lacounty.gov). Alternatively, you may contact John Kelly, Deputy Director, at (310) 305-9532 or by email at [jkelly@bh.lacounty.gov](mailto:jkelly@bh.lacounty.gov).

Very truly yours,

A black rectangular redaction box covering the signature of Gary Jones.

Gary Jones, Acting Director

GJ:JK:CE

c: Don Knabe, Supervisor, Fourth District, County of Los Angeles  
Zev Yaroslavsky, Supervisor, Third District, County of Los Angeles



# County of Santa Barbara Planning and Development

Glenn S. Russell, Ph.D., Director

Dianne Black, Assistant Director

February 13, 2014

California Coastal Commission  
c/o Sea level Rise Work Group  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Email: [SLRGuidanceDocument@coastal.ca.gov](mailto:SLRGuidanceDocument@coastal.ca.gov)

RE: Draft Sea Level Rise Policy Guidance

Dear Ms. Papendick:

Thank you for the opportunity to comment on the Coastal Commission's Draft Sea Level Rise Policy Guidance document. We appreciate the Coastal Commission's work in developing guidance relative to analysis and appropriate treatment of sea level rise. We have strong concerns about the feasibility of implementing some of the suggestions concerning existing development. In addition, we offer the following specific comments on the draft document.

#### Chapter IV: Addressing Sea Level Rise in Local Coastal Programs

- The direction specified in Step 1 requests that jurisdictions modify the range of sea level rise projections specific for their region to account for local conditions. The guidance document should provide more information on how jurisdictions should modify the region specific projections to account for local conditions, including examples of local conditions that should be considered in the projections.
- The discussion in the Adaptive Capacity, Consequences, and Land Use Planning Options and Constraints Sections under Step 3 should be located under Section 4, as this information is more a part of the response rather than an assessment of risk to sea level rise impacts.
- The discussion for identifying adaptation measures to minimize risks in Step 4 lacks guidance for the role of the public process in updating a certified LCP. Additionally, it would be helpful to include examples of adaptation methods in the guidance document.
- In general, the suggestions in Section 4 that would affect existing development will be much more challenging to apply than for vacant land. The guidance document should include a robust discussion for each of the suggested updates to development standards in the LCP. The direction specified in Step 4.1 suggesting changes to the LCP for planning and locating new development lacks guidance for built out areas where their uses can become nonconforming and can lead to potential legal issues associated with this suggestion. The discussion on updating development standards to include language for converting vulnerable areas to conservation or open space site by allowing and encouraging retirement or transfer of developments rights on private property

subject to sea level rise raises questions as to whether this type of development standard will be supported by Coastal Commission.

- We are concerned about the feasibility regarding the direction under Step 4.1 to: 1) limit subdivision in areas vulnerable to sea level rise by prohibiting certificates of compliance (COC) since COCs simply recognize legal lots, rather than create them; and 2) the direction to consider a shorter development life for constrained lots. Additionally, we are concerned about potential legal issues, including takings claims, associated with the suggestion to limit expansion and redevelopment of non-conforming or other land uses in hazardous areas.
- The direction specified in Step 4.1 concerning limiting development near vulnerable water supplies isn't clear. Does this include private wells?
- The discussion of suggested changes to existing LCPs under Step 4.5 states that existing LCP agriculture policies may need to be updated to include policies limiting the conversion of non-prime agricultural land and establishing incentives for conservation easements. It is unclear how these policies will protect agriculture given sea level rise projections.
- The suggested action under Step 4.5 to minimize impacts by identifying and rezoning areas suitable for future agricultural production to replace areas lost to sea level rise seems impractical. Because most counties originally used an agricultural zoning as a catch-all for all non-developed land, there will be little opportunity to rezone additional agricultural land.
- The direction to add policies to protect archeological and paleontological resources from sea level rise in Step 4.7 should include language regarding the significance of the resource.
- The discussion of Scenic Resources in Step 4.8 is not very specific; the guidance document should provide more information on what visual impacts may occur with sea level rise.
- The discussion under Step 5 for updating LCPs and obtaining certification with the Coastal Commission does not characterize the process accurately and should provide more details on the certification process.

