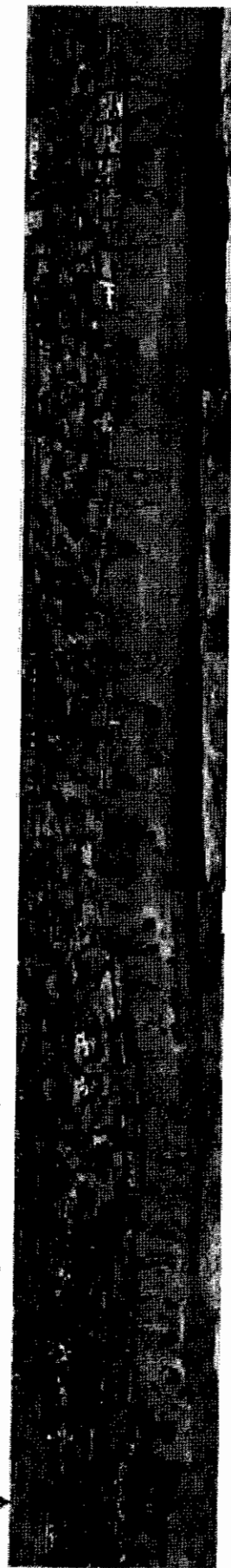
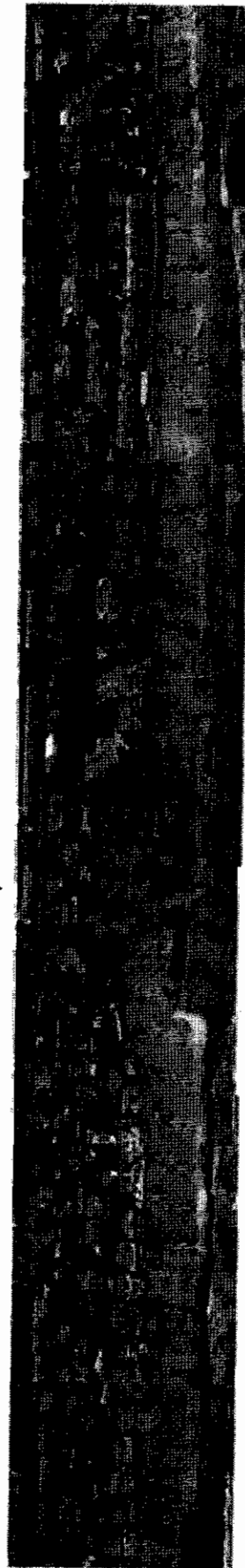


**City of Solana Beach Response to Staff Report
City of Solana Beach Land Use Plan
California Coastal Commission Agenda Item TH 8c Nov.13, 2008**

↓ Northern City Boundary



↓ Fletcher Cove



↓ Southern City Boundary



Th 8c



CITY OF SOLANA BEACH

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www.ci.solana-beach.ca.us FAX (858) 792-8513 / (858) 755-1782

November 7, 2008

Mr. Pat Kruer, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: California Coastal Commission Agenda Item TH 8c – November 13, 2008
City of Solana Beach Local Coastal Program Land Use Plan

Dear Chairman Kruer:

The City of Solana Beach (City) would like to thank you, the Commissioners and California Coastal Commission (Coastal Commission) staff for the time and effort spent reviewing the City's Local Coastal Program (LCP) Land Use Plan (LUP). Since its incorporation in 1986, the City has actively shared the responsibility of managing local coastal resources with the Coastal Commission. We are committed to furthering the goals of the Coastal Act, and utilizing a comprehensive and collaborative approach in this effort.

The entire City is located within the Coastal Zone. The City's LUP was prepared over the last three years with substantial public participation and input. It has the support of a Citizens' Committee of local stakeholders comprised of property owners and the environmental community, including the Surfrider Foundation and CalBeach Advocates (Citizens' Committee). Stakeholders participating in this process included Dwight Worden, member of CalBeach Advocates, former Coastal Commissioner and former city attorney for the City of Del Mar; James Jaffee, engineer and representative of CalBeach Advocates and the Surfrider Foundation; and Jon Corn and David Winkler, attorneys who own bluff top homes. To summarize the primary intent of the stakeholders, this Citizen's committee stated:

"By way of summary, the plan calls for the creation and retention of a wide sandy beach and a guarantee that blufftop homeowners will be able to protect, improve and maintain their homes until at least 2081, if they comply with the provisions of the plan. This gives beach users, the community, its property owners, and businesses the priceless asset of a sandy beach while allowing blufftop homeowners the ability to protect and enjoy their homes. Ultimately, the provisions of the plan provide mechanisms for the restoration of the beach and bluffs to a natural condition."

This submittal was the framework for what became the LUP submitted by the City to the California Coastal Commission staff for its review in July 2006. It was formally accepted as a submittal by the Coastal Commission staff in May, 2007.

The LUP contains a long-range plan for addressing erosion of beaches and bluffs, parameters and methodologies to be used for undertaking a long term cost-benefit analysis regarding the removal of bluff retention devices, and a list of incentives for early removal of bluff retention devices. The LUP also contains a beach and bluff overlay planning area to implement various LUP plans, policies, and programs within a beach and bluff planning district.

One of the future elements of the proposal, an element of the LCP Workplan, deals with fundraising and financing for implementation of the LCP. The proposal contains a number of special financing options including assessment districts, various types of fees including sand mitigation fees, land lease fees and other development related fees. These are still under development and will be submitted as part of the City's Implementation Plan for Commission consideration.

The City received the first Coastal Commission staff comments on the draft LUP eight months after it was submitted. The second set of their comments was received four months after the City's resubmittal of the draft LUP. This timing utilized the one year period allowed under the Coastal Act to process the plan, necessitating a withdrawal and resubmittal of the application. The Commission has until September 2009 to act on the LUP submittal; however, the City was working with staff toward a November 2008 hearing with great anticipation.

The Coastal Commission staff has, just in the last few weeks, made us aware that their recommendation is for denial of the entire program with no suggested modifications. Coastal Commission staff's recommendation for denial came as a complete surprise to the City. It is also an extreme disappointment for the Citizens' Committee. These stakeholders, who historically have had divergent positions, have now reached a consensus on many progressive policies and programs contained in the LUP submittal. The Coastal Commission staff's recommendation for denial could have the unintended consequence of unraveling this fragile consensus and upsetting the balance that has been achieved among the various diverse interests in this important policy making process.

Coastal Commission Action Requested:

The City, and its Citizen's Committee, requests that the Commission provide policy direction to it's staff that the Commission supports and finds merit in the Solana Beach LUP policies as proposed.

We request the matter be continued by the Commission, and the Coastal Commission staff be directed to return in the coming months with a certifiable LUP as outlined in Attachment A.

The central issue in the City of Solana Beach LUP plan is the coastal bluff program. The City's Coastline is 1.3 miles long. It is comprised almost entirely of sixty to eighty foot high sandstone bluffs which have steep, vertical slopes facing the ocean that are exposed to ocean waters at high tides. The bluffs are composed of highly erosive sediments including a clean sand lens which, when exposed, triggers mid and upper bluff failures which then require upper bluff stabilization projects in addition to seawalls. About 50% of the bluffs along the City's shoreline have sea walls or other shoreline protection devices, most of which were placed there on an emergency basis.

The entire coastline is developed with residential buildings at the very edge of the bluff, with the exception of one vacant residential parcel and a parcel at Fletcher Cove. Fletcher Cove is City owned and contains public facilities. Most of the privately owned residential buildings are within zero to twenty feet of the bluff's edge. The bluffs are directly impacted by wave and tidal action during high tides which occur twice daily, with seasonal storm surges that create conditions that are even worse.

Time is of essence for consideration of this plan. Given these physical parameters, the City is concerned that many of these principal residential structures will very likely continue to experience emergency conditions in the coming years, prompting property owners to request more shoreline protection devices to be considered as allowed under the Coastal Act without benefit of a prospective CEQA review or requirement for removal in 2081.

Benefits of the Proposed Land Use Plan:

The City and the Citizens' Committee developed a policy document that is not only in compliance with the Coastal Act, but establishes policies that advance the Coastal Act including a proactive, managed approach for the future. The public benefits of this plan are outlined in Attachment 2.

The LUP includes provisions for fees to support sand replenishment and provide the City with a means for potential property acquisition along the bluff edge. It will also provide for preferred standards for protection devices and improved public safety. Finally, the LUP as proposed will provide a managed approach to the removal of all of the protective shoreline devices over time.

It is our belief that no other City or County in California have gone as far as the City of Solana Beach to create formal policies to proactively manage shoreline retreat and protection devices. It is also unique in that this plan has the full support of property owners and environmental groups.

Primary Areas of Coastal Commission Staff Disagreement

The Coastal Commission staff has indicated that its interpretation of Coastal Act policy is in opposition to all bluff retention devices except in emergency circumstances. They do not acknowledge any public safety benefit in regards to bluff protection devices. The LUP allows for approval of bluff retention devices if

bluff failure is imminent and anticipated within two years based on a geotechnical review and factor of safety analysis prepared by licensed geotechnical engineers.

Bluff retention devices are designed and engineered to abate erosion, retain the existing bluff in place to prevent it from falling onto the public beach below. Unprotected coastal bluffs have directly resulted in the deaths of five people in San Diego County since 2000, most recently in August 2008 in the Torrey Pines area of San Diego.

All coastal bluff retention devices are by nature preventative measures intended to prevent the bluff from falling onto the public beach below. Building these devices earlier when there is an imminent threat present, but not yet an emergency condition, will avoid rushed approvals under emergency circumstances. The processing of these preventative devices will allow for more deliberate and thorough analysis of applications (when an imminent threat is present). This means that more appropriate, less massive bluff retention devices; and greater preservation of the natural bluff slope will be more likely; all while helping to ensure that significant existing bluff top structures are protected. Instead of being CEQA exempt under emergency procedures, structures will be subject to CEQA review in non-emergency situations, when an imminent threat is present.

Coastal Commission staff comments indicate an opposition to the sand and land lease/recreation impact mitigation fee policy establishing a potential "offset credit" for public benefits associated with bluff retention devices. Further, Coastal Staff appear to be categorically opposed to the LUP 5-year work plan which calls for refinement of key elements in the LUP over a period of years following certification of the LUP. However, development of a broad program and subsequent refinement of key elements as defined in a 5-year work plan is a very standard planning process. The City has about one-third of the LUP work plan tasks in development already. These include, for example, the sand mitigation and land lease/recreation fee program, development of preferred bluff retention solutions, development of a list of pre-qualified geotechnical consultants for use by applicants preparing permit application submittals to the City, and development of a potential offshore submerged multi-purpose reef.

Many of the policies that are contained in the LUP are not requirements of the Coastal Act and the Coastal Act has no provision precluding the City from recognizing public benefits of erosion control structures that are installed. The City respectfully requests that the Coastal Commission direct staff to work with the City on the fee study for Land Lease Fees and Sand Mitigation Fees to be implemented as soon as possible in a manner consistent with the submitted LUP. The Fee Study will include a mechanism for credits or other procedures to prevent duplicative fees assessed by other Agencies for the same purposes as the City-imposed fees against property owners.

The most recent set of Coastal Commission staff comments revealed for the first time that they had fundamental problems with key provisions of our LUP, and asserted that many of the shoreline and bluff policies contained in the LUP are in direct conflict or are inconsistent with the California Coastal Act of 1972. However, Coastal Commission staff offered no examples or references to specific Coastal Act policies in its letter, making the City's ability to make constructive responses very difficult.

The following list provides some example policies that reflect the site-specific, locally responsive provisions in the LUP.

Key policies of the LUP – California Coastal Act and Beyond

The essence of the City's LCP is embodied in policies and implementation strategies that together create a long-term comprehensive land use plan referred to as Planned Shoreline Retreat - Removal of all bluff retention devices at Year 2081 unless certain specific and detailed findings can be made:

- City's right to acquire bluff property through rights of first refusal are included.
- Establishment of incentives to increase sand deposits and to remove bluff retention devices.
- A permit term of up to 2081 for bluff retention devices and any extensions thereafter. It also establishes policies for early removal and ultimate removal of bluff retention devices.
- Establishment of criteria for the approval, maintenance, and repair of bluff retention devices. These devices will be reacquired to meet certain criteria set out in the LUP.
- Three-tiered strategy for coastal permit processing: A Tier 1 administrative permit would include minor projects that are considered routine or non-controversial. It would be decided at the staff level, subject to appeal to a soon-to-be-formed Shoreline Planning Commission; Tier 2 regular coastal permits would include applications to install preferred bluff retention solutions. These preferred solutions would be pre-approved types of bluff retention devices. Tier 2 projects would be heard and decided by the Shoreline Planning Commission established by the City Council, with the right of appeal to the Council; and, Tier 3 non-preferred bluff retention solutions would be heard by the Shoreline Planning Commission. This specialized planning commission would make a recommendation to the City Council. Tier 3 applications would then be forwarded to the City Council for ultimate decision and approval, subject to appeal to the Coastal Commission given certain parameters;
- Sand Mitigation and recreation/Land Lease Fees – Following the lead of the Coastal Commission, the LUP contains policies for development of similar fees that would ultimately replace the Commission fees for projects in the City.

6

- Development of a logistics plan to allow Planned Retreat to proceed according to the year 2081 Shoreline Management Plan.

City Implementation of the LUP & Local Implementation Plan

One of the Coastal Commission staff's primary objections to the City's LUP appears to be based on the fact that the LCP Local Implementation Plan (LIP) was not submitted concurrently. However, the Coastal Act does not require the LIP to be fully developed or submitted concurrently with the LUP in order to allow certification of the LUP. The LUP is the guiding policy document that proscribes the steps necessary to accomplish the work plan over time. The work plan is therefore the implementation plan of the LUP. It is important to note that the Coastal Commission does not relinquish its oversight authority and jurisdiction in this policy making process until it has approved each proposed step in the implementation plan. For example, the current Coastal Commission fee structure will remain in place until the City completes the mitigation fee study which is currently in process. Once the Commission reviews the City's proposed mitigation fee methodology and amount, and makes a finding that the fee program is adequate, and then the existing fee program will be replaced with the new one. The Commission controls the timing and the determination of whether or not to replace the fee program and whether or not it is deemed to be adequate before taking any action on this portion of the work plan.

As part of the long term LCP implementation strategy, the City has included the policies and programs which are components of the Year 2081 Shoreline Management Plan. The various elements of this program are fully detailed in Chapter 2 of the LUP, and an implementation schedule referred to as the work plan is included in Appendix 1 of the LUP. The key work plan implementation tasks remaining to be initiated are listed below. In the near term, the City will prioritize resources to complete the following:

- Establish Beach and Bluff Overlay Zone (BBOZ)
- Evaluate the formation of assessment districts
- Develop a Financing Plan for LUP Policy Implementation
- Develop incentives not to build in hazard areas
- Establish an inventory of surf breaks, reefs and related resources
- Establish a Shoreline Planning Commission

Within five years of adoption of the LUP, the City will prioritize resources to complete the following as part of the LIP:

- Prepare a Cost Benefit Analysis for a Logistics Plan
- Develop a Logistics Plan
- Negotiate State Lands Lease terms so City can collect fees

- Develop criteria/plans for relocating/managing city infrastructure including, public streets, utilities, marine safety center, community center, lifeguard towers, public access stairways
- Identify bluff properties for possible acquisition

It is important to note that the City is almost entirely built out. As such, the City has a General Plan, Zoning Code, a Highway 101 Specific Plan, and a Master Plan for Fletcher Cove that governs land use decisions in the City. Land use patterns are established.

