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COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

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August 7, 2015

VIA EMAIL

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

Subject: Santa Cruz County Comments on Draft Sea-Level Rise Policy Guidance

Honorable Commissioners and Staff:

Thank you for the opportunity to provide these comments on the Sea-Level Rise Policy Guidance dated July 31, 2015 (Guidance). We agree on the goal to develop policies that pragmatically address the need to avoid and mitigate the risks to development and continue to protect coastal resources in light of sea level rise. However, based on the concerns outlined below and in the Attachment, we strongly urge the Commission to make further changes to the Guidance necessary to achieve this goal prior to final adoption.

Santa Cruz County must develop policies and regulations that recognize the variety of land use and geographic settings that exist. Regulatory approaches often differ for coastal urban areas, in contrast to coastal rural and agricultural areas. As well, decisions on proposed Coastal Development Permits are often based on different conclusions about some of the same considerations, depending on whether a site is urban, rural or agricultural. The County agrees that natural processes are likely the most appropriate approach within rural and agricultural areas, but the more intensely developed urban areas face special challenges, which should be more clearly conveyed within the Guidance document.

As a provider of urban services to not only our residents and businesses, but also to visitors to the coast, Santa Cruz County must also deal with the practical realities of how to provide and maintain public infrastructure. Some of this infrastructure is provided directly by the County of Santa Cruz, such as public roads. Other types of infrastructure are provided by the State, or regional agencies, or special districts over which the County has no or limited authority: Caltrans and the Regional Transportation Commission for Highways 1 and 17 that provide visitor access routes to the coast, various fire districts and water districts, and wastewater sanitation districts. Another layer to the complexity is the very limited ability to identify and/or increase revenues to fund infrastructure maintenance and improvement projects. As you know, a two-thirds vote of the people must approve new funding for specific infrastructure projects or purposes. The public is often skeptical and it can be very difficult for local governments to obtain majority voter approval for general purpose revenue increases that can be spent more flexibly.

The County believes that it is also important to recognize the role of private property and business owners in providing goods, services and accommodations to those that visit the California coastal zone. Visitor-serving commercial and recreational areas often rely on the efforts of the private sector to ensure that visitors to the coast have a place to stay, to eat, to play and recreate, and are able to otherwise enjoy the coast in a variety of ways.

The County of Santa Cruz Planning Department therefore offers comments on the Guidance document from a perspective of trying to recognize certain practical realities, as well as uncertainties, that affect the approach to new public policies and regulations, as well as the approach to proposed public and private development projects within the coastal zone, in light of projected climate change and sea level rise considerations. Our detailed comments are included in the Attachment to this letter.

Alternatively, if the Commission is inclined to adopt the Guidance document at this time, we strongly urge specific modifications of the document in two key areas as outlined below. Our intent with these proposed modifications is an acknowledgement within the Guidance that local jurisdictions may develop alternative approaches regarding sea level rise adaptation while remaining consistent with the requirements of the Coastal Act and best available science on future sea level rise.

Adaptation Strategies

1. We suggest adding language to the introduction of Chapter 7, page 120, in paragraph 5, clarifying that the strategies listed are not an exhaustive list of options or a mandatory checklist, and local governments may propose replacing or supplementing the strategies listed with alternative strategies that meet the goals of the resource protection and hazard policies of the Coastal Act.

Reason: It is important to local government that the Guidance emphasize that the strategies listed are not an exhaustive list of options or a checklist of required actions. We understand that to mean that local governments may propose replacing or supplementing the strategies listed with alternative strategies that meet the goals of the resource protection and hazard policies of the Coastal Act. A one-size-fits-all approach is not appropriate given the diverse geography and conditions of different areas, and additional and alternative adaptation strategies will be identified by local governments based on analysis of specific risks and vulnerabilities of a region or project site, and determination of local priorities and goals for protection of coastal resources and development consistent with Coastal Act requirements. It is important that the document that guides local agency staff and Commission staff be clear about this concept.