#### Chapter V: Addressing Sea Level Rise in Coastal Development Permits:

- The discussion of expected project life or design life in Step 1 states that the proposed life of a project may need to be shortened if the project site is constrained by hazards such that development cannot be sited and designed to be safe for a 50 or 75 year design life without reliance on protection efforts or impacts to coastal resources. The guidance document should provide more information on how jurisdictions could implement such a recommendation, due to the potential legal issues associated with this suggestion.
- The direction specified in Step 3 requests analysis beyond the scope of potential project impacts. For instance, under Public Access and Recreation, the Guidance Document states that all public access locations on or near the proposed project should be identified, and that impacts to those access points from sea level rise should be determined. Similarly, the Coastal Habitats section specifies that all coastal habitats on or near the proposed project site need to be identified, and impacts to those habitats on and offsite from sea level rise need to be analyzed. This same issue applies to the analysis requested for Scenic Resources.
- Under the Agricultural Resources and Water Quality sections of Step 3, the Guidance Document stipulates that necessary submittal information includes estimation of the likely future elevation of groundwater, whether groundwater changes will alter proposed site conditions, and whether drainage patterns will change with rising sea level. These requirements are not feasible or appropriate at the level of individual Coastal Development Permits.

Draft Sea level Rise Policy Guidance  
February 13, 2014

Again, thank you for the opportunity to comment on this proposed guidance document. If you have any questions please contact Heather Allen, Associate Planner, at (805) 884-8082 or [hallen@countyofsb.org](mailto:hallen@countyofsb.org).

Sincerely,

A black rectangular redaction box covers the signature of Glenn S. Russell. There are some faint handwritten marks above the box, possibly initials or a date.

Glenn S. Russell, PhD., RPA, Director  
Planning and Development Department

G:\GROUP\COMP\Comp Plan Elements\Legislation\AB 32\CAS\Adaptation\CCC SLR Guidance Doc

February 13, 2014

Ms. Hilary Papendick  
California Coastal Commission  
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45 Fremont Street, Suite 2000  
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E-mail: [SLRGuidanceDocument@coastal.ca.gov](mailto:SLRGuidanceDocument@coastal.ca.gov)

Re: California Coastal Commission  
Draft Sea-Level Rise Policy Guidance  
Response to Administrative Draft

Dear Ms. Papendick:

The Ventura County Resource Management Agency, Planning Division, is in receipt of the California Coastal Commission (CCC) Draft Sea-Level Rise (SLR) Policy Guidance. Ventura County also participated in the two webinars held on December 5 and 17, 2013, and followed the CCC hearing on December 12, 2013, and January 9, 2014, to listen to oral comments on the draft document. The Planning Division appreciates the opportunity to comment on the Draft SLR Policy Guidance. We recognize that this document will provide important direction for Ventura County when we are ready to prepare amendments to our Local Coastal Program (LCP) that address sea-level rise. We also recognize the importance of the SLR Policy Guidance document to the future processing of Coastal Development Permits (CDPs). Similar to the CCC, Ventura County believes that understanding SLR is an important issue that should be addressed in order to avoid future hazards and protect coastal habitats and other coastal resources.

During its review of the Draft SLR Policy Guidance, the Planning Division identified several issues, summarized below, that we recommend be addressed to avoid future problems and to more effectively implement the CCC document:

- *Guidance versus regulations:* Greater clarity is needed within the SLR Guidance Document to define its regulatory intent. The guidance was developed using 17 principles intended to guide sea-level rise adaptation efforts. These principles were derived from the Coastal Act and generally reflect the policies and practices of the CCC in addressing coastal hazards. In the absence of sea level rise certified policies in local LCPs, however, it appears that the SLR Policy Guidance has the same degree of authority as the Coastal Act. In our view, the CCC policy guidance should primarily be implemented through the LCP amendment process and should not be prematurely used to condition discretionary projects through the CCC appeal process.



- *Insufficient Funding:* While it is important that the SLR Guidance Document be implemented through the standard LCP amendment process, a lack of funding for that process will create significant implementation delays unless additional funding is made available.
- *New versus existing (or redevelopment) projects:* The SLR Guidance Document should more clearly distinguish between policies that apply to existing versus new development, consistent with the Coastal Act. In addition, the SLR Guidance Document should directly address the legal takings issue.
- *Expected project life/design life:* In our view, this is a complicated issue that should not be defined by the SLR Guidance Document. Other types of hazards (fire, earthquake, etc.) are addressed through the regulatory process without defining expected project life.
- *Regional Vulnerability Assessments and Adaptation Planning:* Except where necessary for critical infrastructure, the SLR Guidance Document should minimize requirements for inter-jurisdictional planning, as such requirements are likely to increase costs and timelines for LCP updates that address SLR.

