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JAN 03 2014

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CCC-R.E. RamosDRAFTSea-LevelRisePG1-02-14

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CALIFORNIA COASTAL COMMISSION DRAFT SEA-LEVEL RISE POLICY GUIDANCE

Public Review Draft

Comment Period:

October 14, 2013 – January 15, 2014

Please accept the following comments on the above Draft Sea-Level Rise Policy Guidance:

Pg 3 – Executive Summary – A well written concise state of purpose of this document: “Specifically, this document provides step-by-step guidance on how to address sea-level rise in new and updated Local Coastal Programs (LCPs) and Coastal Development Permits (CDPs) according to the policies of the California Coastal Act.” That uses Best Available Science (BAS) on Sea-Level Rise (SLR). This document states on page 4 that the State of California considers the 2012 national Research Council’s Report, *Sea level Rise for the Coasts of California, Oregon and Washington: Past Present and Future*, **as the best available science on sea-level rise for California.** Will the California Coastal Commission (CCC) update SLR BAS on a regular cycle in the future (If yes; what would that cycle be?) and provide notice to users of the Policy Guidance?

Executive Summary (ES) – General Comments – I would suggest that the ES include wording that connects SLR, climate change, adaptation planning for the purpose of protecting public health and safety within California’s coastal zones and those areas impacted by Climate Change as related by SLR. There are coastal areas, such as the San Francisco Bay which is in the jurisdictional area of authority of the San Francisco Bay Conservation and Development Commission (BCDC). It would be helpful to know how the CCC and BCDC coordinate shoreline management policies to integrate SLR climate change mitigation and adaptation policies within a regional SLR impact area.

Additionally I would recommend that the ES provide highlight discussion on (1) adaptive management; (2) the need for specific scientific research to include funding (particularly grants) and technical support that is available to city LCP planners; and (3) a lead agency or task force, charged with initiating statewide adaptation planning to facilitate coordination and collaboration among various agencies and stakeholders **be established**, if not already existing. Is there a contact person/department at CCC that the public can contact by telephone/e-mail regarding SLR and Climate Change issues, if other than Hilary Papendick?

Has the CCC considered what the economic impacts of this guidance would be on local governments and has an opinion as to local government ability to perform under the CCC policy guidance?

Pg 4 – Executive Summary Continued– The ES indicates that the 2012 National Research Council’s Report, *Sea Level Rise for the Coasts of California, Oregon and Washington: Past Present and Future*, is currently considered the best available science on sea-level rise for California. Will the CCC notify users if there is/are a change(s) in the BAS?

Pg 6 - GUIDANCE FOR LOCAL COASTAL PROGRAMS

Step 1. Determine a range of sea-level rise projections relevant to LCP planning area or segment.

Local governments should use the best available science” – which is per the CCC the 2012 NRC Report.

Does the 2012 NRC Report – in opinion of CCC - provide adequate methodology that would enable local government planning staff to make this determination on their own without the need to retain consultant services?

Pg 9 – GUIDANCE FOR COASTAL DEVELOPMENT PERMITS

Based on CCC experience are most local government staffs capable of performing in accordance with the CCC LCP and CDP guidance or would they need additional training or new staff? If no, could the guidance provide some suggestions as to training sources and new staff background education?

INTRODUCTION

Pg 20 2013-2014 Funding for LCP updates – Can the CCC provide specific contact information in its text about CCC contacts for local governments and the general public. Are there any grants or funding sources that are recommended by the CCC to support local non-governments organizations that may be involved in supporting local governmental efforts?

Pg 20 PURPOSE AND SCOPE OF GUIDANCE DOCUMENT – States: “Finally, this guidance does not address how sea-level rise may involve private property rights and taking issues in specific cases. Accelerating sea-level rise may raise difficult issues with respect to what kinds and intensities of development are allowable or that must be allowed, in specific areas threatened by sea-level rise in order to avoid “taking” of property within the meaning of the United States and California constitutions. Coastal Act Section 30010 prohibits the Commission, ports, and local governments from exercising their coastal development permitting authority in a manner that will take or damage private property without just compensation. Evaluation of whether a particular regulatory action would constitute a taking involves consideration of wide range of site- and project-specific factors. How to perform this evaluation is outside the scope of these Guidelines. Agencies implementing the Coastal Act should obtain legal advice regarding specific situations that raise taking concerns.”

Comment: It seems that this guidance document could and should provide information/guidance related to the situation where SLR may reclaim or take back property, and what tools might be available to local LCP authorities. Minimally, it would seem appropriate for this guidance document to make referral to how property ownership may be impacted by SLR.