The City's response to Coastal Commission staff comments is as follows:

Coastal Commission staff states that the LUP is insufficiently clear with respect to land use types, and parking standards, however, these standards are not only in place but were provided as requested by Coastal Staff for review. It has always been anticipated by the City that changes to these existing land use documents would be addressed through implementing ordinances following certification of the LUP – not before. Further, Visitor Serving uses are addressed in the zoning ordinances in the existing ordinances that have been submitted with the LUP.

Environmentally Sensitive Habitat Areas (ESHA) are described in section 2.3.7 of the LUP and are shown in Exhibit 2-6. The term ESHA is defined by the California Coastal Act as noted on page 2-50 of the LUP and the City does not propose to use a different definition of ESHA. ESHA and wetland setbacks and are provided addressed in LUP Policies C.1.1 and F.1.1.

Policies pertaining to the use of native, drought-tolerant, and non-invasive policies are included in LUP policy K.1.6.

The City is working with the San Elijo Lagoon Conservancy, San Diego County, City of Encinitas, Department of Fish and Game, and the Department of Fish and Wildlife to update, develop and implement an appropriate Vegetation Management Plan intended to reduce wildfire risk within and adjacent to the City's jurisdiction under applicable state regulations and codes. The City will protect trailhead access locations within its jurisdiction to the San Elijo Lagoon.

Additionally, the City is in compliance with, and will continue to implement plans in compliance with all applicable state laws and code requirements for stormwater, drainage, vegetation management and Wildland Urban Interface provisions and mandates.

Coastal Commission staff's interpretation of some of the key elements of the *Year 2081 Shoreline Management Plan* is in error. Keeping in mind that all of the City's bluffs are already developed and many parcels have already been redeveloped with newer homes, all bluff top redevelopment approvals are

dependent on a finding of two licensed geotechnical engineers (applicant and City) that such development will not adversely affect the stability of the bluff or require a bluff retention device for structural stability. This is an existing requirement under the Solana Beach Municipal Code. The LUP in fact contains incentives to encourage property owners to build as far landward as possible by allowing reduced front yard setbacks.

Further, the Year 2081 Shoreline Management Plan also requires full mitigation to sand supply and for the potential for loss of public recreation area as is currently assessed by the Coastal Commission. The City's mitigation fee program is in the early stage of development. The City is proceeding in a very deliberate fashion, including using surveys of beach goers to establish the recreational value of the beach using a broadly accepted methodology. The City's mitigation fees are intended to ultimately replace the fees imposed by the Coastal Commission, but until that time, the Coastal Commission's fees will remain in place. Therefore, if the Coastal Commission's fees are designed to mitigate adverse impacts, there would in theory be no point in time when the impacts are not mitigated.

Coastal Commission Staff correctly notes that effectiveness of removing shoreline protection in 75 years "...will not be known until the completion of several significant feasibility studies including a Logistics Plan, a Long-Term Cost benefit Analysis and a Financing Plan." However, Coastal Commission staff fails to acknowledge that removal of bluff retention devices is neither contemplated nor required by the Coastal Act. None of the already permitted and built bluff retention devices are currently required to be removed so the Coastal Commission is giving up nothing, but instead a potential gain would be realized by the possible removal of existing and future retention devices. The LUP provides for approval of bluff retention devices if bluff failure is anticipated within 2 years based on a geotechnical review and factor of safety analysis prepared and reviewed by licensed geotechnical engineers. The Coastal Act itself allows these devices and does not strictly contain language allowing them in only emergency situations – this is an admitted interpretation by the Coastal Commission Staff. The Coastal Commission Staff have stated that they do not support shoreline protection devices of any kind in a non-emergency situation, while the Coastal Act allows shoreline protection devices when an imminent threat exists. Furthermore, it needs to be recognized that only when shoreline protection devices are preventative can there be a deliberative CEQA review.

Finally, once we are given the direction we seek from the Commission that the policy's presented in the LUP have merit and should be further developed, we will then utilize the time and opportunity provided in the coming months to collaborate with the Coastal Commission staff and resolve their stated issues with the CEQA findings that are needed to present an LUP that is certifiable by the Commission.

Conclusion:

With the shared goal of identifying long-term solutions to the unique Coastal issues found within the City, the various interests participating in the development of the LUP are committed to achieving a balance of public and private interests, rights and needs as provided in the Coastal Act. In the absence of having a certified LCP, the Coastal Commission will retain original jurisdiction in Solana Beach. Under this scenario, the implication for both the City and Coastal Commission is more business as usual, which the MEIR discourages.

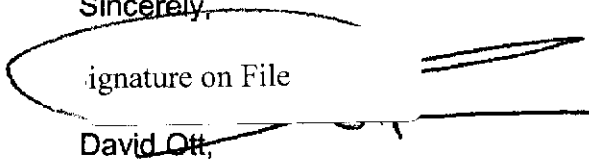
The Coastal Commission gains nothing under these circumstances and will continue to review projects approved by the City for compliance with the Coastal Act on an individual project-by-project and piecemeal basis. Coastal Commission staff shortages, budget cuts and workload demands will continue to lengthen the processing timelines for the public. Neither local residents nor the public derive any benefit under these conditions.

Conversely, Coastal Commission staff and the Coastal Commission as a whole would benefit from eventual adoption of a Local Coastal Program for Solana Beach by having fewer individual projects to review and permit, thereby enabling the staff and Commission to focus on other business at hand.

The City respectfully requests that the Coastal Commission find that the LUP as presented has merit and direct staff to develop the submitted LUP to include the items as proposed by the Citizens' Committee and the City, as outlined in Attachment A, and to return to the Commission with a certifiable LUP for your consideration in the next few months.

We remain available to meet with you, other Coastal Commissioners and Coastal Commission staff to resolve any issues pertaining to Coastal Act compliance. We look forward to continuing to work with you to advance the City's LUP for Coastal Commission consideration. Please do not hesitate to call me at 858-720-2400 should you have any questions or concerns.

Sincerely,



Signature on File

David Ott,
City Manager
City of Solana Beach

CC: David W. Roberts, Mayor, City of Solana Beach
Mike Nichols, Deputy Mayor, City of Solana Beach
Lesa Heebner, Councilmember, City of Solana Beach
Tom Campbell, Councilmember, City of Solana Beach
Joe Kellejian, Councilmember, City of Solana Beach
California Coastal Commissioners
Peter Douglas, Executive Director, California Coastal Commission
Sherilyn Sarb, Deputy Director, California Coastal Commission
Deborah Lee, District Manager, California Coastal Commission
Diana Lilly, Coastal Planner, California Coastal Commission
Carol Childs, Citizen, Solana Beach - Beach and Bluff Conservancy
David Winkler, Citizen, Solana Beach - Beach and Bluff Conservancy
Dwight Worden, CalBeach Advocates
Jim Jaffee, Citizen CalBeach Advocates and Surfrider Foundation
Tina Christiansen, Community Development Director, Solana Beach
Leslea Meyerhoff, Consultant, City of Solana Beach

ATTACHMENT A
Coastal Commission Agenda Item TH 8c
City of Solana Beach Local Coastal Program Land Use Plan

The City of Solana Beach and the Citizen's Committee requests that the California Coastal Commission find that;

The Land Use Plan, as proposed, has merit and the Coastal Commission staff is directed to work out the details of the plan and return within the next few months with a final, certifiable LUP for its consideration. The final LUP should include:

- a. The LCP 5-year work plan as proposed by the City that outlines implementation of the LUP policies and guides development of the LUP.
- b. A sand mitigation and recreation/land lease fee program following certification of the LUP that includes a potential offset for public benefits associated with shoreline protective devices.
- c. Findings that allow for and supports the approval of a shoreline protection device to protect existing structures on a non-emergency basis when an imminent threat is present as allowed by the Coastal Act.
- d. Accepts City's compliance with applicable governing state regulations for stormwater, vegetation management and State Fire Codes where applicable to the LUP.

ATTACHMENT B
City of Solana Beach Local Coastal Program Land Use Plan

The proposed LUP provides the following Public Benefits:

- Implementation of a financing program for:
 - Creation of a sandy beach
 - Improved public safety on the beach, at the base of, and near the bluffs
 - Sand retention devices, such as artificial reefs, that will not harm or degrade existing surfing and beach resources and which may improve existing surf breaks and create new ones
 - Improved maintenance of existing and new bluff retention devices (e.g., seawalls, infills, upper bluff devices) to minimize their scope, maximize the preservation of natural beach and bluff, and for aesthetics and safety
 - Purchase of blufftop homes and removal of bluff retention devices
- Mitigation for the adverse impacts of bluff retention devices on the beach through payment of fees incident to permit approvals with the funds to be used for beach restoration and related beach, surfing, beach recreation and similar projects. Mitigation fees to be paid include:
 - Recreation/Land lease fees
 - Sand mitigation fees
- Removal of bluff retention devices and return of the beach and bluff to a natural condition in 2081 unless certain criteria are satisfied
- Recognition of the importance of a wide sand beach, natural bluffs, surf breaks, and other recreational resources for residents, visitors and businesses
- Controls to prevent new development in unstable areas
- Restrictions so that no new bluff retention devices are allowed on the beach unless all other reasonably feasible options for protecting bluff top homes are deemed infeasible, and when allowed, that they are as small as possible, designed for later removal, and aesthetically managed and maintained to minimize their impacts

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:

Solana Beach LCP (Land Use Plan). Public hearing and action on request by City of Solana Beach to certify LCP Land Use Plan (San Diego County).

Date and time of receipt of communication:

November 5, 2008 at 2:45 pm

Location of communication:

Phone

Type of communication:

Teleconference

Person(s) in attendance at time of communication:

Susan McCabe, Leslea Meyerhoff, David Ott, Tina Christensen, Johanna Canlas

Person(s) receiving communication:

Patrick Krueer

Detailed substantive description of the content of communication:

(Attach a copy of the complete text of any written material received.)

I received a briefing from the project representatives in which they informed me that the City objects to the staff recommendation to deny the LUP without any suggested modifications. They described the history of the LUP development, the extensive local citizen input, and their efforts to work with staff thus far. One of the main components of the LUP is a planned retreat program to remove all shoreline protection by the year 2081. They indicated that staff is basing the denial on a lack of "detail and comprehensiveness" in the LUP and described staff's fundamental concerns regarding the City's shoreline and bluff management policies. The City strongly feels that the level of detail staff is requesting should and will be provided at the Implementation Plan stage of the LCP process. Until that time, the Commission will retain permit authority. The City is requesting the Commission to direct staff to work with the City to narrow the differences in order to create a certifiable LUP.

Date: 11/6/08

Signature on File

Signature of Commissioner: _____

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CALIFORNIA
COASTAL COMMISSION

Ex-Parte Communications

15

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



October 30, 2008

TH 8c

TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
DIANA LILLY, COASTAL PROGRAM ANALYST, SD COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF SOLANA BEACH LCP LAND
USE PLAN for Commission Meeting of November 12-14, 2008**

SYNOPSIS

The subject LCP Land Use Plan (LUP) was submitted and filed as complete on July 22, 2008. A one-year time extension was granted on September 10, 2008. As such, the last date for Commission action on this item is September 20, 2009.

SUMMARY OF REQUEST

The subject request is the first time the City of Solana Beach has submitted a Land Use Plan to the Commission. The submittal consists of only the Land Use Plan portion of the City's LCP at this time; future certification of an Implementation Plan will be required to fully certify the City's LCP. The LUP contains policies that have been developed to address coastal issues that have been identified by City staff, a citizen's group studying shoreline issues, and other interested parties. The LUP covers the entire city limits of Solana Beach, and, along with Implementation Ordinances to be developed in the future, is intended to function as a stand-alone document from the City's General Plan and Zoning Ordinance.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending denial of the LUP as submitted. The City's LUP addresses a wide range of issues and planning concerns relevant to Solana Beach. It is clear the City and the various community groups that have been involved with the LUP have put a great deal of time and effort into developing the LUP. However, it is critical that the LUP contain clear, specific, and detailed policy direction for each of the policy groups contained in Chapter 3 of the Coastal Act, to carry out the policies of the Coastal Act.

Section 30108.5 of the Coastal Act defines "Land Use Plan" as those portions of a local government's general plan "which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies

and, where necessary, a listing of implementing actions.” The intent of the Coastal Act is that fundamental land use decisions be made early in the LCP process rather than leave such decisions until review of the zoning ordinances. At this stage, the LUP is lacking both the detail and comprehensiveness required of an LUP.

For example, the LUP does not include descriptions for the various land uses identified in the plan (residential, commercial, industrial, etc.) There are no parking standards identified. Specific land area for visitor-serving commercial and overnight accommodations have not been identified, quantified or protected. The City has specific policies and regulations for the Highway 101 Corridor and Fletcher Cove, but these standards have not been included in the LUP, and it is unclear how these various documents would be integrated with the LUP.

The City has included a vegetation map in the LUP, but no specific identification of Environmentally Sensitive Habitat Area (ESHA) has been made. There is no definition of ESHA, or specific policies requiring the identification of ESHA, or setbacks and buffers identified for biologically sensitive resources and wetlands. There are no policies addressing the use of invasive species in landscaping, the protection of nesting birds, or the impacts of beach grooming or the protection of grunion and beach wrack. Specific limits on development of wetlands consistent with Section 30233 of the Coastal Act have not been incorporated into the plan policies, and limitations on alterations of streams have not been limited consistent with Section 30236.

There are policies identifying and protecting access to the shoreline, but none for San Elijo Lagoon. Lower-cost recreational facilities are not prioritized or protected. There are no visual protection policies addressing views from Interstate 5, or the potential impacts of signage and telecommunications facilities, or requiring landscape screening and color restrictions around scenic natural areas.

The City is in the process of developing a City-wide fire protection and management map, but it is not available yet. The LUP does not contain policies protecting sensitive habitat from brush management or requiring development to prepare brush management plans that incorporate setbacks and designs that avoid impacts to steep slopes and native vegetation. Many of these issues may be able to be addressed through suggested modifications, and staff is continuing to work with the City to identify potential additions and revisions to the LUP.

However, of more fundamental concern is the City’s approach to shoreline and bluff management. The City has developed an ambitious program for regulating bluff top structures and shoreline protection with the commendable goal of removing all shoreline protection in the year 2081. However, in return for this long-term benefit, development would be allowed to be sited and redeveloped in unsafe locations, and new shoreline protection would be allowed to protect backyards and homes that are not in imminent danger from erosion. The plan does not ensure that adequate mitigation for impacts to sand supply and public access and recreation from shoreline protection would be required and does not take into account the impacts from sea level rise.