The comments summarized above, which are listed in general order of priority, are further articulated below.

### **Guidance Versus Regulation**

Ventura County requests that the SLR Policy Guidance document be updated to clarify how it will be used by the CCC to evaluate proposed development projects and proposed amendments to LCP documents. According to the CCC, the SLR Policy Guidance, which the CCC intends to adopt in April 2014, is not a regulatory document and does not directly govern the actions that the Commission or local governments may take under the Coastal Act. The Coastal Commission SLR Policy Guidance is rooted in 17 fundamental guiding principles, many of which derive directly from the requirements of the Coastal Act. The 17 principles are intended to guide sea-level rise adaptation efforts.

The SLR Policy Guidance document should be updated to clarify how it will be used by the CCC to evaluate proposed development projects and proposed amendments to LCP documents. Ventura County is concerned that the SLR Policy Guidance will have an immediate impact on proposed development projects as well as LCP amendments:

- Development Projects: When the 17 principles identified in the SLR Policy Guidance are reviewed against past actions taken by the CCC, it appears that 4 of the principles formed the foundation for the CCC's conditional approval of the City of San Buenaventura LCP Amendment for the Ventura Harbor mixed use development project (case no SBVMAJ-1-11). In its conditional approval, the CCC specified that the City of Ventura must provide a coastal hazard analysis that identifies sea level rise thresholds for future development. The City was



directed to consider best available scientific information in the preparation of findings and recommendations for all requisite geologic, geotechnical, hydrologic, and engineering investigations. The City also must substantiate the range of values that address coastal hazards and must require that all new structures in hazard areas be sited and designed to minimize destruction of life and property during likely inundation events.

Guidance for LCP updates (step 4) identifies two types of updates that are necessary to address sea-level rise: (1) policies and ordinances that apply to all development exposed to sea level rise, and (2) policies and land use changes to address specific risks in a particular portion of the planning area. The CCC action taken in the above circumstance goes against standard development review processes and procedures, which rely on adopted policies and regulatory language. In the absence of LCP policies and implementing development standards to address SLR, an applicant proposing a project along Ventura County's coastal zone is not required to provide an analysis on sea level rise and the County has no basis for adding conditions to a project that address sea level rise. The County is therefore concerned that coastal projects subject to discretionary review will now be subject to appeal by the CCC if they do not adequately address SLR.

- LCP Amendments: Ventura County is currently working on the second phase of a major LCP update that includes a variety of subject areas. Those subject areas are defined by a grant-funded work program prepared in 2009, and sea-level rise is not a major topic area listed in the scope-of-work for this LCP update. Due to mandated deadlines as well as limited funding, the six steps to address SLR will not be accomplished during this particular LCP update. Our concern is that the CCC will reject the entire amendment if SLR is not addressed in a matter that is acceptable to CCC staff.

In our view, the SLR Policy Guidance should be modified to clarify how the CCC will use the document during its review of development projects as well as LCP amendments. Additional clarification language should be added to provide private landowners and developers with some level of certainty about how proposed development projects will be reviewed and conditioned by the CCC. Additional clarification language should also be added to provide clarity to public agencies that are currently processing LCP amendments. Once the SLR Policy Guidance is adopted, will the information translate to regulations? Will the CCC appeal LCP amendments and CDPs if they do not incorporate the CCC SLR adaptation planning processes for LCPs and CDPs as noted in the SLR Policy Guidance?

### **Insufficient Funding**

If adoption of the SLR Policy Guidance results in short-term impacts to development projects and LCP amendments, as described previously, then the lack of funding available to update LCP programs in response to that guidance becomes a major issue

of concern for coastal California jurisdictions. Updates to LCPs are a significant and costly undertaking for local governments. LCP amendments that address sea-level rise, in particular, will be expensive as they will rely on the review and application of complex technical data to a wide variety of on-the-ground conditions. LCP amendments that address sea-level rise will also be expensive as they rely on long-range forecasts and conditions that change dramatically over time.

