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Via email: SLRGuidanceDocument@coastal.ca.gov

California Coastal Commission
Executive Division
45 Fremont Street, Suite 2000
San Francisco, CA 94105

RE: Draft Sea Level Rise Guidance Document

Dear Dr. Lester and Honorable Coastal Commissioners:

Thank you for providing this updated Sea Level Rise Guidance policy and for allowing comments on the revised draft guidance. On behalf of Surfrider Foundation's 20 local Chapters throughout California and our 250,000 supporters, activists and members worldwide, we submit the following comments for the Draft Sea Level Rise Guidance Document (Document). The Surfrider Foundation (Surfrider) is a non-profit grassroots organization dedicated to the protection and enjoyment of our world's oceans, waves and beaches. Surfrider now maintains over 90 chapters worldwide and is fueled by a powerful network of activists.

Surfrider applauds the California Coastal Commission (CCC) for taking action through the development of guidance for local governments working to address the challenges and impacts of SLR. In addition, Surfrider commends the CCC for fostering the iterative and responsive development process of the guidance document. The detailed responses given to areas of concern expressed in our initial feedback on the Draft Sea Level Rise Guidance Document were impressive and representative of the CCC's effort to develop a document reflective of – and relevant to – the communities to which the document speaks.

Through its revision, the document has become easier to navigate and manage. In particular, the significant strides toward incorporating a more holistic view of adaptability can be seen through the addition of a chapter on the legal context of adaptation planning and the revision of the chapter on SLR adaptation strategies.

We are additionally very pleased to see the CCC explaining the impacts of armoring in relation to SLR. We hope the CCC will continue to dissuade the use of hard structures since they only exasperate erosion. Armoring the shoreline has historically been California's primary response to coastal hazards, but this coastal management panacea is maladaptive as it actually reduces coastal resilience. As Stanford Law School explains in its report *2015 California Coastal Armoring Report: Managing Coastal Armoring and Climate Change Adaptation in the 21st Century*,

armoring: accelerates the loss of beaches already eroding by blocking natural bluff erosion processes and thereby reducing available sand supply; increases erosion on neighboring properties; and prevents coastal ecosystems from naturally migrating inland as sea level rises thus endangering beaches, dunes, and wetlands. Beach loss will result in reduced public access, fewer opportunities for recreation, loss of habitat, and loss of revenues. The physical, ecological, economic, social, and aesthetic effects as well as the impacts to access resulting from coastal armoring are why Surfrider believes it is critical that this SLR guidance document speak clearly and directly on the subject.

Surfrider Foundation is encouraged by and appreciates the Commission's efforts to include a legal analysis in this version of the guidance in "Chapter 8: Legal Context of Adaptation Planning," including the acknowledgement that seawalls impinge on the Public Trust property that the California Coastal Commission and other state agencies, such as the State Lands Commission, have a duty to protect for the benefit of the general public. Specifically, as the Commission acknowledges in this guidance, trustee agencies that protect the Public Trust assets, such as the coastal lands, have the authority to refuse to allow, or require removal of, shoreline armoring located on public trust lands, including if armoring interferes with public trust uses, such as water-oriented recreation and environmental protection. (See Revised Guidance at p.161). Surfrider Foundation ardently agrees that public lands must be protected from the harms of seawalls and other coastal armoring and encourages the Commission to take action to protect these lands for future generations to access and enjoy.

The Coastal Commission should be specific about the guarantee of public access to tidal lands, including both horizontal and vertical access. That is, under Coastal Act Sections 30210, 30220, 30221, and 30213, the public shall be afforded maximum access to walk along the beach and to be able to obtain access to the beach from inland locations, for the enjoyment and recreation of these public trust resources. Any encouragement of coastal development and fortification is not consistent with the policies and procedures of the Coastal Act, since it will jeopardize near shore ecosystems, beach access and even coastal infrastructure and private property. If seawalls are not able to be removed, how can the Coastal Commission guarantee public access to public coastal lands in the face of sea level rise?

The Commission should continue to search for and promote operable mechanisms to regulate shoreline armoring in a manner that will not result in a "abdication" of public trust lands where a seawall prevents the natural landward migration of the public trust land. Surfrider writes to suggest three legal mechanisms that the Commission should consider to ensure that California state agencies are fulfilling their duties under the public trust to promote public access and prevent exclusive, unlawful occupation of public trust lands.

1. Charge Occupancy Fees For Seawalls below mean high tide: As the Guidance recognizes, California law establishes that all coastal lands below mean high tide belong to the State and are held in trust for the public as a whole. Under the Supreme Court's precedent in *Illinois Central* the State may not abdicate public trust property to private entities. Thus, at a minimum the Commission

must develop a scheme to charge littoral owners for the use and occupancy of public trust lands when seawalls come to lie below the naturally-occurring location of the mean high tide line. This is true for *all* seawalls along California's coastline, even if they protect pre-Coastal Act structures. Surfrider recommends that any funds so collected be dedicated to improving public access to the coast.

2. Protect Horizontal Access where Seawalls Eliminate the Beach: the ultimate effect of sea walls in an era of rising sea levels is to drown the beach. When this occurs, the public's right to horizontal access (the ability to walk parallel to the ocean in the intertidal zone) is lost. The Commission should recognize this impact and articulate mechanisms to protect horizontal access so that a California citizen or visitor can walk up and down the beautiful coastline. The public should be guaranteed access to land that is within the natural ambulatory path of the shoreline, including lands that would otherwise be tidelands but for a seawall. The Commission could accomplish this goal by providing guidance on how a future easement may be legally exacted to permit public access when new seawall permits are issued.

3. Adopt the principle of Rolling Easements: James G. Titus describes more than a dozen approaches to allow wetlands, beaches and barrier islands to migrate inland in response to sea level rise in the "Rolling Easement" publication by EPA's Climate Ready Estuaries program (2011).¹ Since a rolling easement will allow the protection of publicly owned tidelands to migrate inland with sea level rise, Titus argues that states should enact laws requiring future development to be subject to rolling easements. The Commission has the opportunity to embrace that concept, and thereby protect the public access, recreational resources and ecosystem structure and function, required to be protected by the Coastal Act. The Commission should require that cities incorporate the rolling easement mechanism in their LCP updates regulating all future development and redevelopment and providing protection for California's vital coastal habitats. As explained in Surfrider's original comment letter:

The Commission should encourage local governments to incorporate rolling easements into local coastal plans as requirements for all new development along the coast. Under *Nollan and Dolan*, the significant nexus must articulate a connection between the impact of the proposed development and the exaction sought. A rolling easement requiring ultimate removal of a structure would be consistent with this requirement where the easement is exacted to protect public access and environmentally sensitive habitat areas.²

The Commission's commitment to engage local planners and continually support local governments is necessary – and commendable. We thank the CCC for offering their continued support and ask that additional technical workshops be made

¹ <http://papers.risingsea.net/rolling-easements.html>

²

available to a breadth of stakeholders so that coastal community actors are able to work together to 'dive deep' into adaptive planning for SLR.

We want to assure the Commission that Surfrider is committed to assisting you in achieving the goals set out in the SLR document, and look forward to cooperating on actions that will collectively result in progressive planning to combat SLR and climate change impacts.

Sincerely,



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