Furthermore, the effectiveness of the goal of removing shoreline protection in 75 years will not be known until the completion of several significant feasibility studies, including a Logistics Plan, a Long Term Cost Benefit Analysis, and a Financing Plan. If any or all of these studies, estimated to take approximately 5 years to complete, determine that removal of shoreline protection is infeasible or undesirable, the shoreline protection would be allowed to remain. Nevertheless, in the meantime, the impacts to coastal resources over the next 75 years resulting from improper siting of new development and the construction of shoreline protection, would be allowed to continue.

Staff is also continuing to work on developing specific modifications to many of the beach, blufftop, and shoreline protection policies. However, because many of the policies described above are so unsubstantiated at this point and are very problematic from a policy perspective, individual suggested modifications are not possible. Thus, staff must recommend denial of the LUP, until significant elements are completed and substantive changes are made to the City's approach to shoreline management.

The appropriate resolutions and motions begin on Page 5. The findings for denial of the Land Use Plan as submitted begin on Page 6.

ADDITIONAL INFORMATION

Further information on the Solana Beach LCP Land Use Plan may be obtained from Diana Lilly, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

The City of Solana Beach is within the area that was covered by the County of San Diego Local Coastal Program, which covered the north central coast of San Diego County including the areas of Solana Beach, Leucadia, Encinitas, Cardiff, and other unincorporated communities.

The County LCP Land Use Plan, which comprised approximately 11,000 acres, was approved by the San Diego Regional Coast Commission on March 13, 1981. Subsequently, on May 21, 1981, the State Commission certified the LUP with suggested modifications. After three resubmittals, the Commission certified the LUP on August 23, 1984. On September 26, 1984, the Commission certified, with suggested modifications, the Implementation Plan portion of the County's LCP. Subsequently, the County resubmitted for Commission review the Implementation Plan incorporating the Commission's previously suggested modifications, with the exception of that portion of the plan dealing with the coastal bluff areas. On November 22, 1985, the Commission voted to certify the Implementation Plan for the County, except for coastal bluff lots affected by the Coastal Development Area Regulations, where certification was deferred.

On July 1, 1986 and October 1, 1986, the Cities of Solana Beach and Encinitas incorporated, reducing the remaining incorporated area of the County within the coastal zone to less than 2,000 acres. Because of these incorporations, the County has indicated that it does not plan to assume coastal permit-issuing authority for the remaining acreage, and the County LCP never became "effectively certified."

The subject request is the first time the City of Solana Beach Land Use Plan will be reviewed by the Commission. The City of Solana Beach first submitted a Draft LCP (Land Use Plan and Implementing Ordinances) for Commission staff's informal review and comment in August 2000. On April 9, 2001, staff provided the City with written comments, which advised the City that Commission staff felt the LUP lacked specificity and detail (see Exhibit #2—attachment to May 25, 2007 letter).

On May 25, 2007, a revised Land Use Plan (LUP) was filed in the San Diego District office. On January 5, 2008, Commission staff provided initial comments on the revised LUP. At that time, staff indicated that the draft LUP provided a good starting point, but it did not contain policies and standards for many of the policy groups in Chapter 3 of the Coastal Act, and lacked the required specificity and detail to carry out the policies of the Coastal Act. The draft LUP was focused mainly on shoreline issues, and lacked specific policies addressing other Coastal Act concerns (see Exhibit #2). Commission staff identified specific policy groups and issues that would need to be addressed in the LUP.

Staff also noted at that time that the proposed LUP allowed new development in areas specifically determined to be hazardous (i.e., seaward of the geologic setback line), allowed and even promoted expedited approval of such projects and new bluff retention

devices, and the only offsetting measures were an amortized mitigation fee that was difficult to quantify, could entirely be offset by “proving” a public benefit by means of a currently undetermined methodology, and a promise that the devices will be removed three generations from now, unless the City decided at that time it would be preferable not to remove them. The LUP policies allowed more development in at-risk areas, which would result in greater armoring of the coast, with less mitigation for impacts to public access and recreation. Staff concluded that there did not appear to be any overriding public benefit in this approach. The City withdrew the LUP, and a revised LUP was filed complete on July 22, 2008. However, the majority of the bluff top and shoreline policies are the same as in the 2007 LUP.

B. STANDARD OF REVIEW

The standard of review for land use plans, or their amendments, is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP or LUP amendment if it finds that it meets the requirements of Chapter 3 of the Coastal Act. Specifically, it states:

Section 30512

(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.

C. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject Land Use Plan request. All of those local hearings were duly noticed to the public. Notice of the subject Land Use Plan has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTION

Following a public hearing, staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided.

- I. MOTION:** *I move that the Commission certify the Land Use Plan for the City of Solana Beach as submitted.*

STAFF RECOMMENDATION OF DENIAL OF CERTIFICATION:

Staff recommends a **NO** vote on the motion. Failure of this motion will result in denial of the land use plan as resubmitted and adoption of the following resolution and findings.

The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO DENY CERTIFICATION OF LAND USE PLAN AS SUBMITTED:

The Commission hereby denies certification of the Land Use Plan for the City of Solana Beach as submitted and finds for the reasons discussed below that the submitted Land Use Plan fails to meet the requirements of and does not conform to the policies of Chapter 3 of the California Coastal Act. Certification of the plan would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures that would substantially lessen any significant adverse impact which the Land Use Plan may have on the environment.

PART II. FINDINGS FOR DENIAL OF CERTIFICATION OF THE SOLANA BEACH LAND USE PLAN, AS SUBMITTED

The Commission finds and declares as follows:

A. NONCONFORMITY OF THE SOLANA BEACH LUP WITH CHAPTER 3

1. Hazards/Shoreline Protection

a. Plan Summary. The City of Solana Beach has approximately 1.4 miles of shoreline consisting of steep bluffs, and bluff stability is identified as a significant concern along the entire coastal bluff area. The shoreline policies are intended to regulate the construction of shoreline protective devices and ensure that each bluff top property owner is able to enjoy reasonable use of his, her or its property as required by law.

The LUP includes both long and short term policies addressing bluff top and shoreline development. Long-term strategies include development of a Logistics Plan to address relocation or protection of bluff top development, a Long Term Cost Benefit Analysis, and removal of all Bluff Retention Devices after December 1, 2081. Short-term strategies include developing incentives to remove shoreline protective devices, creating a Shoreline Planning Commission to process and streamline the permit review process for bluff top and shoreline structures, adopting a Financing Plan to implement a 75-year beach and bluff management program, requiring a sand mitigation and land lease fee for shoreline protection, and promoting sand replenishment projects. Where setbacks cause reasonable use to be difficult to achieve, policies encourage acquisition of the bluff property by the City, if feasible.

Other identified hazards are fire, flooding, runoff, and slope erosion. The goals and policies in the LUP related to hazards focus on reducing the risk associated with such

hazards through development controls and regulations to reduce the damaging effects of natural and man-made hazards.

b. Applicable Coastal Act Policies

Section 30235

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. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30236

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30250

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels. [...]

Section 30253

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 or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

(3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.

(4) Minimize energy consumption and vehicle miles traveled.

(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

c. Conformity with Chapter 3 Policies.

The above-cited policies are designed to minimize impacts on coastal resources by ensuring that development is sited in a manner that avoids or minimizes risks to life and property from such threats as erosion, fire, and flooding, and that development does not itself cause erosion, instability or require shoreline protection that alters natural landforms.

However, while the City is in the process of developing a City-wide fire protection and management map, it is not available yet. Section 30250 requires that new development be located where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. However, the LUP does not contain policies specifying brush clearance standards to reduce structural susceptibility and provide protection of structures from wildfires. Nor do the City's policies specifically prohibit or limit development within the floodway of any river or stream as required by Section 30236. The LUP does have policies relating to steep slopes, but the policies do not limit encroachment on these potentially hazardous areas.

However, the most significant deviation from the above-cited Coastal Act policies are in the City's proposed shoreline development policies. Although the City has devised an innovative program to encourage the removal of all shoreline protection in the year 2081, the policies on siting of new bluff top development, and when and how new shoreline protection would be permitted, are not consistent with Coastal Act Chapter 3 policies. The Commission has a long history of dealing with the issue of coastal erosion and bluff top development along the Solana Beach shoreline. This was an issue of great concern when the Commission reviewed the County of San Diego LCP in the early 1980's. In fact, due to differences between the Commission and the County regarding blufftop setbacks and other concerns relating to blufftop development, those properties located on the bluffs were subject to deferred certification. Those same concerns remain today in the current submittal by the City.

Specific proposed policies that allow the most significant deviations from Coastal Act policies include the following:

LUP Beach and Bluff Policies Inconsistent with Chapter 3:

Policy E.1. states that the purpose of Bluff Retention Devices is to protect Bluff Properties, which includes the entire parcel. Section 30235 permits the construction of shoreline protection only when required to protect existing structures.

Policy E.1.2 states that Bluff Retention Devices must be preventative in nature; that is, that they can, or are to be constructed before there is a threat from erosion. Section 30235 states that seawalls shall be permitted when “required” to protect existing structures.

Policy H.7, Policy I.1.10, Policy I.1.11: and the definition and policies relating to an **Extensive Remodel** all affect when and where non-conforming structures are allowed to be repaired and remodeled. These policies are inconsistent in several ways with how the Coastal Act requires evaluation of non-conforming structures. For example, the City's LUP policies would only consider demolition of the portion of the structure within the Geologic Setback area when determining whether a remodel is actually demolition and new construction, and the LUP as proposed would allow reconstruction of a damaged residential structure that requires construction of a new bluff retention device.

Policy I.1.11 allows additions to non-conforming structures as long as they do not encroach into a 25 foot Geologic Setback area. However, Section 30235 does not permit any additions that would in any way require the construction of protective devices for shoreline protection, regardless of how far back from the bluff the addition was proposed.

Policy I.1.14 would allow the construction of a Minimum Home, defined as a home of at least 1,600 sq.ft. plus a 400 sq.ft. garage in an area considered at risk of erosion, with a waiver of any rights to shoreline protection. Section 30235 allows only the minimum reasonable use of the site (which may not necessarily be a new 2,000 sq.ft. foot home) if the structure would be at risk from erosion, in order to minimize risks to life and property, and avoid or minimize the need for shoreline protection.

Policy K.1.3 would allow bluff top development to be sited based on a set erosion rate of four tenths of a foot per annum. In order to ensure new development is located where it will not have significant adverse effects on coastal resources, as required by Section 30250, and to ensure stability and structural integrity, bluff top development must be sited based on the most current known or estimated erosion rates, since these will change as sea level increases, and historic trends cannot adequately anticipate future hazards. As a result, erosion rates must be reassessed at least every 5 years.

Policy L.1 would allow seacaves and notch infills when not required to protect existing principal structures. While in the past, the Commission did approve some seacave and notch fills as preventative measures with the goal of avoiding more significant shoreline

protection, experience has shown that seacaves and notch fills usually have the same adverse impacts on public access, public recreation, and sand supply as seawalls. As such, the Commission now typically permits the filling of seacaves only when the same criteria is met as for seawalls, as set forth in Section 30235 and other cited Chapter 3 sections.

Policy L.2 would allow the construction of shoreline protective devices on the beach and bluff face if a slope stability analysis determines a bluff failure could occur on the site that "has the potential to cause damage to life, health or property, or which could cause a future emergency to occur." This is an extremely broad standard that could most likely be met on any bluff top property at any point in time. The Coastal Act standard contained in Section 30235 for the construction of a shoreline protective device is that an existing structure is threatened. In addition, the Commission has consistently interpreted this to mean an existing "principal" structure—not an accessory building or hardscape. Thus, this policy is not consistent with the Coastal Act or Commission precedents.

The City's proposed policy would also allow reconstruction of the bluff face to a location as far as 10 feet seaward of the bluff edge as it existed on January 3, 1991, and creation of a backyard area at the top of the bluff as large as it existed on January 3, 1991. As noted, the Coastal Act policies cited above do not support the reclamation of backyards or bluff edges beyond that necessary to construct the measures needed to protect existing principal structures.

Policy L.3 requires a mitigation fee for the sand supply and recreational impacts of shoreline protection. The formula for determining the mitigation fee is located in the "Glossary and Definitions" section. The City's formula is similar, but not identical, to the formula the Commission has used for many years, which has been peer reviewed and found consistent with the Coastal Act requirement of Section 30235 that shoreline protection be designed to eliminate or mitigate adverse impacts on local shoreline sand supply. However, no documentation has been provided on why the City's proposed formula has been revised from the Commission standard. In addition, the fee includes "Offset Credits" for various perceived monetary public benefits resulting from the shoreline protection, which suggests the mitigation provided would be less than the fee typically imposed by the Commission. Thus, it appears that insufficient mitigation to offset the adverse impacts of shoreline protection would be provided, inconsistent with Section 30235.

Policy L.4 would allow the construction of upper bluff structures if an upper bluff failure is likely to fail within two to four years, and "the Bluff Home, or City Facility is more likely than not to be in danger within five years." No alternatives analysis is required. While not quite as broad as the criteria permitting construction of shore-level protection, this is still more permissive than allowed by the Coastal Act. Section 30253 of the Coastal Act mandates that all new development must minimize risk and not create geologic hazards. Section 30250 of the Act mandates that new development shall be sited as not to individually or cumulatively adversely affect coastal resources.

The Coastal Act requires the same criteria be met for the construction of upper bluff protection as for beach level protection; that is, a principal structure is actually threatened (not that *might* be threatened within five years), the protection is the least environmentally damaging feasible alternative, is the minimum size necessary, has been designed to minimize all environmental impacts, and provides mitigation for all coastal and environmental impacts. There could be cases where, as an alternative, a City facility could feasibly be relocated (e.g., an overlook, or infrastructure, or recreational facility), and the City's proposed policy would not require this option to be exercised before allowing the construction of bluff structures.

Policy L.10.1 states that if bluff top property owners move all or significant portions of the Bluff Home at least twenty feet landward of the existing most seaward Floor Area of the Bluff Home, then the Bluff Property Owner shall not be obligated to pay permitting fees, Sand Mitigation Fees or Land Lease Fees, even if a Bluff Retention Device is ultimately constructed. Section 30235 requires mitigation for all impacts, regardless of whether a property owner previously attempted to delay the need to construct shoreline protection.

25-foot setback: Several policies, exhibits, and definitions in the LUP establish a 25 foot setback for development. This setback is not based on any geologic evidence that a 25 foot setback is safe or would avoid the need for shoreline protective structures. Only with site-specific geotechnical studies relying upon scientifically-based erosion rates, anticipation of sea level rise and other changing coastal conditions as well as site geology and local soil and stability conditions, can the City establish the appropriate distance to site new development to avoid significant adverse effects on coastal resources and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or in any way require the construction of protective devices, consistent with Sections 30250 and 30253.