In 2013, the following three grant programs were announced to assist local governments to develop SLR policies and development standards. As shown below, a total of \$5 million was available to fund \$12 million requested by grant applications to update LCPs to address SLR:

- (1) CCC LCP Assistance Grant: These grants provided a total of \$1 million in available funds, and the CCC received 28 applications requesting funding totaling over \$5.2 million. A number of grants awarded through this program did not focus on sea-level rise.
- (2) Ocean Protection Council's (OPC) LCP Sea-Level Rise Grant Program: This program provided a total of \$2.5 million in available funds. The OPC received 18 applications requesting a total of \$3.8 million and seven projects were recommended for funding, for a total of \$1.3 million. A second round of the grant program will be announced in 2014 to distribute the remaining funds.
- (3) State Coastal Conservancy's Climate Ready Grant Program: This program provided a total of \$1.5 million in available funds. According to the Coastal Conservancy's top ranked projects, there were 20 applications that, when combined, requested nearly \$3 million.

In the case of the LCP Planning Grant program, jurisdictions that received grant awards often had extensive in-kind funds. For example, Marin County was selected and awarded \$54,000 in part because the CCC considered their proposal to have a high likelihood of success due to nearly \$3 million in in-kind funds from a variety of funding sources.

Financial assistance has been, and will continue to be, critical for the 76 coastal counties and cities responsible for the preparation of coastal plans and processing of coastal permits.<sup>1</sup> Using Marin County as an example, if a rough estimate is made that incorporating SLR into LCPs generates a cost of approximately \$3 million per jurisdiction, then it could cost \$228 million to update LCPs to address sea-level rise. When compared to currently available funding, it becomes clear that far more funding will be needed to successfully incorporate the six step process defined by the Coastal Commission's SLR Policy Guidance into LCPs. Without additional funding sources, we believe it is unlikely that the majority of coastal agencies will undertake LCP updates that address SLR in the near future. Considering this likelihood, it is unclear what tools local agencies will have to require or facilitate project reviews that address SLR.

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<sup>1</sup> In addition, non-governmental organizations compete for grant funds.

### **Expected Project Life or Design Life**

The SLR Policy Guidance suggests that a minimum of 75 to 100 years should be considered as the design life for primary residential or commercial structures. The expected or proposed project life would be used to determine the amount of sea-level rise to which the project site could be exposed during the lifetime of that particular development. Ventura County recommends that project life or design life be removed from consideration by the SLR Policy Guidance, as the project life is not typically defined for other types of projects proposed in high-hazard areas.

Another reason to eliminate expected project life or design life from the SLR Policy Guidance is because project life is difficult to determine. Also, it is not clear how the CCC established the 75 to 100 year design life. Predictions for building life-spans are extremely rough estimates, and one estimation technique is based on the type of construction:

- Temporary: 0-5 years
- Semi-permanent: 5-25 years
- Permanent: over 25 years.

Other methods utilize tables of the expected life of building components or various material types. Architects and engineers, for example, may select particular building materials/components based upon the expected life of the project. Many factors affect the life expectancy of building components, including the quality of the component, quality of installation, level of maintenance, weather and climatic conditions, and intensity of use. If there are no cost constraints, maintenance and repair activities can indefinitely extend the physical life of the structure.

It is unclear why the CCC wants local governments to define project life expectancy, and it is also unclear how this information would be used during the regulatory review process. Life expectancy for a project is generally not considered during permit reviews, although beach front communities currently are exposed to damage from storms and high waves. Similarly, buildings and structures in high fire hazard areas are at risk from wildfire and the loss of private property is a consequence of building in high-risk areas. Nevertheless, life expectancy is not assigned to a structure in a high fire hazard area and, if it is destroyed, the property owner absorbs the cost to rebuild or replace the structure in a location with fewer hazards.

As an alternative to requiring the lead agency to determine life expectancy for primary residential and commercial structures, the SLR Policy Guidance should discuss the life expectancy of seawalls and the CCC's position on maintenance and repair of seawalls that protect primary residential and commercial structures and that effectively determine the life expectancy of a structure subject to flooding from sea level rise.