The following is from a California States Land Commission staff report :

“Sea Level Rise and Sovereign Boundaries

As sea level continues to rise, it will have an impact on California’s sovereign lands and shoreline boundaries. Under the Equal Footing Doctrine, as a fundamental right upon its admission to the Union on September 9, 1850, California took title in trust as a sovereign state on behalf of its citizens, to the beds of all tidal and navigable waterways within its border, not previously conveyed by the Spanish or Mexican government. California holds its navigable and tidal waters in a sovereign trust for the public. These sovereign lands or Public Trust lands include tide and submerged lands including those adjacent to the coast and offshore islands of the State and within bays, rivers, streams, sloughs, inlets, straits, estuaries, lagoons, and lakes. As a result of the unique nature of these lands, there are no patentis, lists or other documents conveying sovereign lands from the federal government to the State. These lands may only be used for public purposes consistent with the provisions of California’s Common Law Public Trust Doctrine....

California’s coastal water boundaries are ambulatory, changing as the shoreline erodes or accretes under natural conditions. The common law doctrines of accretion , erosion, and avulsion generally govern changes to water boundaries. Accretion and erosion are “gradual and imperceptible” gains and losses to an upland property, respectively. A boundary marked by a water line is a shifting boundary, going landward with erosion and waterward with accretion. Such changes effectively alter the property boundary, the rationale being that a riparian property owner stands to gain as often as they stand to lose from such gradual imperceptible changes. Avulsion, on the other hand, is a swift or rapid change in the location of a waterway, typically induced by a flooding event. Changes wrought by avulsion generally do not affect property boundaries. Augmentation of existing upland by gradual natural accretion alters the boundary of that upland accordingly. When such augmentation occurs as a result of sudden avulsion or by accretion caused by the works of man, however, the boundary is not altered. These rules have been codified under Cal.Civ.Code ss 1014 and 1015 for rivers and streams and applied by the Courts to tidal and open coast shorelines.

Like avulsion, under California law “artificial” accretion caused by human action does not alter tidal water boundaries; in a controversy between the state, or its grantees, and the upland owner, artificial accretions belong to the state, or its grantees, as the owner of the tidelands. The rationale for this rule is partly grounded in the policy that certain sovereign public lands cannot be conveyed into private ownership, whether by grant or by artificial means....

Regardless of whether human activity contributes to the increased levels of greenhouse gases in the atmosphere, which in turn contributes to climate change and an increase in the rate of the rising sea levels, the increase in the rise of the sea remains in the eyes of the law gradual and imperceptible – sea level rise, even taking into account the increase in the rate of the rise, while measurable over periods of years, it still not noticeable or detectable by the naked eye. As such, the current rubric of statutory law and case law governing coastal boundaries in California’s sovereign ownership of its waterways and the uplands along tidal waterways. As has been the case generally throughout California’s legal history, coastal boundaries and the State’s sovereign ownership should continue to move with ever shifting sands and seas. But Commission staff should continue to analyze each project on a case by case basis, in determining the boundary between the State’s sovereign ownership and uplands along California’s coastline and tidal waterways.”

Comment: In the situation where SLR contributes to a reclaiming of land that was in private ownership it appears the California States Land Commission believes such lands become State of California tidal lands and what was in private ownership become sovereign land of the State of California and not be consider a taking. Would the CCC agree? Your guidance document could also discuss circumstances where appropriate adaptive processes could be used rather than on page 23 indicating: “An Adaptive management framework involves learning and dynamic adjustment in order to accommodate uncertainty.” More detail would be more helpful to local governments administering LCPs.

General Comments/Questions: The guidance should recommend Counties adopting a zoning regime to facilitate sea-level adaptation. This zoning regime could feature overlay zones in areas vulnerable to SLR, with the stated purpose of promoting public health and safety. Perhaps the guidance can include some further discussion in reference to zoning and legal taking of property, such as:

In a landmark 2005 ruling, the Massachusetts Supreme Judicial Court ruled that a zoning ordinance did not constitute a regulatory taking based on allegations that it prevented the plaintiff from constructing a home and may have reduced the property’s market value. The Court upheld the ordinance because it had the clear goal of protecting people and property, left the property owner with many alternative uses, and was applied fairly to identifiable mapped areas. Perhaps the CCC could provide local governments some California case examples.

Erosion rates tied to SLR and erosion studies from the USGS and other appropriate agencies could provide the data necessary to implement such zones. The zones could regulate armoring, density, retrofitting, relocation, and preservation to accommodate a variety of adaptation goals. The CCC should consider something like the following SLR overlay zones be included in its guidance:

- **Protection zones.** Areas with critical infrastructure and dense urban development, where the locality will permit coastal armoring. Local governments could require that non-structural hardening techniques be employed where feasible.
- **Accommodation zones.** Areas where local governments will limit the intensity and density of new development and require that structures be designed or retrofitted to be more resilient to flood impacts. Such zones could also include existing development.
- **Retreat zones.** Areas where armoring will be prohibited and landowner are encouraged to relocate structures upland through tax incentives, land acquisitions, conservation easement programs, etc..
- **Preservation zones.** Areas where important ecosystems are designated for preservation and restoration to enhance important flood buffers, habitat, or public benefit.