LUP Policies Supporting Removal of Shoreline Protection

The City has proposed a tradeoff for allowing the sections outlined above that are inconsistent with the Coastal Act. It proposes that the LUP require the removal of all shoreline protective devices in 2081. This goal is fully consistent with Chapter 3 of the Coastal Act, and the Commission applauds the City's efforts to develop a program that would require the eventual removal of shoreline protection. However, the programs that would ensure this long-term goal is feasible have not yet been developed, and the policies that are in the proposed LUP are amorphous and contain considerable exceptions and exemptions that make it unlikely the removal would ever occur. Yet, in the meantime, impacts to public coastal resources inconsistent with the Coastal Act policies would be permitted to occur, without adequate mitigation or offsetting public benefits.

Policy L.7 is the main LUP policy that requires the eventual removal of shoreline protection or the removal of blufftop structures. This policy states that, in 2081, all existing Bluff Retention Device permits, regardless of when issued, shall come due and expire resulting in removal of all the Bluff Retention Devices, **unless** the City Council

finds there is no reasonably feasible alternative to protect the bluff top structures, and that “important matters will not be accommodated financially and/or logistically to provide for prudent removal of the Bluff Retention Device,” and there is not adequate money to pay for the removal, and all economic, safety and environmental consequences that might be associated with the removal.

This policy provides such broad exceptions to the requirement that bluff retention devices be removed, that it does not provide any level of confidence that the removal would ever occur. For example, a reasonably feasible alternative to protecting bluff top structures might be removal of the structures or portions of the structure. But Policy L.2 suggests removal of all or portions of a threatened structure could be feasible only when taking into account “the cost to the Bluff Property Owner, the loss of value associated with diminishing the Floor Area of the Bluff Home, any reduced functionality of the Bluff Home, any other costs, hardship or consequences associated with demolishing and rebuilding the Bluff Home or portions thereof which are suffered by the applicant Bluff Property Owner and any other nearby public and private property owners.” There would always be some loss of value associated with removing a structure. It is unlikely that removal would ever be found feasible under this definition.

It is impossible to say with any certainty that economic, financial, or logistical considerations in 2081 will support removal of the shoreline protection. The LUP identifies a number of very important planning documents that are intended to support the goal of removing shoreline protection, and would lay out explicitly how it would be done, when, by whom, the costs involved, funding sources, etc. Specifically, the Logistics Plan, required in **Policy A.4.1** would address the costs and logistics associated with relocation or protection of bluff structures, **Policy A.4.2** requires development of a Long Term Cost Benefit Analysis of removal of bluff retention devices, **Policy A.4.3** requires incentives be developed for the early removal of shoreline protection. **Section 2.3.1.7** requires adoption and implementation of a Financing Plan that “the success of many of the key programs” contained in the LUP depend on.

The Commission is hopeful that these plans will lay out a realistic, achievable program for removing shoreline protection. But none of these plans or incentives have been developed yet, and most are not expected to be completed until 2013. There is no guarantee that the programs will be developed by the deadline, or that when developed, they will conclude that the goal of removing shoreline protection is attainable.

The Commission is always interested in innovative ways of balancing the needs of private property owners to protect their existing structures, with the Coastal Act mandate to protect and preserve coastal resources for the public. However, were the Commission to ever consider, as the City’s plan would allow, the construction of both blufftop development in hazardous locations and shoreline protection devices when not required to protect existing principal structure, the public benefit would have to be unequivocal, substantial, and irrevocable. At this point, the LUP policies do not and cannot provide the Commission with that assurance.

As noted above, the proposed mitigation fees that would be provided for the impacts of bluff protective devices have not been adequately defined at this time. In addition to the Commission's detailed formula for estimating the impact of bluff protective devices on sand supply, the Commission has also recently been working on developing a formula or process to assign a monetary value to the public access and recreational impacts of shoreline protection. **Policy L.3** of the LUP indicates that a sand mitigation fee and land/lease recreation fee would be established, but exactly how the land lease fee rate would be determined has not yet been developed.

Potentially, the exact formula for calculating the fee could be deferred to the LCP Implementing Ordinances, if the LUP contained very specific policies describing how the fee would mitigate impacts to various coastal resources. However, the proposed mitigation fee includes a number of different offsetting "credits" that would significantly reduce the amount of any fee, unacceptably undermining the adequacy of the mitigation. The proposed mitigation fee would be "subject to any offset for the cost of the Coastal Structure." The purpose of the mitigation fee is to compensate for the impact to public resources caused by shoreline protection; the cost of the structure must be borne by the private property owner, not used to reduce the mitigation fee. Nor can the fee be reduced "equal to the value of the amount of any quantifiable natural deposit of sand on the beach prior to or after the issuance of the permit from the bluff area landward of the Coastal Structure." The bluffs are publicly owned resources that naturally contribute sand to the littoral system. The mitigation fee estimates the approximate amount of sand that will not reach the beach as a result of the shoreline structure; there is no "credit" given for sand that falls naturally to the beach prior to or after construction of the shoreline protection.

The Mitigation Offset Credit (**Policy L.3C** and **E.1.5**) would allow both the sand mitigation fees and the land lease fees to be offset for any "proven quantified monetary public benefit flowing from the Coastal Structure or Seacave or Notch Infill (e.g., enhanced safety to beachgoers; protection of City Facilities, City Properties, City Infrastructure, greater property tax revenues, etc.) that exceeds the quantified monetary private benefit (e.g., the increase in the value of the Bluff Property)." The methodology for determining these public benefits has not been established. This policy appears likely to substantially undermine the purpose and intent of the mitigation fee.

The Commission is unconvinced that there are or can be proven quantified monetary public benefits from shoreline protection, and without an explicit accounting of what the fee would cover and how it would be calculated, we are very concerned that the effective outcome of this process would be to eliminate the mitigation fee at the expense of the public. This is not an item that can be deferred to the future outcome of a City public hearing process, and approval of the mitigation fee in concept, if it includes a mitigation offset credit, cannot be found consistent with the Coastal Act.

Finally, the Commission finds that the policy language in the LUP that describes and promotes shoreline protection as beneficial to public safety is not consistent with the Chapter 3 policies of the Coastal Act. The Commission's geologist and engineer have

reviewed the proposed LUP and feel strongly that “enhanced safety to beachgoers” is a factually incorrect and misleading characterization of the result of shoreline protection. Seawalls do not and cannot render the inherently risky, changing natural shoreline environment “safe.” Upper bluff failures can continue in the presence of shoreline stabilization measures. Adjacent bluff failures can continue, and possibly even worsen as a result of activity associated with the construction of bluff retention devices and the changes in wave energy resulting from new structures on the beach. Therefore, policies that suggest a public safety benefit results from the presence of a seawall, or that require this benefit be used to reduce the mitigation required to offset the adverse public impacts, are not consistent with the Coastal Act.

In conclusion, the City’s policies addressing risks to property from fire, flooding, and erosion lack the detail and specificity to ensure consistency with Chapter 3 of the Coastal Act. The City's beach and bluff policies would allow the siting of new development in hazardous locations likely to be at risk from erosion, and trigger the need for shoreline protection. In addition, the policies would allow the construction of shoreline protective devices when not required to protect existing principal structures and that would result in alterations to natural landforms and have significant adverse effects, individually and cumulatively, on coastal resources. The policies do not ensure that development would be the least environmentally damaging feasible alternative, or would provide adequate mitigation for impacts to sand supply and other coastal resources. The benefits associated with the potential removal of all shoreline structures in 2081 cannot offset the allowed impacts to public resources. Therefore, the LUP must be denied.

2. Public Access/Pubic Recreation

a. Plan Summary. This policy group addresses the many forms of public access to the shoreline, including vertical and lateral access. In addition, many of the beach and shoreline policies discussed in the above section are actually located in this section of the LUP. The LUP contains policies prohibiting timeshare and condo-hotels.

b. Applicable Coastal Act Policies

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited

to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby, or, (3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway. [...]

Section 30212.5

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. [...]

Section 30220

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

c. Conformity with Chapter 3 Policies.

As cited above, the Coastal Act has numerous policies related to the provision and protection of public access and recreation opportunities. As such, many categories of development are affected by and must ensure that public access and recreation are not adversely impacted. Although the above discussion of the City's beach and bluff policies concentrated on the inconsistencies with Sections 30235, 30250, and 30253, there are a number of adverse impacts to public access and recreation associated with the construction of shoreline protection. The natural shoreline processes referenced in Section 30235, such as the formation and retention of sandy beaches, can be significantly altered by construction of a seawall, since bluff retreat is one of several ways that beach area and beach quality sand is added to the shoreline. This retreat is a natural process resulting from many different factors such as erosion by wave action causing cave formation, enlargement and eventual collapse, saturation of the bluff soil from ground water causing the bluff to slough off and natural bluff deterioration. When a seawall is constructed on the beach at the toe of the bluff, it directly impedes these natural processes, reducing the amount of sand available for access and recreation, inconsistent with the above-cited policies. The physical encroachment of a protective structure on the beach also reduces the beach area available for public use and is therefore a significant adverse impact. This is particularly true given the existing beach profiles and relatively narrow beach in Solana Beach.

Other concerns about the City's public access and recreation policies are that the City does not have a visitor-serving or tourist-oriented land use category. These types of uses are permitted in the various commercial categories, but have not been identified or specifically protected, or given priority over general commercial uses, as required by Section 30222. Nor is any consideration given to prioritizing lower-cost overnight accommodations, or requiring mitigation fees or programs to ensure such facilities are developed, as the Commission has determined may be appropriate when only high-end accommodations are available in an area.

The City does have policies that prohibit timeshares and condo-hotels, which will protect traditional, high-priority hotel uses. But the City does not allow short-term vacation rental for periods of less than 7 days at time, which may eliminate a pool of available lower-cost transient stay opportunities for people who may want to rent for a weekend; a more affordable choice than a full week rental.

The City has policies addressing access to the shoreline, but none identifying or protecting public access to the trails of San Elijo Lagoon Reserve, a recreational resource of regional significance (the Reserve itself is not within Solana Beach's city limits, but access to the lagoon trails is taken from Solana Beach).

The LUP does not have policies that address and regulate temporary events on public beaches, changes in parking fees or hours of operation for parking lots, or potential beach curfew, all of which can adversely impact public access and recreational opportunities, inconsistent with the above-cited Chapter 3 policies.

Thus, as proposed, the LUP does not have the regulations and detailed guidelines to ensure consistency with the public access and public recreation policies of Chapter 3, and the LUP must be denied.

3. Environmentally Sensitive Habitat Areas

a. Plan Summary. This section contains policies which are designed to protect and preserve the City's natural resources. The City of Solana Beach contains a number of important sensitive resources, including the natural vegetation in the canyons and slopes on the south side of San Elijo Lagoon, substantial patches of Southern Maritime Chaparral on undeveloped hillsides around the eastern portion of the City, Steven's Creek, and the coastal area and its rich marine environment. The LUP includes a map of vegetation communities (see page 2-49, Exhibit 6 of LUP), and a table quantifying the amounts of types of vegetation in each community (see page 2-48, Table 2 of LUP). Policies protecting water quality are also provided.

b. Applicable Coastal Act Policies

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Section 30233

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for these purposes to appropriate beaches or into suitable longshore current systems. [...]

(d) Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients that would otherwise be carried by storm runoff into coastal waters. To facilitate the

continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for these purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

c. Conformity with Chapter 3 Policies.

The City's LUP has a number of general policies that call for the protection of sensitive habitat. However, the policies do not specifically regulate the siting of development in such a manner that the Commission can be assured that ESHA will be protected. For example, the City has included a vegetation map in the LUP, but no specific identification of Environmentally Sensitive Habitat Area (ESHA) has been made. The LUP does not define ESHA, or include specific policies requiring development to identify, avoid, protect, or mitigate for the loss of sensitive biological resources. The LUP does not include policies regulating development adjacent to environmentally sensitive habitat areas and parks and recreation, such as requiring setbacks and buffers. The LUP does not contain policies protecting sensitive habitat from brush management or requiring development to prepare brush management plans that incorporate setbacks and site designs that avoid impacts to steep slopes and native vegetation.

The LUP does not clearly establish specific limits on development of wetlands, consistent with Section 30233 of the Coastal Act, and alteration of streams has not been limited consistent with Section 30236. Steven's Creek has not been identified as a stream or wetland requiring protection and preservation. The LUP does not define how wetlands shall be identified or delineated. There are no policies requiring the avoidance of invasive species in landscaping, or the protection of nesting birds. Given the City's extensive shoreline, the lack of LUP policies addressing the impacts of beach grooming and the protection of grunion and beach wrack, is a significant deficiency.

The Commission's water quality staff has reviewed the proposed LUP, and determined that while the City has several strong policies addressing the protection of coastal waters, more specific language requiring the minimization or elimination of polluted runoff is

required. In summary, because the LUP does not adequately protect native upland vegetation, wetland resources, marine resources, and water quality, this policy group is not consistent with the Chapter 3 policies of the Coastal Act.

4. Planning and Locating New Development

a. Plan Summary. This policy group contains policies regulating new development throughout the City. This section contains policies addressing and promoting mass transit and a pedestrian orientation for new development. In addition, many of the policies described above under shoreline access and hazards are actually located in the Planning and Locating New Development section of the LUP.

b. Applicable Coastal Act Policies

Section 30250

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels. [...]

Section 30252

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Section 30253 (cited above)

c. Conformity with Chapter 3 Policies.

Typically, this section of an LUP would outline the general characteristics of the planning area, and describe current and anticipated land uses and development. The LUP does include a map of the City's land use designations (e.g., commercial, residential, industrial, etc.); however, there are no descriptions of what development types are allowed in the various land use categories. The LUP does not contain parking standards, density or height limitations for any permitted use. Minimum requirements for parking (and/or alternative means of transportation) are not only required to enhance public access to the coast as required by Section 30252, but also are required and supported by the public access and recreation policies cited in a previous section of this staff report, particularly Sections 30212 and 30212.5. When private development does not provide adequate parking, there can be "spill-over" effects onto surrounding public streets and parking lots that would otherwise be available for the beach-going general public.

The LUP makes reference to the specific policies and regulations contained in the Highway 101 Corridor Specific Plan and the Fletcher Cove Master Plan, but these standards have not been included in the LUP, and it is unclear how these policies would be integrated with and be applied concurrently with the LUP.

The plan contains policies promoting mass transit and a pedestrian orientation for new development. However, the policies are general and do not specifically require new development to facilitate the provision of transit services and provide facilities for nonautomobile circulation, for example, by providing incentives for transit ridership and ride sharing, parking cash-out programs, parking fees, or subsidies for transit ridership and incorporating bus shelters, bus pullouts, secure bicycle storage into major new developments.

Section 30253 also requires new development to minimize energy consumption and vehicle miles traveled. The LUP does not contain any policies requiring development, for example, to be designed and oriented with the objective of maximizing the opportunities for solar energy use and energy conservation, or encouraging and promoting the use of alternate energy systems, (e.g., solar and architectural and mechanical systems). Therefore, the proposed LUP cannot be found consistent with the Planning and Locating New Development policies of the Coastal Act.