Scenario Planning

1. We suggest modifying Principle 4 on Page 36 to acknowledge that it is appropriate to design for a moderate sea level rise scenario, and adaptation strategies must be reasonably feasible for local communities and applicants to implement. Suggested modifications:

   ~~Use a precautionary approach by~~Consider planning for and providing <u>reasonably feasible</u> adaptive capacity for ~~the highest amounts~~<u>a range</u> of possible sea level rise <u>amounts</u>. *LCPs and CDPs should analyze ~~the highest~~ <u>a range of</u> projections of sea level rise in order to understand the implications of a ~~worst case~~<u>full range of</u> scenario<u>s</u>. ~~In some cases, i~~It may be appropriate to design for the local hazard conditions that will result from more moderate sea level rise scenarios, as long as decision makers and project applicants plan to implement additional <u>reasonably feasible</u> adaptation strategies if conditions change more than anticipated in the initial design…*

Reason: Coastal communities that have fully built out shoreline and bluff areas have very limited adaptive capacity. It is important to recognize this in the Guidance by acknowledging that adaptation strategies must be reasonably feasible for local communities and applicants to implement. In addition, as described in the Guidance, there is significant uncertainty regarding the pace and amount of sea level rise that is predicted to occur in the future. Because of the uncertainty regarding the level of hazard in the future and the hardship of adapting to the extremes of future predictions, designing for a sea level rise amount that is within, but not at the extreme end of, the projected range may be most appropriate.

The National Research Council 2012 report presents a range of future sea level rise amounts (1.5 feet to

5.5 feet by the year 2100) based on a range of possible future conditions. Within that range, the report projects a rise of three feet based on a moderate, and realistic, future emissions scenario (similar economic and population growth patterns but with a more balanced energy approach of both fossil-intensive and non-fossil sources). Therefore, it would be reasonable to assume three feet of sea level rise, for example, when estimating future bluff retreat for development projects and the elevation of structures in flood hazard areas. It should also be noted that the Federal Flood Risk Management Standard established by Executive Order in 2015 also suggests that three feet would be an appropriate amount of additional elevation of structures in flood hazard area to increase resilience against the impacts of flooding that are expected to increase in the future as a result of climate change (and sea level rise). The three feet level could be adjusted in the future, if warranted, by amending policy and ordinance requirements based on best available new science. This is a practical way of dealing with uncertainties regarding predicting future sea level rise, and represents a reasonably feasible way of managing redevelopment of existing structures.

Conclusion

Santa Cruz County staff has been meeting with Coastal Commission District staff to discuss creative ways to adaptively respond to changing conditions, focusing on avoidance or minimization of risks and protection of coastal resources. We look forward to continuing these discussions during preparation of amendments to our Local Coastal Plan.

Thank you for the opportunity to provide these comments.

Sincerely,

[redacted]

David Carlson
Resource Planner

Attachment

Cc: Kathy Previsich, Planning Director

Attachment

Key Concerns about Proposed Sea Level Rise Guidance Document

1. *Concern about legal issues related to the Coastal Act and other relevant laws. The Guidance document really pushes the boundaries of interpreting and administering the Coastal Act, and goes too far in certain respects.*

We believe that the Coastal Commission's interpretation and practice regarding Section 30235 of the Coastal Act over the past 40 years is appropriate, such that seawalls and shoreline protection structures shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion. We do not believe that "existing structures" means only those structures that existed at the time the Coastal Act was adopted, as a definition or threshold date could have been included in the law, but were not. Consider the result if the contemplated interpretation was also used to apply to "beaches", which is in the same sentence of Section 30250. Is the suggestion, then, to protect only "existing beaches" in the same manner the Guidance contemplates for "existing structures" and only for the beach areas and structures as they existed in 1976?

2. *Concern about inadequate recognition of the importance of existing public works/infrastructure and the expense of "relocating" (building new) infrastructure -- especially on land a government would need to buy, which itself is likely already developed. There needs to be a reality check. There should also be a recognition that private property owners (as well as local governments) can also be viewed as "partners" in the future adaptation, not adversaries.*

Most of the county's population and non-agricultural economic activity, including the coastal visitor-serving communities of Live Oak/Pleasure Point, Seacliff, Rio del Mar, and Aptos/ Seascape, are located within the Urban Services Line of Santa Cruz County. A substantial portion of the coastline in this urban area is already armored, especially along the popular East Cliff Drive coastal bluff and nearly Opal Cliffs area. Some of this armoring is protecting the special communities, as well as coastal access roads, public works/infrastructure, and visitor-serving coastal uses that were approved and developed after the Coastal Act was adopted. Some of this armoring is directly protecting one home, but also indirectly protecting nearby key public infrastructure which would be very, perhaps prohibitively, costly to replace. This existing armoring, and continued maintenance and potentially replacement thereof, has been and should be found consistent with the intent of the Coastal Act. Furthermore, it must be recognized that, as being a highly desirable location for many decades, most urbanized areas of coastal California are nearly completely developed with existing structures. There are very few opportunities to "relocate" structures and infrastructure. As existing structures facing coastal processes desire to build a seawall or protective structure, the Coastal Act will allow for that. Furthermore, most of the existing coastal protection structures have been approved with conditions of approval that require maintenance. The presumption that these protection structures will be maintained reflects the intent of the Coastal Act. It is especially important that existing developed areas, and existing protection structures, be allowed to function into the future to provide visitor-serving and coastal access services into the future.