General Comments/Questions Continued: Is it an appropriate course of action to do nothing and let the ocean reclaim property that was previously in private ownership and reverted to state ownership as tidal lands? It would be helpful if the CCC guidance provide more on the let nature take its course option to SLR impacts, such as is indicated in my question above.

Pg 24 - 27 B. MINIMIZE COASTAL HAZARDS THROUGH PLANNING AND DEVELOPMENT STANDARDS [Coastal Act Sections 30253; 30235; 30001, 30001.5]

6. Avoid or minimize coastal resource impacts when addressing risks to existing development.

Shouldn't the guidance say something about when economic considerations might indicate the most prudent course of action would be to do nothing and let nature take its course and cede existing development to the sea?

8. Property owners should assume the risks associated with new development in hazardous areas.

Comment/Question: This CCC guidance should be modified to include existing development – What are CCC thoughts about this?

C. MAXIMIZE PROTECTION OF PUBLIC ACCESS, RECREATION, AND SENSITIVE COASTAL RESOURCES [Coastal Act Chapter 3; Section 30235]

12. Address the cumulative impacts and regional contexts of planning and permitting decisions.

Is the CCC suggesting the need for a regional lead agency? If yes, why not be more explicit and make it a CCC recommendation? Where littoral cells or watershed are not well researched what guidance does CCC give on how should LCP and LSP accommodate such realities?

16. Consider conducting vulnerability assessments and adaptation planning at the regional level.

Questions/Comment: How would the CCC participate in such efforts? Does the CCC have grant funds or know where local governments can apply for funding to conduct vulnerability assessments and support adaptation planning and adaptation capital projects? For the San Francisco Bay Area would the CCC consider the Association of Bay Area Governments (ABAG) the most logical candidate to be a Lead Agency? If not, then what agency would the CCC suggest? Would the CCC recommend a Lead State Agency over a regional organization for the San Francisco Bay Area? Does the CCC have some model adaptation plans that it would recommend? **Comment:** I would recommend that the CCC guidance document include text indicating the relationship and overlap between Greenhouse Gas Reduction (typically the focus of Climate Action Plans) and Adaptation planning. You might consider including Figure 2 on page 23 included in the Draft California Climate Adaptation Policy Guide prepared by the California Emergency Management Agency and the California Natural Resources Agency April 2012. Adaption strategies seek to reduce vulnerability to the projected changes to climate and increase the local capacity to adapt.

Pg 32 CONSEQUENCES OF SEA-LEVEL RISE FOR COASTAL RESOURCES AND DEVELOPMENT

Indicates "The replacement value of property at risk from sea-level rise for the California coast is approximately \$36.5 billion (in 2000 dollars, not including San Francisco Bay)" Why was the San Francisco Bay area excluded? The San Francisco Bay area should be included (particularly in that the San Mateo County coastal and bay areas are amongst the most highly nationally projected impact areas). I refer you to the recent (9 December 2013 Conference entitled "Meeting the Challenge of Sea Level Rise in San Mateo County (Sponsored by Congresswoman Jackie Speier in conjunction with Assemblyman Rich Gordon and Supervisor Dave Pine) at the College of San Mateo. I recommend the CCC consider the following for possible inclusion in its guidance:

"Shoreline protection is most effective and less damaging to natural resources if it is the appropriate kind of structure for the project site and erosion and flood problem, and is properly designed, constructed, and maintained. Because factors affecting erosion and flooding vary considerably, no single protective method or structure is appropriate in all situations. When a structure is not appropriate or is improperly designed and constructed to meet the unique site characteristics, flood conditions, and erosional forces at the project site, the structure is more likely to fail, require additional fill to repair, have higher long-term maintenance costs because of higher frequency of repair, and cause greater disturbance and displacement of the site's natural resources."