5. Visual Resources

a. Plan Summary. This policy group addresses preservation and enhancement of the aesthetic resources within the City. This is partially accomplished by the establishment of scenic overlooks and street view corridors.

b. Applicable Coastal Act Policies

Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30253 (5) (cited above)

c. Conformity with Chapter 3 Policies.

Section 30251 of the Coastal Act provides for the protection of scenic coastal areas and the enhancement of visual resources. Section 30253(5) requires that popular visitor destination points for recreational uses be protected. The City has a variety of scenic resources, including the hillsides overlooking San Elijo Lagoon, Interstate 5 (a major coastal access route), steep slopes, established residential neighborhoods and visitor-serving commercial districts, and the beach and coastal bluffs. However, as discussed in detail above, many of the City's beach and bluff policies may have the effect of encouraging shoreline protection that visually degrades the bluffs and alters natural landforms. The LUP does not have policies prohibiting or restricting development on steep slopes. There are no visual protection policies addressing views from Interstate 5, or the potential impacts of signage and telecommunications facilities, or requiring landscape screening and color restrictions around scenic natural areas such as the San Elijo Lagoon Viewshed.

Furthermore, the LUP lacks specific development standards for maximum building heights. The Commission has found that regulation of both building and sign heights is appropriate in assuring that scenic resources within the Coastal Zone are protected, consistent with Section 30251. Because the LUP lacks specificity and does not have policies protecting many of the City's visual resources, the Commission finds the Visual Resources policy group inconsistent with Chapter 3 of the Coastal Act.

6. Conclusion

In summary, the LUP plan as proposed has general policies addressing all of the relevant policy groups in Chapter 3 of the Coastal Act, but fails to identify and provide guidelines and regulations to protect numerous valuable public resources, from sand supply to parking, recreational trails, wetlands, and ESHA. In particular, the conflicts with specific policies of Chapter 3 of the Coastal Act regarding the siting of blufftop development and the construction of shoreline protection affect the entire plan and the plan's adequacy to appropriately protect coastal resources. Thus, the plan does not conform with the

Chapter 3 policies of the Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5. Therefore, the Commission finds that the entire land use plan must be denied.

PART V. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal to find that the LCP does conform with CEQA provisions. As described above, the LUP does not conform to CEQA provisions, and would have adverse impacts on public access, public recreation, environmentally sensitive resources, and visual quality. The Commission finds that there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the LCP may have on the environment. Therefore, in terms of CEQA review, the Commission finds that approval of the LCP amendment will result in significant adverse environmental impacts, and must be denied.



STAFF REPORT CITY OF SOLANA BEACH

TO: Honorable Mayor and City Councilmembers
FROM: David Ott, City Manager
MEETING DATE: June 11, 2008
ORIGINATING DEPT: Community Development Department *TPSC*
SUBJECT: Public Hearing to Authorize City Staff to Submit a Revised Local Coastal Program (LCP) Land Use Plan (LUP) to the California Coastal Commission

BACKGROUND:

On February 22, 2006, the City Council authorized a work plan for the preparation and ultimate approval of the City's Local Coastal Program ("LCP") by the California Coastal Commission (Coastal Commission). A Draft LCP Land Use Plan ("LUP") was prepared and posted on the City's website for public comment. On April 19, 2006, the City Council reviewed the Draft LCP LUP and referred it back to the citizen's group for further refinement.

In July 2006, the City of Solana Beach submitted a Draft LCP LUP to the Coastal Commission for review. City staff and members of the LCP citizens group met with Coastal Commission staff in an effort to explore potential issues and answer any Coastal Commission staff questions. Coastal Commission staff indicated that their review of the City's Draft LCP LUP had not been initiated and would not be initiated until such time as a (a) formal resubmission of the LCP LUP occurred with specified numerous attachments; (2) the City issued a Notice of Availability (NOA) of the Draft LCP for public review and comment; and, (3) the City conducted a public hearing to receive public comments on the Draft LUP. Once these requirements were met, the Coastal Commission staff indicated they would initiate their review process for the Draft LUP.

In order to meet Coastal Commission requirements, the City Council held a public hearing on November 29, 2006 to adopt a resolution formally resubmitting the City's Draft LUP to the Coastal Commission for purposes of starting the official Coastal Commission review period for the Draft LUP. At this City Council meeting, Council agreed to conduct an additional public hearing to receive public

CITY COUNCIL ACTION:

EXHIBIT #1

APPLICATION NO.

Solana Beach LUP

City Approval of LUP Submittal



California Coastal Commission

comments and input from the public on the Draft LCP and adopt a resolution (Resolution 2006-193) stating the City Council's intent to hold further public hearings once official written Coastal Commission staff comments were received by the City. The City's submittal of the Draft LUP to the Coastal Commission in November 2006 was the first step in officially initiating the State mandated response time period. The revised LUP was subsequently submitted to the Coastal Commission for formal review in May 2007.

DISCUSSION:

On January 25, 2008, City staff received an official comment letter from the Coastal Commission on the draft LUP stating that additional changes and a resubmittal of the document were required before the Commission could consider recommending the LUP for approval. Key issues raised by the Coastal Commission included:

- Issues related to the City's process and procedures for reviewing and approving bluff retention device permits;
- Mitigation for sand supply and recreational land use impacts associated with seawalls;
- Expanding the discussion about how the Year 2081 shoreline management strategy would work;
- Inclusion of the City's Municipal Code Zoning Ordinance and various General Plan Elements;
- Inclusion of additional maps and graphics supporting the text;
- Plans for implementing key work plan tasks including the establishment of a Shoreline Planning Commission, Financing Plan and Logistics Plan;
- Provisions for a minimum home and setback requirements; and,
- Fire hazard vegetation management planning efforts.

In response to the Coastal Commission's letter, City Staff (in conjunction with the citizen's group) have prepared a response to comments document (Attachment 1) and a revised LUP to address Coastal Commission staff comments (Attachment 2).

The LUP must be revised in order to respond to Coastal Commission staff comments before a second round of Coastal Commission staff review can commence.

This Revised Draft LUP is expected to generate the following benefits for the public, bluff top property owners, and the City:

Public Benefits

- Implementation of a financing program for comprehensive shoreline management;
- Promotion of a sandy beach;

- Sand retention devices, including submerged multi-use reefs, designed to provide retention, recreation and habitat benefits;
- Improved maintenance of existing and new bluff retention devices (e.g., seawalls, infills, upper bluff devices) to minimize their scope, maximize the preservation of natural beach and bluff, and for aesthetics and safety;
- Purchase of blufftop homes and removal of bluff retention devices;
- Mitigation for the adverse impacts of bluff retention devices on the beach through payment of fees incident to permit approvals with the funds to be used for beach restoration and related beach, surfing, recreation and similar projects. Mitigation fees to be paid include:
 - Land lease/recreation fees; and,
 - Sand mitigation fees.
- Removal of bluff retention devices and return of the beach and bluff to a natural condition in 2081 unless certain criteria are satisfied;
- Recognition of the importance of a wide sand beach, natural bluffs, surf breaks, and other recreational resources for residents, visitors and businesses;
- Controls to prevent new development in unstable areas; and,
- Restrictions so that no new bluff retention devices are allowed on the beach unless all other reasonably feasible options for protecting blufftop homes are deemed infeasible, and when allowed, that they are as small as possible, designed for later removal, and aesthetically managed and maintained to minimize their impacts.

Blufftop Property Owner Benefits

- Streamlined process for approval and permitting of bluff retention devices that meet certain reasonable pre-approved criteria;
- Recognition of private property rights including the right to protect, maintain and improve blufftop homes, and the right to at least a minimum home of 1,600 square feet on each lot; and,
- Creation of an assessing entity, such as a Geologic Hazard Abatement District, to fund construction and maintenance of bluff retention devices.

City Benefits

- Tools to align the applicable provisions of the City's land development code with the current requirements of state law through the adoption of the LCP;
- Increased local control as the City will be authorized to alone approve many projects in the coastal zone, in a streamlined manner, without a Coastal Commission hearing;
- Increased potential to avoid seawall-related lawsuits;
- Protection or relocation of City facilities and infrastructure over time, as needed;
- Framework for long term planning to address coastal erosion; and,
- Increased tax revenues resulting from establishment and maintenance of a wide sandy beach with an expected increase in tourism and visitor spending resulting in more Transient Occupancy Taxes (TOT), sales taxes, parking revenues, increased property values, and increases in the local share of property taxes.

The LUP contains a work plan that will explore the creation of a number of special financing options including assessment districts, hazard abatement districts, redevelopment-type districts and various types of fee programs including sand mitigation fees and land lease/recreation fees.

The LUP also contains a long-range plan for addressing erosion of beaches and bluffs, and parameters and methodologies to be used for undertaking long term cost benefit analysis regarding the removal of bluff retention devices. The LUP includes a list of incentives for early removal of bluff retention devices and establishes a permit term to up to Year 2081 for bluff retention devices. In addition, the LUP establishes incentives to increase sand deposits and confirms the City's right to acquire bluff property through rights of first refusal to purchase bluff properties that are put up for sale.

This Staff Report requests the City Council's authorization to direct staff to resubmit a revised LUP to the California Coastal Commission based on their January 25, 2008 comment letter. Attachment 1 provides responses to comments on the Coastal Commission comment letter and Attachment 2 consists of the revised Draft LUP. Both of these documents are based substantially on input and concepts developed by the citizen's group.

The City's LCP consists of (1) a Land Use Plan (LUP) and (2) Implementing ordinances (i.e., zoning ordinances and maps) which together meet the Coastal Act requirements and implement its provisions and policies within the City.

The City will provide additional future opportunities for public review and comment on the LCP and LUP as implementation of the LCP will require approval of Implementing Ordinances. The Implementing Ordinances (Chapter 3 of the LUP) are specific sections within the Solana Beach Municipal Code and maps that describe actions, which carry out provisions of the LCP and Coastal Act policies. In order for the City's LCP to take full force and effect, a public hearing on the Implementing Ordinances will be required.

According to the *Coastal Act* at PRC §30510,

"...a proposed local coastal program may be submitted to the commission, if both of the following are met:

(a) It is submitted pursuant to a resolution adopted by the local government, after public hearing, that certifies the local coastal program is intended to be carried out in a manner fully in conformity with this division.

(b) It contains, in accordance with guidelines established by the commission, materials sufficient for a thorough and complete review.

After the June 11, 2008 public hearing and the expected receipt of subsequent Coastal Commission comments later this year, the City Council will hold an additional public hearing, or hearings as may be necessary, to consider anticipated modifications to the Revised Draft LCP based on Coastal Commission staff input as well as further public input. As such, implementation of the City's Draft LCP will not immediately take effect upon potential subsequent Coastal Commission action.

City staff and Coastal Commission staff have adopted the mutual goal of meeting the November 2008 Coastal Commission meeting which is to be held in San Diego November 12-14, 2008. In order to continue working toward that goal, it is critical that the City submit this revised LUP on June 12th

If the City receives the second set of comments from Coastal Commission staff on the Revised LUP, Staff will convene the Citizens group to review the comments. Staff and the citizens group would then work to respond to the comments adjusting the document as appropriate and necessary and as agreed to by the citizens group.

In the interim, the City will continue to work with the Coastal Commission staff to complete their review and processing of the revised LUP as soon as possible to allow the LCP to be scheduled for the November 2008 Coastal Commission meeting. To this end, the City Council is holding this public hearing and adopting a corresponding resolution with full public participation. It is the intention of the City to ensure that the LCP is implemented in a manner fully consistent with the Coastal Act.

The LUP contains a list Implementing Ordinances in Chapter 3 that will be the set of formal regulations supporting the City in its implementation of the LUP. Additionally, the revised LUP contains a work plan and schedule (Appendix A) which is intended to implement the certified LCP by establishing the steps and timelines necessary to accomplish the goals set out in the LCP. The dates contained in this work plan will be subject to adjustment based on the timing of responses from the Coastal Commission and ultimately the adoption of the LCP by the City of Solana Beach. The drafting of implementation ordinances and policies will also likely be subject to adjustment, based on the feedback received from Coastal Commission staff. Discussions with the Coastal Commission staff by members of the City staff and its consultant will continue to be employed to facilitate the overall LCP review and approval process.

CEQA COMPLIANCE STATEMENT:

Holding a public hearing is not a Project as defined by CEQA §15378(b)(5) and is therefore exempt from the requirements of CEQA.

FISCAL IMPACT:

None with this action, however, substantial labor costs are on going and anticipated to coordinate with Coastal Commission staff, to respond to comments received from the Coastal Commission and incorporate any necessary revisions to the Revised Draft LCP. Labor costs will also be associated with efforts to finalize the LCP for ultimate adoption by the City, develop and define implementation ordinances and finally to implement the City's LCP including all provisions of the LCP Workplan. These costs are budgeted this year and have been included in the next fiscal year budget as proposed by the City Manager. Next year's proposed budget includes the use of staff including the City Attorney, a consultant to facilitate continued processing and development of the LCP, as well as future lobbyist costs to engage the services of governmental relations consultant to facilitate coordination with the California Coastal Commission when the LCP is scheduled to be considered before the full Coastal Commission. Consultant costs for this fiscal year and as proposed next fiscal year are included in the CIP budget Project #9903, "Shoreline Management LCP".

WORKPLAN:

Adoption of an LCP continues to be one of the City's six top priorities.

OPTIONS:

The range of Council options include:

- Direct the City Manager to resubmit the Revised Draft LUP based on California Coastal Commission comments; authorize staff to continue coordinating with Coastal Commission staff to ensure completion of review process and timely processing of LCP application
- Do not direct the City Manager to resubmit the Revised Draft LUP based on California Coastal Commission comments or confirm desire to

expeditiously submit Revised Draft LCP document to the Coastal Commission; do not authorize staff to continue coordinating with Coastal Commission staff to ensure initiation of review process and timely processing of LCP application.

- Provide alternative direction to Staff.

DEPARTMENT RECOMMENDATION:

Staff recommends the City Council:

1. Report Council disclosures.
2. Conduct the Public Hearing: Open the public hearing, Receive public testimony, Close the public hearing.
3. Direct the City Manager to resubmit the Revised Draft LUP based on California Coastal Commission; authorize staff and consultant to continue coordinating with Coastal Commission staff to ensure initiation of review process and timely processing of LCP application.

CITY MANAGER'S RECOMMENDATION:

Approve Department Recommendation

A handwritten signature in black ink, appearing to read 'David Ott', is written over a horizontal line.

David Ott, City Manager

- Attachment 1: Coastal Commission comment letter dated January 25, 2008
and City Responses to Coastal Commission Comment letter
- Attachment 2: Revised Draft LUP

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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(619) 767-2370



January 25, 2008

Tina Christiansen
Community Development Director,
City of Solana Beach
635 South Highway 101
Solana Beach, CA 92075

Re: City of Solana Beach Draft LCP Land Use Plan dated June 5, 2006

Dear Ms. Christiansen:

Thank you for the opportunity to review the City's draft Local Coastal Program (LCP) Land Use Plan (LUP). The City and the various community groups that have been involved with the LUP have obviously put a great deal of time and effort into developing this innovative and complex planning effort.