### **New versus Existing (or Redeveloped) Property**

The SLR Policy Guidance should more clearly distinguish between existing and new development and should also address legal takings issues. Currently, the SLR Policy Guidance does not provide different guidance for existing versus new development. Nor does the document describe how local government or the CCC will resolve disputes that involve private property rights and takings issues. Instead, the SLR Policy Guidance includes a recommendation that local agencies obtain legal advice regarding specific situations that raise takings concerns.

At a minimum, the SLR Policy Guidance should be updated to address the following sections of the Coastal Act, which distinguish existing versus new development:

- Coastal Act Section 30235 states "Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply."
- Coastal Act Section 30253 states "New development shall... neither create nor contribute significantly to erosion... or in any way require the construction of protective devices that would substantially alter landforms along bluffs and cliffs."

The difference between Sections 30235 and 30253 are the words "existing" versus "new" development. The Coastal Act requires the Commission to protect existing structures; it does not require the Commission to approve new development placed in a hazardous area.

At the December 12, 2013, CCC hearing, Commissioner Zimmer noted that every month the CCC is presented with a request to approve a seawall or an emergency seawall that conflicts with the draft SLR Policy Guidance document. She expressed her concern about how the Commission will handle these types of projects. She also suggested (and we agree) that the SLR Policy Guidance should include a section that discusses legal challenges associated with seawalls and that describes how previous court cases and legal opinions should be used to interpret the discretionary power the Commission retains. Furthermore, additional specificity in Appendix C, Adaptation Measures, should be included that reflect strategies that the Commission has found acceptable in this context.

Commissioner Zimmer's request reflected a similar point made by Commissioner Shallenberger that the SLR Policy Guidance does not address "vulnerable communities"-that is, communities that do not have the ability to adapt or respond to emergencies. Ventura County's existing beach communities, for example, do not have the luxury to relocate or to modify their residences in any significant way to reduce flooding or other risks associated with SLR. It is therefore likely that residents will request that seawalls protecting their property be reinforced. In the absence of a clear

interpretation of Section 30235 through the legislature, the issue of seawalls will continue to be litigated.

The SLR Policy Guidance recommends that local jurisdictions' limit the expansion of non-conforming or other uses in hazardous areas and require projects with significant exterior and/or interior alterations of non-conforming structures to bring the entire structure into conformity with current requirements regarding avoidance and minimization hazards. Consistent with this recommendation, the Ventura County Building Code (2010 Edition) Section 45.3.4.4 states that when the estimated value of repair is 50% or more of the replacement value of the structure, the entire structure shall be brought into conformance with the fire and life safety and structural requirements of the current code. What is not clear, however, is what regulatory standard should be used to reflect the SLR Policy Guidance in such situations prior to the point when a Zoning Ordinance or other implementation document is updated to reflect the SLR Policy Guidance. It also is not clear what should occur when a property owner wants to demolish and rebuild a primary residence.

### **Regional Vulnerability Assessments and Adaptation Planning**

Principle No. 12 and No. 16 suggest that local governments conduct vulnerability assessments and adaptation planning at the regional level. To accomplish this, the local government would evaluate SLR impacts throughout an entire littoral cell or watershed, determine how those impacts affect the LCP jurisdiction or project, and recommend adaptations that minimize impacts generated by sea-level rise.

Inter-jurisdictional planning and cooperation is needed to minimize SLR impacts to infrastructure or natural resources that span multiple jurisdictional boundaries. However, although there may be benefits associated with addressing cumulative impacts on a regional basis, the SLR Guidance document is unclear when it describes a study that includes "regional impacts and any cumulative impacts within a larger planning context in a LCP or other larger-scale analysis."

At the December 12, 2014 CCC hearing, Commissioner Brian Brennan suggested that the coast be subdivided by littoral cell. Commissioner Brennan also suggested that the discussion on regional SLR impacts be extended outside the Coastal Zone because sand and sediment originates from the inland areas. The Santa Barbara Littoral Cell extends from Point Conception to the Mugu submarine canyon, and it contains a complete cycle of sedimentation including sand sources that provide sand to the shoreline, sinks where sand is lost from the shoreline, and transport paths on the shoreline along which the sand moves. There is evidence that shoreline and bluff erosion are impacting beaches along this littoral cell. Coastal change in the Santa Barbara Littoral Cell region is complicated by the irregular coastline, variability in wave forces, structures such as harbors, groins, piers, dams and urbanization, and limited information on littoral sediment sources.