San Francisco Bay Conservation and Development Commission

Pg 50 - 51 4.1 Planning and Locating New Development – What should updated development standards include: General Comment: The CCC guidance upfront expand the following to include redevelopment in existing developed areas and not just as is given on page 51:

- **Update inventory and maps:** The LCP update should include an updated inventory and map of all lands uses, clearly showing areas vulnerable to sea-level-rise.
- **Update land use designations and zoning ordinances:** For those areas that become (or are) in hazardous due to sea-level rise, establish hazard zones or overlays and update land uses and zoning requirements to minimize risks from sea-level rise.
- **Convert vulnerable areas to conservation or open space sites:** This could use some word-smithing so it makes it clear that this be a focus for undeveloped areas, but that developed area should also be considered given it's economically reasonable to acquire the property. If not economically reasonable then disclosure of the vulnerability needs to identified and the acquiring party placed under deed restrictions that are prudent.
- **Limit or prohibit use of bluff retention or shoreline protection for new development.** I recommend that local government also be provided guidance on how to handle restrictions on existing properties that constitute a hazard from a bluff and/or shoreline protection basis.
- **Ensure that current and future risks are assumed by the property owner.**

Pg 52 - 54 4.2 Hazards and Shoreline/Bluff Development

- **Incorporate sea-level rise into calculations of the Geologic Setback Line:** Update geotechnical report requirements for establishing the Geologic Setback Line (bluff setback) to include consideration of bluff retreat due to sea-level rise, in addition to historic bluff retreat data, future increase in storm or El Nino events, and any known site-specific conditions. The report should be completed by a licensed Geotechnical Engineer or an Engineering Geologist. What about existing properties that already have less than the needed bluff setback to structures? Does the CCC intend to make it a requirement for a licensed Geotechnical Engineer or an Engineering Geologist to complete the reports or is this guidance only a suggestion to local governments?
- **Increase setback requirements: Require new structures to be set back a sufficient distance landward to minimize risks, to the maximum extent feasible, over the life of the structure.** Will the report by Geotechnical Engineer or an Engineering Geologist include a recommended set back? If the project is a redevelopment project of an existing development and there is insufficient setback distance what guidance does CCC give to local governments?
- **Establish a transfer of development credits program:** Consider creating a transfer of development credits program (TDC) or lot retirement program where new development located in hazardous areas must pay a fee or purchase development rights of properties identified by the land use plan to be in high-hazard sea-level zones or key conservation areas for wetland migration. This would seem a good idea if local governments have the means to make it possible.

- **Develop or update shoreline management plans to address long-term shoreline change due to sea-level rise:** Create policies that require areas subject to wave hazards and erosion to develop a management plan, including strategies to manage changes in wave, flooding, and erosion hazards due to sea-level rise. This seems a good idea if local governments have the means (competent staff and/or resources to augment staff with consultant services. Can CCC help?
- **Establish a beach nourishment program and protocols:** This will require a good understanding of local coastal littoral zone, planning, and available resources to enable nourishment. This should also be incorporated into regional adaptation planning that should be under a regional lead agency – would the CCC agree?

Pgs 55 - 56 4.3 Public Access and Recreation

- **Require mitigation of any unavoidable impacts:** What would the CCC guidance be if such mitigation constitutes a legal taking of property or development rights? Would this be an obligation of local governments?
- **Incorporate sea-level rise into a comprehensive beach management strategy:** Update or develop a new comprehensive beach management strategy to address loss of beach areas, including loss of lateral access, or changes in beach management due to sea-level rise. Establish a program to minimize loss of beach area through, as may be appropriate, a beach nourishment program, restoring sand and sediment supply to littoral cell, removal or adjustments to shoreline protection structures or other actions. Some local government have management agreements with the California Parks Department for operating State owned beaches, would the State of California be primarily responsible for having a comprehensive beach management strategy that local governments would be expected to follow if they management the beach for the State of California?

Pgs 57 – 58 4.4 Coastal habitats (ESHA, Wetlands, etc.)

- **Update requirements for coastal habitat management plans:** Add policies stating that the effects of sea-level rise should be addressed in management plans for coastal habitats: ...The plan should establish an adaptive management approach, with clearly defined triggers for adaptive actions. Existing management plans may need to be updated to add new monitoring and restoration requirements to address sea-level rise. Does the CCC expect to or already has funding mechanisms (such as grants) that will incentivize local governments to accomplish this, and does the CCC have a model plan that it can refer local governments to as a reference guide?

Pg 119 APPENDIX B. DEVELOPING LOCAL HAZARD CONDITIONS BASED ON REGIONAL OR LOCAL SEA-LEVEL RISE USING THE NRC 2012 REPORT- This does provide a procedure for local governments. Will the CCC update this as new methodologies evolve that may be considered better?

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Pg 148 APPENDIX C. ADAPTATION MEASURES – There are other agencies that develop a separate Adaptation Plan guidance document. Is the CCC anticipating developing a document dedicated to adaptation management and planning?

This concludes my comments on the CCC Draft Sea-Level Rise Policy Guidance document. Thank you for the opportunity to provide input.

Regards,


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