Before specifically commenting on the City's draft LUP, I want to bring to your attention a new LCP resource developed by the Local Assistance Program of the Coastal Commission now available—the "LCP (Local Coastal Program) Update Guide" available at <http://www.coastal.ca.gov/la/landx.html>. Although this document is specifically directed at updates to an existing LCP, it provides a good overview of the types of Coastal Act issues that must be addressed in all LCPs prepared by local governments to meet the requirements of the Coastal Act.

As you know, an LCP consists of two parts, the Land Use Plan and Implementation Plan (IP). Section 30108.5 of the Coastal Act defines "land use plan" as "the relevant portion of the local government's general plan, or local coastal element which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions." The standard of the review for an LUP is Chapter 3 of the Coastal Act. The standard of review for the IP is that it is adequate to carry out the policies of the certified LUP. It is, therefore, critical that the LUP contain clear, specific, and detailed policy direction for each of the policy groups discussed above, to carry out the policies of the Coastal Act.

GENERAL COMMENTS

Staff has several overarching concerns with the City's LUP relating to these standards. All LCPs must address every major policy area identified in the Resources Planning and Management Policies contained in Chapter Three of the Coastal Act. The City's draft LUP contains 10 policy groups from Shoreline Access through Hazard Areas as laid out in the Coastal Act. However, it appears that the City's current draft LUP was designed to concentrate mainly on shoreline issues. The document does contain many policies

EXHIBIT #2
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Solana Beach LUP
Staff Correspondence (3 letters)
California Coastal Commission

addressing coastal hazards and shoreline erosion. However, the LUP has relatively few policies addressing other Coastal Act concerns, and those that are included are very general. The City's LUP is far less detailed and comprehensive than the June 9, 2000 draft LCP, which Commission staff felt lacked specificity and detail (see attached letter dated April 9, 2001).

Regarding shoreline development policies, it appears that the City has developed both long and short term policies addressing bluff top and shoreline development. Long-term strategies include development of a Logistics Plan to address relocation or protection of bluff top development, a Long Term Cost Benefit Analysis, and removal of all Bluff Retention Devices after December 1, 2081. Short-term strategies include developing incentives to remove shoreline protective devices, creating a Shoreline Planning Commission to process and streamline the permit review process for bluff top and shoreline structures, adopting a Financing Plan to implement a 75-year beach and bluff management program, requiring a sand mitigation and land lease fee for shoreline protection, and promoting sand replenishment projects.

As we understand it, the LUP is intended to balance the rights and desires of bluff top property owners to develop and protect their property, with the City's desire and responsibility to protect the public's interests in public access, recreation, and safety. However, it difficult to follow how the specific policies as stated in the LUP form a cohesive strategy to carry that out. Therefore, staff would encourage development of a shoreline strategy Executive Summary that explains how the various policies lead to particular goals. The standards and criteria that will be used in review of development proposals and to implement the 75 year beach and bluff management program must be made clearer to the public and the decision-makers.

In some cases, there is an inherent contradiction within the policies. For instance, the plan requires that new homes or extensive remodels be set back based on a site-specific projected erosion rate, but the LUP includes a set defined erosion rate that would remain unchanged for at least 10 years; yet, homes smaller than the defined Minimum Home size would be permitted to encroach into the geologic setback and as close as 15 feet to the bluff edge. These differences and their potential application need to be reconciled through the policies and their implementation measures.

Regarding bluff retention devices, the LUP policies assume construction of bluff retention devices in exchange for mitigation fees that will be used toward sand replenishment of the City's shoreline to, hopefully, reduce the need for future armoring. Given today's conditions, this is not an unreasonable approach; however, the standards used to determine the risk and need for protection must still be established in the certified LCP. Section 30235 of the Coastal Act requires the Commission to approve shoreline protection for existing structures in danger of erosion. Given the adverse effects of such armoring which is located on public beaches and, sometimes, public bluffs, to public access, sand supply and scenic quality, the Commission enforces a strict standard as to when protection is required. The City's LCP must include both LUP policies and implementing ordinances that make very clear the circumstances under which bluff

retention devices will be approved. In some cases, they may be preventative in nature, which can be acceptable; but, again, the standards used to determine the appropriate form of protection for a particular site, given the site specific erosion rate, slope stability analysis and proximity of the home to the bluff edge must be made clear.

In exchange for the approval of any bluff retention device, a sand mitigation and land lease fee would be imposed and the device would be removed after December 1, 2081. However, staff is concerned that the proposed LUP allows new development in areas specifically determined to be hazardous (i.e., seaward of the geologic setback line), allows and even promotes expedited approval of such projects and new bluff retention devices, and the only offsetting measures are an amortized mitigation fee that is difficult to quantify, can entirely be offset by "proving" a public benefit by means of a currently undetermined methodology, and a promise that the devices will be removed three generations from now, unless the City decides at that time it would be preferable not to remove them. It is difficult for us to see the overriding public benefit in this approach. The plan provides incentives to remove bluff retention devices in 75 years, but no incentives not to build in hazardous areas. The LUP policies would seem to allow more development in at-risk areas which will result in greater armoring of the coast, with less mitigation for impacts to public access and recreation. However, we remain open to an explanation from the City as to how these policies can work together to meet the many desirable goals that are stated in the plan.

Staff supports the development of "preferred bluff retention solutions" and expedited processing for specific shoreline protective device specifications that have been reviewed and found most effective and protective of coastal resources. Staff supports in concept the development of a Logistic Plan, Cost Benefit Analysis, Shoreline Planning Commission, and Financing Plan. These are the types of "big picture" studies that could eventually result in a comprehensive beach and bluff management program that would result in a plan that allows some additional development on at-risk lots, because it is clear that development rights would eventually be extinguished, or that no shoreline protection would be requested, or that long-term funding of beach nourishment is assured, etc. But until these plans are actually developed and incorporated into the LUP/LCP, there is no way to assess the viability of these long-term planning efforts.

Regarding the organization of the LUP, staff strongly recommends that the LUP be redesigned to put all of the policies relating to a particular issue in separate sections of the LUP. For instance, the policies on shoreline development, in particular, are distributed throughout the document, making it difficult to follow.

As noted, there are a number of Coastal Act issues and concerns that must be included in any new LUP. Some of these items are briefly touched on in the City's draft, and staff has made comments on specific policies as necessary; but most of these items have not been included in the LUP. Listed below are various issues, roughly organized into broad topics groups, that must be addressed through specific policy language in the City's LUP.

Natural Resources – Environmentally Sensitive Habitat, Wetlands and Marine Resources – Coastal Act Sections 30231, 30231, 30233, 30236 and 30240

Beach grooming

Biological studies increasingly confirm that beach grooming and the removal of beach wrack has serious adverse impacts on the biological health and quality of the beach environment. The LCP should specifically prohibit beach grooming, or include a specific beach management plan that includes measures defining when and where it may occur. For example, only above the Mean High Tide Line, only during the summer season, only where grunion surveys have been performed, etc.

Landscaping

Non-native, particularly exotic invasive landscaping associated with private residences and commercial development can adversely impact the health of native ecosystems. Policies should require that landscaping for new development emphasize the use of native plant materials, particularly drought and fire-resistant natives, and prohibit the use of invasive plants. The California Native Plant Council (www.cal-ipc.org) is a good resource for identifying inappropriate plant species. Areas adjacent to the lagoon or other open space areas should be required to use native plants at least adjacent to existing sensitive resources, if not on the entire site.

Brush management

Recent fires in San Diego County emphasize the importance of establishing and maintaining adequate buffers around development. Solana Beach has numerous hillsides, canyons, and open space areas, as well as San Elijo Lagoon, that present challenges in balancing the need to preserve valuable biological and visual resources, with the need for public safety. It is critical that all new development be reviewed with any requirements for brush clearance or thinning calculated as part of the building envelope. Encroachment into environmentally sensitive habitat area (ESHA) for brush management should be prohibited in connection with new development and, specifically, new subdivision of land. The LCP should contain brush management regulations that recognize the constraints associated with existing development adjacent to steep hillsides and open space and minimize impacts to ESHA and/or public open space to the maximum extent possible

Buffers from wetlands and riparian areas

The Commission has typically found that development that does not provide at least a 100-foot buffer from wetlands (freshwater or saltmarsh) and 50-foot buffer from riparian vegetation areas can adversely impact the wetland. The purposes of establishing a buffer area between wetlands and development include reducing the

amount of human and domestic animal intrusion into sensitive vegetation, reducing the impact of human activity on native wildlife species, providing an area of land which can filter drainage and runoff from developed areas before it impacts the wetlands, and providing an upland transitional and/or resting retreat area for some wetland animal species. In some instances, it may be acceptable to reduce the buffer because topography (e.g., a substantial change in elevation) can serve as an adequate buffer; in other cases, a larger buffer could be appropriate. Some uses, such as trails, can be accommodated in the "upper" half (the part farther from the resource) in a habitat buffer, in certain cases. Detailed LUP policies should require and establish minimum buffers and any potential uses in buffers, based on the needs of the biological resources in question.

Environmentally Sensitive Habitat Areas

The Coastal Act (Section 30240) requires that environmentally sensitive habitat areas (ESHA) be protected against any significant disruption of habitat values, and only uses dependent on those resources be allowed within those areas. In addition, development adjacent to environmentally sensitive habitat areas and parks and recreation areas must be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas. Environmentally sensitive area is defined as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments" (Section 30107.5).

The City has many slopes and canyons containing native scrub vegetation that may be considered ESHA. LUP policies should define ESHA and specifically limit development in these areas to uses dependent on the natural resources, and include prohibitions on development that would adversely impact ESHA. In addition, policies should address how the County's Multiple Habitat Conservation Plan (MHCP) apply to and in Solana Beach and if Solana Beach has a subarea plan. Any land designated as MSCP preserve area should be identified and mapped in the City's LUP.

Construction in floodplains/floodways

Flood hazards should be mapped. The construction of permanent structures or the placement of fill within a designed floodway should be prohibited. Uses allowed within floodplains are those capable of withstanding periodic flooding without fill.

Water Quality

Detailed policies regarding Best Management Practices (BMPs) including pre and post construction, site design, source control and treatment control, etc. and maintaining BMPs should be developed. There should be policy language regarding preserving natural drainage systems and the hydrologic cycle, minimizing land disturbance, encouraging infiltration and minimizing the generation and introduction of pollutants. Attached is the Water Quality section from the above-referenced LCP Update Guide http://www.coastal.ca.gov/la/lcpguide/lcpguide_wq_3.pdf that includes recommendations of water quality policies and references existing LCPs that have excellent water quality elements. Water quality policies for construction on the beach should be developed that ensure potential water quality impacts from storage of equipment in the surf zone, oil and grease equipment leakage, vehicle washdown, and overspray of gunite/concrete will be avoided.

Unsewered properties—The City has several areas designated as “unsewered” in the County LCP. Policies should require that new development or substantial redevelopment project connect to the City sewer, or include standards or options for protecting water quality if connecting to the City sewer is infeasible or undesirable.

Golf course runoff—Policies addressing water quality issues specific to the City’s golf courses should be included.

Pesticides, rodenticides and Integrated Pest Management (IPM)—Pesticides and rodenticides have been associated with impacts to water quality and biological resources. Policies promoting the use of IPM, and requiring the use of IPM for large commercial and residential development should be included.

Stevens Creek

Section 30236 of the Coastal Act prohibits the channelization and other substantial alteration of rivers and streams except under three limited circumstances: 1) water supply projects; 2) flood control projects to protect existing structures and; 3) developments whose function is to improve fish and wildlife habitats. The majority of Stevens Creek from Interstate 5, southwest to San Dieguito Lagoon is filled and channelized with only a small portion remaining as an open channel. Policies should assure that any removal of vegetation within Stevens Creek for flood control purposes obtain a coastal development permit and mitigation for any impacts to wetlands or riparian habitat. Mitigation could potentially involve removal of non-native or exotic vegetation along with plantings of riparian/wetlands vegetation. Policies should promote restoration of the habitat value and scenic quality of the streambed as open space.

Holmwood Canyon

Holmwood Canyon and the residential development in the canyon present unique challenges for protecting sensitive lagoon resources. Policies specific to Holmwood Canyon regarding brush management, water quality and runoff, impervious surfaces, etc., that ensure the protection of the lagoon resources may be appropriate. The policies should promote preservation of the habitat and scenic value of the open space areas and minimize alteration of natural landforms.

Public Access & Recreation – Sections 30210-30224

Identification of commercial recreation designated land and overnight visitor accommodations

The City must identify (and map) the areas of the City zoned and designated for visitor-serving commercial uses. It is important that adequate land area be provided for prime visitor-serving uses such as hotels, restaurants, and other tourist-oriented businesses. Policies should clearly protect, promote, and prioritize visitor-serving uses in these designated areas.

The City has recently banned condo-hotels, fractional ownership facilities, and timeshares of all kinds in the City. Commission staff supports these restrictions in Solana Beach, particularly due to the limited amount of land area available for traditional hotel uses that are open and available to the general public. The City's ban should be incorporated as policies in the LUP.

Mitigation for loss of lower-cost visitor-serving land/facilities (e.g., provision of lower-cost facilities or in-lieu fee)

Policies protecting visitor serving facilities should be included, along with policies addressing mitigation for the loss of these facilities should it be determined unavoidable. For example, policies could require that any proposal to demolish existing overnight visitor accommodations be required to demonstrate that rehabilitation of existing units is not feasible.

An in-lieu fee should be required for new development of overnight visitor accommodations in the coastal zone that are not lower cost. This in-lieu fee should be required as a condition of approval of a coastal development permit, in order to provide significant funding to support the establishment of lower cost overnight visitor accommodations within the coastal area of North San Diego County.

The Commission has recently required the fee to be \$30,000 per room for 25% of the total number of proposed overnight visitor accommodations in the new development. The fee (i.e. \$30,000 in 2007) could be adjusted annually to account for inflation according to increases in the Consumer Price Index – U.S.

City Average. This amount was derived from a pro forma provided by Hostelling International for purposes of estimating the costs of construction of a hostel in the San Diego area. This information is available upon request.

As an example of potential operation, administration and management of the in-lieu fees, the Commission requires the fees to be deposited into an interest-bearing account, to be established and managed by one of the following entities approved by the Executive Director of the Coastal Commission: City (in this case, Solana Beach), Hostelling International, California Coastal Conservancy, California Department of Parks and Recreation or a similar entity. The purpose of the account shall be to establish lower cost overnight visitor accommodations, such as new hostel beds, tent campsites, cabins or campground units, at appropriate locations within the coastal area of North San Diego County.