Evaluating the dynamic characteristics of SLR and how that will influence the Santa Barbara Littoral Cell region is a considerable endeavor and, while augmenting this analysis with sediment sources originating from Ventura and Santa Barbara County's watersheds is an important piece, a comprehensive investigation such as this would take a considerable amount of resources. As stated previously, unless more funding is made available that specifically focuses on SLR, conducting a regional study of the Santa Barbara Littoral Cell is unlikely and should not be expected of local jurisdictions that attempt to update their LCPs to address SLR.

### **Conclusion**

Ventura County appreciates this opportunity to comment on the SLR Policy Guidance document. All local jurisdictions will continue to rely on the engagement of the CCC and its staff for guidance on SLR. The CCC Draft SLR Policy Guidance is an important step in the process of creating new policies and regulations that effectively address SLR. However, as noted in the comments provided in this letter, we recommend that the CCC provide additional information in the SLR Policy Guidance document that clearly defines, and limits, the regulatory intent and impact of the document. Instead, we recommend that local jurisdictions be provided adequate time to assess and implement the SLR Policy Guidance document through a standard LCP amendment process. We also recommend that the CCC make additional funds available for LCP updates that address SLR, as the ability of local jurisdictions to address SLR will be limited unless additional funding is made available.

Thank you for this opportunity to provide comments from the Ventura County Planning Division. We look forward to future work with the CCC and its staff to address SLR within the County's LCP.

Sincerely,

  
  
Kim Prillhart, Planning Director  
Ventura County Resource Management Agency

Cc: Chris Stephens, Resource Management Agency Director  
Rosemary Rowan, Long Range Planning Manager



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**MEMBER AGENCIES**

City of Brea  
City of Buena Park  
East Orange County Water District  
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City of Fountain Valley  
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Golden State Water Co.  
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South Coast Water District  
Trabuco Canyon Water District  
City of Tustin  
City of Westminster  
Yorba Linda Water District

January 15, 2014

California Coastal Commission  
c/o Sea-level Rise Work Group  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

**Via Email: [SLRGuidanceDocument@coastal.ca.gov](mailto:SLRGuidanceDocument@coastal.ca.gov)**

Dear Work Group Members,

**Subject: Comments on Draft Sea-Level Rise Policy Guidance, Public Review Draft**

Thank you for the opportunity to provide comments on the subject draft guidance document. Our comments pertain in particular to the proposed Doheny Ocean Desalination Project to be located along Doheny State Beach. This project is planned to utilize subsurface, fully buried slant beach wells for the intake system.

Over the past 10 years, the Municipal Water District of Orange County (MWDOC) through its association with participating, resource and regulatory agencies, has found that slant beach well technology is an environmentally protective and cost-effective method for ocean desalination intakes. Doheny State Beach overlies the entire width of the San Juan Creek alluvial channel structure; this 200 foot thick alluvial aquifer extends out under the ocean within the continental shelf. Our pioneering work investigating subsurface intakes using modified water well technology resulted in the construction of the first large scale test slant beach well constructed out under the ocean. The test slant well is located on Doheny State Beach, North Day Use Beach area, and was installed in spring 2006. We subsequently conducted a 21 month extended pumping and pilot plant test that concluded on May 3, 2012. Today, we are continuing project development under a Metropolitan Water District of Southern California Foundational Action Program.

Over the past 10 years we have developed an excellent working relationship with the California Department of Parks and Recreation who recognize the importance of the project to improve water supply reliability in south Orange County, an area heavily dependent on imported water. Moreover, we fully recognize the critical recreational value that Doheny State Beach provides to the public and the environmental resources in the area.

Since 2004, we have appeared before the Commission on several occasions and have worked closely with staff on permitting the project development work. For more information on the project, please visit our website at <http://www.mwdoc.com/services/dohenydesalhome>.

The Commission Work Group recognizes that key challenges in the coming decades for all coastal-dependent public facilities will be providing the critical infrastructure for protection of these public uses and facilities from sea level rise (SLR) and associated risks from design storms, earthquakes, and other coastal processes and risks.