The Guidance document should recognize the practical reality that existing structures are not going away anytime soon, whether or not they are allowed to be improved, added onto, reconstructed, or redeveloped. An objective of public policy should be to shift risk to property owners of structures in hazardous locations. Application specifications, conditions of approval, deed restrictions, and local powers to abate dangerous structures can appropriately manage "amortization" of structures that are modified by more than a threshold amount in the future, if that is an appropriate result for the given structures. Santa Cruz County has some ideas about how "amortization" strategies might be defined that would lead to removal of structures from beaches in the future.

3. *Concern about insufficient menu of adaptation responses to protect key public works/ infrastructure and key visitor serving assets in urbanized coastal areas. Lack of recognition of the extremely high cost of the recommended buying out of coastal bluff property, which will simply not be possible for public agencies, especially as agencies are trying to relocate critical priority infrastructure threatened by SLR for which there is no other funder.*

Page 160 of the SLR Guidance depicts a shoreline protection structure approved by the Coastal Commission and installed several years ago by the County of Santa Cruz along East Cliff Drive. This photo is lauded as an approach that preserved public access and visual resources. It should also be acknowledged that due to the armoring of the coastal bluff that key public infrastructure and coastal access for vehicles, bicycles and pedestrians is preserved. The surfing area continues to function, and the Pleasure Point neighborhood is also protected.

The Guidance document should more strongly acknowledge that in some urbanized areas of the coast, an approach such as the East Cliff Drive seawall is the most appropriate response to sea level rise, at least for the foreseeable future. An added advantage of this approach in some areas is that it will allow for removal of existing rip rap, as this type of modern seawall can replace it.

4. *Concern about proposed approach for "redevelopment" of "existing structures", such that improvements to existing structures are treated as "new development", which is different from the intent of and how the Coastal Act has been implemented for almost 40 years. Lack of acknowledgement that the Coastal Act anticipated improvements to existing structures and infill of urbanized coastal areas.*

The Coastal Act provides for "new development" (Article 6 of the Coastal Act) as distinct from "existing structures", in a manner that anticipates future modifications of existing structures. In fact, Section 30212(b) provides that <u>"new development",</u> for the purpose of determining whether or not a Coastal Development Permit is required, <u>does NOT include</u>: (1) <u>replacement</u> of any structure (as exempted or excluded by the Act); (2) the <u>demolition and reconstruction</u> of a single-family residence provided that the reconstructed residence shall not exceed the floor area, height or bulk of the structure by more than 10 percent; (3) <u>improvements</u> to any structure which do not change its intensity of use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure. Section 30212(b)(4) provides <u>that ALL repair and maintenance activities are exempt, unless the activity may have an adverse impact on lateral public access along the beach</u>, even if a Coastal Development Permit would otherwise normally be required pursuant to Section 30610.

In reality, repair and maintenance projects seldom require a building permit, and thus escape the attention of both local government and the Coastal Commission. In addition, "nexus and proportionality" legal principles constrain the ability of government to deny repair and maintenance, or to impose significant conditions of approval on repair and maintenance activities (such as removal of a seawall due to a proposed repair or maintenance).

Furthermore, <u>Section 30250 anticipates "improvements" to existing structures</u>, which is understood to include activities beyond repair and maintenance. Improvements can include a kitchen remodel or replacement of windows, which may or may not require a building permit. An improvement can include an addition of square footage, for which a coastal bluff site will not require a Coastal Development Permit (CDP) if less than 10%, but will require a CDP if more than 10%. However, the Coastal Act and most jurisdictions implementing regulations place no limitations on approval of such an addition over 10% as long as it does not extend seaward.

Section 30250 indicates that new residential, commercial, or industrial development (and new visitor-serving facilities in particular) should be located within, contiguous with, or in close proximity to existing developed areas with adequate public infrastructure. Clearly, one of the objectives of the Coastal Act was to limit expansion of urban services, and to instead infill existing developed coastal areas. The Coastal Act anticipated and provides for new development in these existing developed areas, as well as continued repair, maintenance, improvements to existing structures (exempt or excluded if less than 10% additions) which it recognized were not "built out" when the Coastal Act was adopted. The Coastal Act was intended to guide the "developing out" of existing urbanized coastal areas, which oftentimes provide a great deal of visitor-serving uses along the coast, and which should be protected.