The entire fee and accrued interest would be used for the above-stated purpose, in consultation with the Executive Director, within ten years of the fee being deposited into the account. All development funded by this account would require review and approval by the Executive Director of the Coastal Commission and a coastal development permit if in the coastal zone. Any portion of the fee that remained after ten years would be donated to one or more of the State Park units or non-profit entities providing lower cost visitor amenities in a Southern California coastal zone jurisdiction or other organization acceptable to the Executive Director. Required mitigation would be in the form of in-lieu fees as specified herein or could include completion of a specific project that is roughly equivalent in cost to the amount of the in-lieu fee and makes a substantial contribution to the availability of lower cost overnight visitor accommodations in Solana Beach and/or the North San Diego County coastal area.

The Commission will also look for policies in the City's LUP that specifically protect existing and encourage new lower-cost visitor overnight accommodations. Policies should also provide for a full range of affordability in the City's visitor-serving accommodations. If demolition of existing lower-cost units is authorized, in-kind replacement should be required or a fee in-lieu of provision of lower-cost units in the replacement project similar to the fee described above.

Beach Sand Replenishment

The City's draft LUP contains a number of policies encouraging and prioritizing beach replenishment and development of an opportunistic sand program. Commission staff strongly supports the inclusion of such policies.

Temporary Events

The City has limited area to accommodate temporary events such as festivals, fireworks or sports events on City beaches, and for the most part, development that takes place on sandy beach would be within the Commission's original

permit jurisdiction. The Commission would support any LCP policies that discourage commercialization of the beach. In addition, temporary events can also occur in, and impact public parking areas and roadways (e.g., Fletcher Cove). Thus, to provide guidance to individuals and organizations who may wish to stage events at or near the beach, the LUP should contain policies directing avoidance of impacts to environmentally sensitive habitat areas and species, scenic resources, and significant adverse impacts to public access and recreation.

Vacation rentals

Short-term rentals of residential properties are a valuable source of overnight visitor-serving accommodations. They provide an important reservoir of lesser-priced (compared to hotels) tourist accommodations. There are only a limited number of hotel/motel rooms in Solana Beach, but residential short-term rentals can help address this deficit. However, they have, on occasion, generated complaints from permanent residents regarding noise, trash, and parking. The LUP should contain specific policies authorizing short-term rentals, possibly establishing particular zones where they are allowed, and ensuring that there are enforceable noise, parking, and nuisance provisions to ensure the short-term rentals are compatible with established residential uses.

Parking

General policy language should maximize public access by requiring adequate parking for private development to minimize competition for public parking spaces. If there is not an existing inventory of public parking areas, completion of one should be a goal in the LUP along with policies that protect the existing public parking available for beach users. The City's parking standards and requirements must also be part of the LUP. .

Planning and Locating New Development – Section 30242, 20350, 30252 and 30253

Minimizing energy consumption and vehicle miles traveled

Policies should encourage energy conservation and the use of alternate energy systems, (e.g., solar and architectural and mechanical systems) in both commercial and residential development. New development should be designed and oriented with the objective of maximizing the opportunities for solar energy use and energy conservation. The LUP should include specific standards and criteria for new development addressing parking requirements, pedestrian orientation, and non-automobile circulation in new development.

Agricultural Land

The City has some existing floricultural operations, and the LUP should include policies to protect these agricultural lands.

Telecommunication facilities

Cell phone towers and other forms of wireless communication facilities can cause visual impacts or impacts to sensitive resources if not appropriately sited. Policies should determine where such facilities are and are not permitted (e.g., in open space areas or beach), and standards for the siting, development, design and maintenance of the facilities. The standards should include the need to assess (and minimize) the visual impact of the facility through placement, color, screening, landscaping, etc. The City of Imperial Beach zoning code, "Chapter 19.88 Wireless Communications Facilities" has an example of detailed requirements for telecommunication facilities which may be adaptable as LUP policies.

Density bonuses

If the City has policies or procedures allowing for density bonuses or other deviations and/or variances from certain specified development regulation for development that includes affordable housing, these policies should be included in the LUP. Any deviations granted should be the least environmentally damaging to sensitive coastal resources.

Affordable Housing Opportunities

Section 30604 (g) of the Coastal Act encourages the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone. Policies promoting the protection of the existing stock of lower-cost housing, including mobile home parks, should be included.

Coastal Hazards

The impact of sea level rise should be a factor included in the consideration of shoreline development.

SPECIFIC COMMENTS

The following are specific comments and questions on the proposed LUP. Quoted sections of the LUP are *italicized*.

There are a number of terms used in the LUP that are not in the glossary. These include:

- Bluff Retention Device
- Bluff Property (specifically is it the house only or house and all ancillary structures, or the land?)
- City Owned Utilities
- In-Lieu Park Fee

MAI
Ordinary High Water Mark
OSR (see Section 2.3.3.3)

Page iii: The *DEFINITIONS* in the LUP are not identical to the Definitions section of the City's Zoning Ordinance. How will discrepancies be resolved?

Staff is concerned that some of the glossary terms are not well defined or the definitions direct the policy to too great an extent.

Accessory Structures: Fences and retaining walls are typically considered accessory structures as well. In addition, this section refers to "Bluff Homes." How will accessory structures elsewhere in the City be addressed?

Beach and Bluff Planning District: This definition should define the seaward extent of the beach.

Bluff Home: A "clubhouse" would appear to be an accessory structure, not a principle building.

Bluff Property: *means a private or City government owned parcel located on, or associated with a parcel located on, the oceanfront in the City.*

What does "associated with" mean?

City Accessways: *means City owned or controlled public accessways to the beach or to bluff top parks and view points.*

Public accessways to the lagoon and San Dieguito County Park should also be addressed. What about public streets that are not identified as "**First Roads**"?

City Design Standards *means all applicable Implementing Ordinances governing designs, aesthetic criteria, materials, and structural components of Bluff Retention Devices as further set forth in Policy L.2.B.*

City Design Standards typically refer to design standards for all development, not just Bluff Retention Devices.

City Infrastructure *means that City owned First Roads and City owned utilities located therein and thereon.*

What about all of the City utilities located throughout the rest of the City not on First Roads, including, but not limited to, the outfall at Fletcher Cove?

Coastal Structure means a structure located at the base of the bluff, such as a seawall, that is seaward of the bluff dripline. A Coastal Structure is intended to protect, support and/or stabilize the bluff toe and/or upper bluff areas that have experienced, or are likely to experience, material erosion or instability.

The distinction between “Coastal Structure” and “Bluff Retention Devices” is unclear. Does Coastal Structure refer to only structures seaward of the bluff dripline? Are there policies that apply only to Coastal Structures, such that they need to be distinguished from other forms of protection such as seacave infill and upper bluff retention devices?

Erosion Rate means the average rate of erosion of the bluff. Initially, the erosion rate is deemed to be four tenth of one foot (.4') per annum. Based upon data which accurately reflects a material change in the rate of erosion of Bluff Properties, as determined with the input of a Licensed Engineer, coastal geologists and other shore properties qualified and accepted experts, the City shall adjust any Sand Mitigation Fees and Land Lease Fees for newly issued permits, after notice and public hearing. Any such erosion rate adjustment shall not occur more frequently than once every 10 years.

This definition might be more appropriately expanded as a policy to better direct its potential application and it raises several questions. “Initially” means from what point in time? What is the rationale behind establishing a set erosion rate rather than using a site specific one developed on a project-by-project basis? How would this set erosion rate work with Policy I.1.13, which requires a determination of a site specific erosion rate? What is the rationale for not adjusting the erosion rate more often than every 10 years?

Existing or existing: means in existence at the time of adoption by the City of the Land Use Plan Portion...

Should be “in existence at the time of effective certification” of the Land Use Plan portion...

Extensive Remodel: The intent and application of this definition is not entirely clear. Reference to Extensive Remodel occurs in Policy K.1.7 *Continuance of Bluff Home Non-Conformity. New Homes and Extensive Remodels to Conform* which states:

A Bluff Home may continue its legal non-conforming status; however, an Extensive Remodel shall cause the pre-existing non-conforming Bluff Home to be brought into conformity with the LCP and Implementing Ordinances. All new Bluff Homes shall also conform with the LCP and Implementing Ordinance.

Commission staff supports the goal of identifying at what point substantial renovation of an existing blufftop residence would trigger the need to bring the residence into conformity with the certified LCP. We suggest the definition of Extensive Remodel and Policy K.1.7, as written, are not sufficient to clarify the application of this policy. For instance, the definition seems not to prevent the augmentation of that part of a building that is already seaward of the geologic setback or within the arbitrary 25 ft. setback area.

The definition also states “*An Extensive Remodel shall not include any addition of Floor Area or demolition of any portion of the Existing perimeter wall which is located landward of the Geological Setback Line.*” What does that mean? It would seem the area landward of the geologic setback line is where additions should be encouraged. We would like to work with the City on developing this approach which we feel is a key component to any shoreline strategy.

Infill: This word normally means development of a new lot that is in an already developed area with existing structures on either side of the new development. The use of this term for Cave or Notch fill is unnecessarily confusing. The term Infill should be changed to Cave Fill.

Licensed Engineer: This term is one that has meaning in the engineering community and the definition modifications add confusion. The term should be changed to “Licensed Engineer with Local Coastal Experience”. This allows the need for local experience to modify the regularly used term, Licensed Engineer. Finally, Geotechnical Engineers and Civil Engineers are licensed engineers. Coastal geologist is not a defined profession and even though the city may want to define geologists to be licensed engineers, the engineering licensing board has not, as yet, supported this definition, and calling a geologist by the name engineer, and does not change their basic education and training from geology to engineering. If the City would like to rely upon Geologists for some work, then a separate definition for geologist should be developed.

Minimum house: Staff believes there are some locations in Solana Beach where it would not be prudent today to locate a residence that is only 15 feet from the bluff face. To establish this as a de facto minimum setback for development that may be in place for 70 years would not be in conformance with Section 30253 of the Coastal Act. The message that this definition would be giving to property owners is that the bluffs are not a hazard and development immediately adjacent to the bluff face is encouraged. This is not the case, and the LCP should actively acknowledge and help property owners recognize the risks associated with living adjacent to the ocean. Further discussion on the purpose and intent of this definition, and the number of lots to which it could potentially apply would be helpful.

Sand Mitigation Fee: In this definition, does “width” mean the along shore or shore parallel dimension? If so, this should be clarified. The cost of the sand should include not only the purchase price of the sand, but the cost to deliver the sand to the beach as well. The formula appears to account only for the sand behind the seawall that will not be contributed to the beach, not for the loss of sand by occupation of the shoreline structure on the beach or for “fixing” the back of the beach. Is that considered accounted for by the Land Lease Fee? An explanation of how these two fees were jointly developed would be helpful. The formula seems to apply the mitigation fee only if and where the bluff face is in public ownership and does not take into account any sand presently located on any privately owned portion of the blufftop property. This is a concern for staff, because regardless of the location of the property line on the bluff face, sand still

falls to the beach in the absence of shore protection, and this loss would be an impact to the public. A model showing how these fees would be applied to an existing project would be very helpful and necessary to know their full implication.

Twenty-Five Foot Setback Area and Setback Line: Staff feels this section does not adequately reflect the experiences of the past 10 or 15 years in which the use of a small, fixed setback has been shown to be of little use on assuring the long term stability of a site. The recommendation to use a fixed 25 foot setback will assure that if there is any new bluff top development in the City, that it will be in danger from erosion or slope collapse well before the end of the buildings anticipated economic life. If setbacks are to be used for siting new development, they should rely upon scientifically-based erosion rates, anticipation of sea level rise and other changing coastal conditions as well as site geology and local soil and stability conditions. Further discussion is needed to help clarify the purpose, intent and potential application of this definition.

Substantial Infill means an infill which is of such a large magnitude that it has the impact of and requires mitigation equal to a Coastal Structure.

If infill is changed to Cave Fill, this should change to Substantial Cave Fill. The LUP should include the criteria to be used to determine if the infill has an impact equal to a Coastal Structure. In recent years, the Commission has come to the conclusion that seacave fills have most of the same impacts to public access and recreation as other forms of at grade protection, and has required a mitigation fee to offset these impacts.

Upper Bluff System: The Commission's engineer has suggested that this should include caissons and tie backs and probably should not include Loeffelstein walls. The exclusion of Loeffelstein is both because they are a proprietary system, and because they may not provide sufficient slope stability to function as an upper bluff retaining system. Use as an end wall is quite different from use as the main retaining wall.

1.1 Solana Beach Local Coastal Program

An LCP must contain a land use designation map as well as the textual LUP and Implementation Plan.

2.1 Solana Beach LCP Districts

Reference is made to the four LCP Districts shown in Figure 1, but there is no Figure 1. Only the Coastal Bluff District is shown in Figure A.

Beach/Highway 101 District: City Hall should also be identified in the public/institutional category.

2.3.1.2 Shoreline Access Policy It should be clear that when the Coastal Act sections are included in the LCP, they are considered LCP policies.

Policy A.1.3. Would the effort to discourage foot traffic near or onto the bluff face be only for public access areas or would it also apply to areas of private development? If the focus is resource protection, it should be applied to all bluffs, with enforcement on private lands possibly done as self-policing or the use of small barriers or garden fences. However, fencing can discourage or prevent appropriate public access and block public views. The City may wish to include a definition of open fencing and fencing policies specific to the beach and bluff overlay zone, or seaward of the first coastal roadway, in order to ensure the protection of public views and access. For example, in the City of San Diego, an open fence in the Coastal Overlay Zone must have at least 75 percent of its vertical surface area open to light, and open fences are permitted closer than 5 feet to the coastal bluff edge only if necessary to provide for public safety and to protect resource areas accessible from public right-of-ways or on public parkland.

2.3.1.5. City Beach Replenishment and Retention Policy. The main elements of this program should be better defined. The policy seems to defer any type of control on the construction of bluff retention devices until 75 years from now or sooner if some undefined changes occur. The conditions for approval of a bluff retention device seem more like filing requirements for a coastal development permit, which would then be evaluated to determine if approval is consistent with the LCP. The effort to get some significant percentage of the in-lieu fee cost up front is admirable, but in reviewing the LCP, there seems to be too strong a focus on getting the money and not enough focus on the overall plan for the Solana Beach shoreline over the next 5, 10, 25, 50 etc. years. Even the 75-year "goal" is unclear. While this may not be the right place to lay out the entire schedule for the 75-year program, there should be some direction and milestones now to direct the vision and define the measures necessary to implement the program.

On page 8, in the last paragraph, the statement is made, "Additionally, since Bluff Retention Devices prevent early episodic bluff failures from occurring ..." It might be more appropriate to state, "Additionally, since Bluff Retention Devices are intended to prevent early episodic bluff erosion from occurring ..." There is no guarantee these structures will always prevent bluff erosion and collapse.

Page 9: The City's plan to seek legislation to restrict the State Lands Commission and the Coastal Commission from imposing fees seems inappropriate for inclusion in an LUP. And, since a certified LCP would grant to the City the authority to issue CDPs for most projects within that portion of the coastal zone covered by the LCP, the Commission would only have CDP responsibility if the project were in original jurisdiction or were appealed to the Commission. In those situations, there would not be a City CDP and there would, thus, be no vehicle for the City to require mitigation. All the beach mitigation fees that the Commission has required to date have been returned to the local government through a Memorandum of Agreement with SANDAG. If the City develops an acceptable mitigation program that could be applied even when the City does not have jurisdiction over their CDP, the acceptance of this program as a substitute for the Commission's current mitigation requirement could be addressed through the LCP and not require special legislation.