We urge your work group to support flexibility in the guidance document to allow for an adaptive management approach that can be staged to protect present and future uses and facilities from future sea level rise. We recommend that the level of protection should be based on a multi-purpose approach that can be implemented over an extended period of time into the future. SLR will necessitate protection of multiple resources and facilities along the coastal zone as well as protection of public uses. For Doheny State Beach the specific sea-level rise planning area coastal segment could include Dana Point Harbor and three segments within Doheny State Beach: North Day Use Area, San Juan Creek flood control channel/seasonal lagoon, and RV Campground area. Agencies with facilities within the Doheny State Beach segment, include:

- Doheny State Beach North Day Use and RV Campground recreation segments
- CalTrans PCH Bridges
- City of Dana Point Roads, Facilities and Coastal Developments
- County of Orange Dana Point Harbor
- County of Orange and USACOE flood control improvements for San Juan Creek
- South Orange County Wastewater Authority San Juan Creek Ocean Outfall
- NMFS southern Steelhead recovery program, including development of refugia in the seasonal coastal lagoon
- Doheny Ocean Desalination Test Slant Well facilities
- Planned Full Scale Doheny Ocean Desalination Project subsurface slant beach well intake system
- South Coast Water District Water and Wastewater Facilities

We recommend that for defined coastal segments, specific joint agency “master adaptive management plans” be developed for staged protection of adaptation improvements for protection from sea-level rise, with design plans developed, approved and implemented for set



target sea level rise elevations. We concur that timing for these protective improvements will need to be based on good science and cooperative inter-agency efforts. Specifically, the full scale Doheny Ocean Desalination Project would incorporate three clusters of three slant wells each, for a total of nine wells to produce 30 mgd of feedwater from the offshore marine aquifer. Two wellhead clusters are anticipated to be located along the Doheny North Day Use segment and one cluster is anticipated to be along the downcoast RV campground segment.

For this particular coastal developed segment, it is useful to illustrate what may be required in the future to adapt to SLR. To provide protection and adaptation from sea-level rise, with design plans for target sea level rise elevations within these two segments, joint studies with State Parks and other agencies will be required. The currently most vulnerable area is the lower-lying down coast RV Campground segment. Protections for the down coast bank of San Juan Creek, San Juan Creek Ocean Outfall, and the slant well cluster will likely require a protective measure at the South end of the campground to help anchor the beach to protect both the slant wells and the campground. In addition to the improved protections for the beach area, it may also be prudent to place a raised protective levee rather than seasonal creation of sand berms along the RV shoreline area to provide enhanced protection up to certain future target SLR elevations and associated extreme tides and storm surges. The Doheny North Day Use segment is relatively well-anchored between the Dana Point Harbor jetty and San Juan Creek groin and jetty rock bank protection, but improvements to these protective features will be needed to protect against SLR. The actual design to provide protections to these critical public uses will require creative thinking on the part of the project, coastal engineering and environmental team to develop the adaptation plan.

If you should have any questions or would like to further discuss our suggested approach, we would be most willing to meet with your team. The draft guidance document is an excellent start to a major challenge that we will face into the future. Adapted management and staged protective measures will be necessary into the future.

I may be reached at [REDACTED] or by phone at [REDACTED]

Sincerely,

[REDACTED]  
Richard B. Bell, P.E.  
Manager/Principal Engineer,  
Water Resources and Facility Planning

Cc: Dave Pryor, CDPR

January 10, 2014

California Coastal Commission  
C/o Sea-Level Rise Work Group  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

**RECEIVED**

**JAN 13 2014**

CALIFORNIA  
COASTAL COMMISSION

Subject: Comments to Draft Sea-Level Rise Policy Guidance

Dear Sirs/Madams:

The County of Orange has reviewed the Draft Sea-Level Rise Policy Guidance currently being circulated by the California Coastal Commission and offers the following comments:

1. Stated throughout the document is that the intent of the document is to function as guidance and not regulation. The County of Orange recognizes the good work that went into the preparation of the document and the importance of providing guidance on this topic. The word "policy" is used in the title, which lends itself toward interpreting the intent as something other than providing guidance.
2. We concur with the statement, "It is important the various State efforts are closely coordinated and do not conflict, to assure an effective statewide response to sea-level rise." (Page18). We ask that you urge the governor to have a plan in place to coordinate efforts of the State agencies.
3. Page 22 reads, "Simple extrapolation of historic trends should not be used." The County concurs with this statement; however, little guidance is provided on what criteria or approach to calculation should be used.
4. Page 24, item B7, reads, "Account for the social and economic needs of the people of the state and assure priority for coastal-dependent and coastal-related development over other development." We believe that Local jurisdictions must maintain the flexibility to establish their own priorities based on the social and economic needs of their residents.
5. Page 25, item C10 includes the following text, "Maximize natural shoreline values and processes; avoid the perpetuation of shoreline armoring." There are several locations within this County's jurisdiction that currently have coastal armoring. Maintenance of these structures will become increasingly difficult and may eventually not be allowed. This could impact public safety as well as both public and private property.

6. Page 25, item C10, "Major renovations, redevelopment, or other new development should not rely upon existing shore protection devices for site stability..." and pages 24-25, item B8 requiring a "no future seawall" deed restriction, are statements that severely restrict options for private property owners. It is recommended that:
  - i. The Coastal Commission reviews the practicality of the combined effect of items C10 and B8.
  - ii. The legal authority to require a "no future seawall" deed restriction be reviewed.
7. Page 26, item C12, indicates, "...LCP or project should evaluate how sea-level rise impacts throughout an entire littoral cell..." It is noted that a littoral cell could far exceed the area of an LCP, and likely encompass several local jurisdictions. Requiring such extensive and expansive coastal analysis would be excessive, costly and time consuming.
8. Page 26, item C13 suggests requiring, "...mitigation of unavoidable public coastal resource impacts related to permitting and shoreline management decisions." CEQA already requires projects to mitigate their impacts; this would be redundant. Also, it is unclear whether this would preclude or limit a Lead Agency's ability to adopt a Statement of Overriding Considerations for potential future impacts to public shoreline resources. The latter should be clarified and further discussed with local jurisdictions.
9. Page 29, indicates that the principle of the Sea-Level Rise Guidance document is to use the best available science to determine locally relevant sea-level rise projects for all stages of planning, project design, and permitting reviews. Applicants should use the current, best available science, which the guidance document identifies as the 2012 National Research Council's (NRC) Report. The NRC report contains regional sea-level rise projections for north and south of Cape Mendocino, which may be too broad to include trends in southern California. Bromirski et al. (2011 and 2012) has shown that mean sea level has remained flat over the past 15 years, but indicates other factors may result in future sea level increases. Sea-level rise science continues to evolve and projections should be updated with the release of new scientific reports.
10. Sea-level rise will result in changes to sediment availability, which could worsen beach erosion and possibly increase the need for beach nourishment projects (Page 31). The County of Orange participates in a recurring beach replenishment project with the U.S. Army Corps of Engineers (Surfside-Sunset Beach Replenishment Project.) This project has been shown to mitigate impacts due to subsidence caused by oil extraction activities. It will become increasingly important that such projects continue, and if sea-level rise accelerates then the recurrence interval of the project may become more frequent.
11. It will be difficult to convert areas vulnerable to sea-level rise to conservation areas or open space in heavily urbanized areas, such as Orange County. The displacement of people, businesses and structures will result in significant social and economic impacts.
12. Page 51 of the document recommends limiting the expansion of non-conforming or other land uses in hazardous areas. It is unclear as to how this addresses hazards; it more so appears to be focused on regulating land use. If it is the latter, the local jurisdictions should retain the flexibility to address land use issue in a manner consistent with their needs and priorities.

13. Page 54, suggests the requiring of mitigation of impacts to public resources by shoreline structures permitted under the Coastal Act. It is recommended that mitigation cover the life of the structure as a condition of approval. This could be potentially costly to local jurisdictions if this applies to public shoreline structures.
14. Chapter Two discusses how new construction should take into account rising sea levels, and how to avoid future damage when developing an area. Local jurisdictions will be challenged to address both new development and to maintain improvements already in place.

Please feel free to contact me, should you have any questions. I can be reached at (714) 667-3217.

Sincerely,



Richard J. Sandzimir, Director  
OC Planning Services

cc: Robert Wilson, Chief of Staff, Second Supervisorial District  
Mark Denny, Chief Operating Officer  
Shane Silsby, P.E., Director, OC Public Works  
Polin Modanlou, Manager, OC Planning Services