The legislative findings and declarations within Chapter 1 of the Coastal Act clearly articulate this legislative intent. Section 30001(d) finds and declares "That existing developed areas, and future developments that are carefully planned and developed consistent with the policies of this division, are essential for the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone". Section 30001.5 includes the goals for the coastal zone, which address both natural and man-made ("artificial") resources.

5. *Concern about reasonable requirements for Coastal Development Permit applicants (in terms of the multiple scenarios and assumptions to be used in studies needed for proposed projects). Also insufficient level of notice to and collaboration with coastal property owners about the impending approval of the proposed Sea Level Rise Guidance document.*

Santa Cruz County agrees with and appreciates the comments made by Dr. Gary Griggs in his October 26, 2013 letter commenting on the first draft of the SLR Guidance. We do not believe that his comments have been sufficiently addressed in the Revised or Proposed Final Draft. As a result, the proposed Guidance is not nearly as helpful as it could be for local governments and for applicants.

The SLR Guidance could also further explore strategies that involve private property owners, rather than an approach that attempts to eventually eliminate privately owned property along the coast. One potential strategy that may at times be appropriate and lead to an improvement over existing conditions, could be to require the owner, in conjunction with an addition / reconstruction / redevelopment project, to replace the protection structure with a modern approach at the expense of the private property owner. This is only likely to occur if the owner receives sufficient benefit to make the investment. For example, where an existing structure on a coastal bluff is protected by rip rap below, it may be possible to have the owner agree to replace the rip rap with a modern appropriately designed seawall. This type of approach, coordinated with other owners and public agencies in the area, can lead to expanded public access opportunities. The desired design of replacement protection structures would be that of the structure that was recently approved by the Coastal Commission and built along East Cliff Drive (depicted in Chapter 7 on page 157 of the Draft Guidance document), which protects road access along the coast, provides an accessway to the shoreline and surfing area, and protects visual resources and an existing coastal neighborhood.

For the above reasons, Santa Cruz County requests that the Draft Guidance be revised to recognize that in urbanized areas that include key public works/infrastructure and key visitor-serving assets, it may be appropriate to allow shoreline protection structures for both "new" and "existing" development, and not appropriate to require that applicants "waive any rights under Section 30235 or related LCP policies to build shoreline protection for a proposed new or existing or "redeveloped" or "reconstructed" development. Local governments already have the right to require evacuation and abatement of structures that are determined to be dangerous, such as due to coastal bluff erosion or failure. Realistically, that is the scenario that is most likely to result in removal of structures, and oftentimes is a better strategy than "relocation" of a structure further back on a parcel, which only repeats the cycle of

potential need to vacate and abate in the future (i.e. beyond the "expected life" 75- or 100-year setback required for the relocated structure).

6. *Concern about potential over-reliance on the ability of local government to rezone properties and adopt regulations to influence future conditions on privately owned lands. Legal principles of nexus and proportionality must be recognized, as well as limited resources of local government.*

The strategy of having local governments rezone land and adopt new zoning regulations is unlikely to have much effect on private land use in the foreseeable future. Existing developments might become nonconforming to new zoning or regulations, but they would be legal non-conforming, and local governments allow these uses and structures to continue.

In that projections about the extent of sea level rise and impacts are uncertain, it may be unsupportable to impose setbacks or conditions of approval related to improvements to existing structures based on the very worst-case scenario that can be envisioned, which appears to be the approach of the Guidance.

Chapter 8 mentions that if takings claims may exist, local agencies should consider either allowing an exception or purchasing a property interest. In that local governments, especially now that redevelopment agencies have been dissolved, do not have funds to buy out expensive interests in beachfront/coastal bluff properties, the regulations of the Coastal Commission and local governments will need to allow for exceptions and continuation/improvements of certain structures.

Finally, Chapter 8 also suggests that local governments should consider establishing a Transferable Development Rights (TDR) program for properties that are subject to significant development restrictions, as another way to minimize potential exposure to takings claims. It must be recognized that TDR programs require a "receiving area" that is desirable in the marketplace but which is presently "underzoned", such that there is a market incentive for buyers to purchase a development right from the "transfer area" in order to be able to upzone and develop in the receiving area. In that the subject at hand is California beachfront property, purchase of development rights would likely be expensive, which when combined with land and development costs for an improvement in the receiving area, would mean that the receiving area would need to be a quite attractive and high value area. In Santa Cruz County, there are no such available or identifiable areas. Only if the State of California elected to so designate certain open space and parklands in Santa Cruz, would such a TDR strategy even be worth exploring, which is considered to be extremely unlikely.