Policy A.3.1 – A.3.3 The city-developed monitoring will be a useful examination of the pilot beach replenishment and retention program, but the process should also allow for public review and input concerning the effectiveness and impact of the project

Policy A.3.3. For monitoring options, the City may want to consider allowing a broader range of monitoring tools than only aerial photography. For instance, the first sentence could be modified to say, “standardized aerial photography of beach conditions, LIDAR, and other appropriate technologies as they become available and accepted for use in monitoring efforts.”

Policy A.4: Planning Documents refers to “A beach and bluff LUP shall be created for the Coastal/Bluff District”. Is this anticipated LUP different than the LCP Land Use Plan? If so, how will it be incorporated into the LCP? Also, the relationship between the LUP and the Beach and Bluff Overlay Zone is not entirely clear to Commission staff at this point in time. Further discussion will be helpful.

Policy A.4.3. *Incentives shall be developed for the early removal of Bluff Retention Devices and implemented by the City Council, Shoreline Planning Commission, and City Staff, as appropriate.*

Policy L.10 lists several incentives for the removal of bluff retention devices; for clarity, these two policies should probably be in the same section. Are there other kinds of incentives in mind? It should be clear that no incentives allow additional or greater impacts to coastal resources. When would they be developed, and how would they be incorporated into the LCP?

Policy A.5.1.A indicates “The Preferred Bluff Retention Solutions shall be established within one year after formation of the Shoreline Planning Commission”. Commission staff feels the preferred design for shoreline protection should be reviewed and approved by the Commission as part of certification of the LCP, which may be the City’s intent, but this statement makes that potential timing unclear.

Policy A.5.1.B. The City Manager should be provided with criteria for the review of permits for the maintenance and repair of private Bluff Retention Devices and goals for the repair and maintenance of all publicly owned devices. There are old shoreline protective devices along parts of the City’s shoreline and coastal resources may benefit from efforts to remove, upgrade, modify or change these structures. A blanket proposal to approve all repairs and maintenance may only perpetuate the problems from these structures, rather than improve conditions. Permit requirements for repair and maintenance activities should be identified.

Policy A.6, A.7, A.8.1, and A.8.4 all use the word “may” when discussing various Assessing Entities; if they are to be binding requirements, the word “will” or “shall” should be used.

Policy A.8.4. An Assessing Entity for the Coastal/Bluff District may be an appropriate implementation and financing tool for the City. The policies addressing the Assessing Entity should be clear the Entity does not have any authority that is different than any Bluff Property Owner in terms of coastal development permit requirements and responsibilities.

Policy A.8.5B Staff is concerned about the last four suggested expenditures.

- *removal and/or relocation of City Infrastructure and City Facilities add here: “threatened by erosion, if necessary in order to avoid the need for shoreline protection.”*
- *Removal of City-owned Bluff Retention Devices, when authorized; [removal of privately-owned bluff retention devices should be the financial responsibility of the property owner]*
- *Insurance premiums; and*
- *Shoreline related litigation*

Please explain what insurance premiums are referred to. There is not a clear nexus between impacts to beaches and the protection of public infrastructure or costs for shoreline litigation. It would not be appropriate to use beach fees for activities that are not directly related to beach enhancement or access improvements.

2.3.1.8 City Parking Access Policy

As discussed above under general comments, this section should be expanded to include general policy language requiring adequate parking to protect public access, and to include the City’s specific parking requirements.

2.3.2 Visitor-Serving and Recreation Facilities

As discussed above under general comments, this section should include a map of the City’s visitor-serving designated areas.

2.3.3 Water and Marine Resources

2.3.3.1 Community Conditions

This section mentions the San Dieguito Lagoon Resource Enhancement Plan includes policies and measures promoting the continued preservation and enhancement of the lagoon/river system. Including this reference suggests there may be policies the City agrees with and wants to see implemented; if so, they should be included in the LUP.

Policy C.1.1 This section is a rewrite of Section 30233, and is not entirely consistent with this section—which is partially but not entirely cited in the LUP. It is important that all

of the restrictions on permitted uses in all types of wetlands be included in the LUP in a manner at least as strict as the Coastal Act requirements.

Policy C.1.2 As discussed above under General Comments, buffers are important next to all wetlands, not just “coastal lagoon” wetlands, and there may be some cases where the City wants to allow reduced buffers or some uses in buffer. If so, this policy should be expanded to incorporate these circumstances.

Policy C.1.3 This policy is very general and covers a wide area. How would this policy apply to existing development in Holmwood canyon and its watershed? Any application to expand an existing single-family residence, construct accessory developments, add impervious surfaces or undertake brush management could all be disallowed under this policy. Is that the intent of the City for existing development in Holmwood Canyon?

Policy C.1.4 Section 30236 (also cited in the LUP) is more restrictive than this policy, creating a conflict in the LUP. As discussed above under General Comments, the City should develop policies that protect and limit channelization, but allow for on-going maintenance of the channel in the context of a permit and mitigation, if necessary.

Policy C.2.4 and **Policy C.2.6** If a policy references the City’s Standard Urban Runoff Mitigation Plan (SUSMP), or Watershed Urban Runoff Management Program (WURMP) the plan will be assumed to be incorporated by reference. As there may be occasions when the City wants to revise or update portions of the SUSMP/WURMP not directly relevant to the Coastal Act without having to amend the LCP, it would be better to pull out specific policies or sections of the SUSMP/WURMP and add just those policies to the LUP.

Policy C.3.1 *For ocean shoreline area, limit development on sand or rock beaches to lifeguard towers/stations, temporary public comfort stations, safety and public information signs, stairways, public recreation equipment and fire rings, except as otherwise provided herein for Infills and Coastal Structures.*

It appears this would preclude public infrastructure improvements such as the energy dissipater. Is that the City’s intent? In addition, new development should also be minimized to the extent feasible and the least environmentally damaging alternative.

Policy C.3.2 As discussed above under General Comments, policies should be developed encouraging and requiring beach sand replenishment.

2.3.4 Diking, Dredging and Filling

Similar to **2.3.3 Water and Marine Resources**, these policies rewrite Section 30233 of the Coastal Act inconsistent with the intent of the policy. These sections should probably be combined in one section that addresses permitted uses in wetlands.

2.3.5.1. Is this section meant to document all of the seawalls in Solana Beach? This description of the Community should be updated to include the walls at Surfsong and Las Brisas. A map would be helpful.

2.3.5.2 Shoreline Structures Policy. As a general comment, this series of policy statements as Policy E.1 through E.9 contain many supportable goals, but it is not clear how they will work together and be implemented due to inherent contradiction. Also, the reference to Bluff Retention Devices as defined by the City is all inclusive and includes both lower and upper bluff protection. Commission staff strongly believes there are options available to avoid the need for upper bluff protection where lower bluff protection may be unavoidable. The visual impacts and long-term problems related to stability are more apparent in known attempts to try to stabilize the upper bluff formation which in most cases is less stable. An analysis of the preferred design for seawalls and, when necessary, upper bluff stabilization should occur as part of this LCP process. In so doing, the conditions that warrant full bluff armoring should become apparent, so policies to potentially avoid that condition can be developed and implemented.

Policy E.1. This policy presumably states the overriding goal of those that follow and states: *To maximize the natural, aesthetic appeal and scenic beauty of the beaches and bluffs by minimizing the size of Bluff Retention Devices to the extent feasible while ensuring that each Bluff Retention Device accomplishes its intended purpose of protecting Bluff Properties and preserving the maximum amount of bluff face.*

Commission staff supports the goal of minimizing the extent of armoring that may be necessary and believe policies that promote avoidance are preferable to those that assume armoring at all costs. This policy should be revised to suggest “avoidance or” minimizing to the extent feasible while ensuring “any necessary” Bluff Retention Device accomplishes its intended purpose which should be protect “existing structures in danger from erosion”, not blufftop properties. Also, the reference to maximum amount of bluff face should be clarified to refer to “unaltered or natural” bluff face.

Policy E.1.2. *To ensure Bluff Retention Devices shall be preventative in nature to forestall and minimize the size of any future Bluff Retention Device. Bluff Retention Devices shall be allowed only where no reasonably feasible alternative exists, such as underpinning of a Bluff Home (provided the underpinning is not exposed in the future), relocation of the structure or portions thereof, or acquisition of the Bluff Property by the City or other public or non-profit entity in accordance with the terms hereof.*

Is “reasonably feasible” different than the defined “Feasible?” Staff supports allowing shoreline protection only where no feasible alternative exists. It is unclear how this policy works with other LUP policies that seem to encourage or allow shoreline protection even when not required to protect existing structures. If a bluff retention device is “preventative,” then it is probably not “required” to protect the structure. This distinction must be specifically addressed in the City’s policies.

Policy E.1.4: We disagree with the implication that “all” the expense of Bluff Retention Devices is borne by the Bluff Property Owners. There is substantial cost to the public in terms of encroachment on public beach, adverse effects on long-term sand supply, and visual impacts, and substantial benefit to the private property owner in terms of afforded protection. These benefits and costs, both public and private, must be balanced through these policies.

Policy E.1.5. Again, is “reasonable and feasible” different that the defined “Feasible?” Will fees be required for all walls or only those built after the City’s LCP goes into effect? Also, as previously stated, there is no guarantee Bluff Retention Devices will prevent bluff collapse, although that may be their intended purpose.

Policy E.1.6. Commission staff disagrees with the suggestion that “construction, maintenance, and removal of Bluff Retention Devices present less risk than the “ongoing existence of unprotected, unstable natural bluffs”. Signage and public education should be an important part of minimizing existing public and private safety risks.

Policy E.1.8. *To ensure that each Bluff Property Owner is able to enjoy reasonable use of his, her or its property as required by law, and where setbacks cause reasonable use to be difficult to achieve, acquisition of the Bluff Property by the City shall be encouraged, if feasible.*

Staff supports acquisition of Bluff Properties by the City when doing so would result in a public benefit by avoiding the need to construct a Bluff Retention Device. However, we need further explanation on how the City has determined “reasonable use” would be difficult to achieve through setbacks.

Policy E.1.9. Why is this policy under Shoreline Protection? Staff questions why provision of recreational facilities and parking need to be “balanced” with encouraging mass transit. It seems both should be able to be achieved.

Policy E.2. It is not clear how the logistical plan works with the Seventy-five year Beach and Bluff Management Plan. Can the 75-year plan be implemented without the logistical plan already in place?

Policy E.4. *To continue to allow reasonable use of City property by a Bluff Property Owner during the construction of a Bluff Retention Device. For example, the City shall allow use of City parking lots for staging areas and reasonable access to City ramps and the beach.*

Instead of “reasonable” use, policies should clarify that that use of City lots for staging for private construction may be granted if impacts to public access and recreation can be avoided or limited. Public access must be maintained if public access ramps used for construction; no storage of equipment overnight on the beach, no staging or work on weekends or holidays, etc.

Policy E.5.1 though **E.5.3**. It may be possible to combine these data bases and inventories into one shoreline inventory and data base. The individual themes could be part of the main inventory. Also, what are the reasons for collecting this data? Often the purpose for data collection helps with the organization of the data. Finally, will the collected data be available for public use and review or will it be only for use by the City?

Policy E.7. It seems that there may be some steps missing in this program. For example, is there already a mechanism whereby property owners alert the city as to their intent to put their home on the market? If so, are private sales included in this? Would the City need legislative changes to require all property owners to provide such information to the city? What are the consequences if a sale proceeds without any prior notice to the City?

Policy E.8.1, through **E.8.4**. Why are these policies included under Shoreline Protection? They are the same policies as B.2., B.2.3, B.2.4., and B.2.6

2.3.6 Environmentally Sensitive Habitat – Section 30240

Wetland policies may be more appropriately grouped in this section.

Policy F.1.1 The Hillside/Coastal Bluff Overlay should be part of the LUP.

Policy F.1.2. Development adjacent to steep slopes should also be considered. What kind of setbacks are required? Any development in a slide area should have a geologic report. The Department of Conservation prepared landslide potential maps for the Encinitas Quad. If these do not extend to Solana Beach, some similar mapping effort would be useful for implementation of this policy.

- *Where unstable geological conditions are indicated by the reconnaissance report, a preliminary engineering geology report is also required to identify...alternative mitigation measures that can be applied.* Alternative to what? Policies require that an alternatives analysis be performed for any project subject to unstable geologic conditions that identifies ways in which the risk could be avoided.

2.3.7 Archeological and Paleontological Resources – Section 30244

The City of Encinitas' LUP has specific policies for assessing cultural resources that Solana Beach may wish to emulate (see page RM-13 Resource Management, attached). In addition, there should be some policies dealing with the protection and preservation of historic resources. In contrast to the LUP, the City's website lists the oldest house in Solana Beach as the Stevens House in the Eden Gardens area, which now houses the Solana Beach Heritage Museum. There may be some historic resources of value in this area that should be identified and protected. Are there any historic resources at the train station or the Quonset huts in the Cedros Design District?

Policy H.6. It may be that the reference to Margin of Error should be changed to Margin of Safety.

Policy H.7 Policy L.6 also deals with non-conforming uses, and it is unclear how these policies are supposed to work together. What are the policies for dealing with non-conforming uses and structures other than Bluff Homes?

Policy I.1.1 The development standards should be part of the LUP. The “Specific regulations associated with coastal zones” need to be developed and included in the LUP.

Policy I.1.7 *Require new development and redevelopment to provide pedestrian oriented access to transit.*

Please clarify what is meant by “pedestrian oriented access to transit.” The LUP should include specific standards and criteria for new development addressing parking requirements, pedestrian orientation, non-automobile circulation and reducing vehicle miles traveled.

Policy I.1.10 Consider adding to the end of this policy, “require construction of a new Bluff Retention Device or rely upon an existing Bluff Retention Device for stability.”

Policy I.1.11 Consider adding to the end of this policy, “or encroach into the geologic setback area.” What about non-conforming uses; are they allowed to expand?

Policy I.1.13 *The required bluff setback for foundation footings for a new Bluff Home, or an Extensive Remodel shall equal the distance to which erosion is likely to occur through 2081...*

Slope stability must be addressed as well as site erosion. The required bluff setback also must include a buffer to keep the footings from being exposed, and footings must be designed for loss of lateral support, regardless of the use of a setback and buffer.

Policy I.1.14 The relaxation of the geologic setback to allow construction of a home that must be at least 1,600 square foot seems intent upon forcing too large a home onto too small a lot. If a Solana Beach size house cannot fit safely onto a parcel, the variance should be in the house size, not the lot safety. Also such parcels may be targeted for consolidation with adjacent parcels or for purchase by the City.

Policy I.1.15 Through what process could the homes be “potentially” constructed with a reduced side yard setback—would a variance be required? The LUP should explain the circumstances under which setbacks could or should be reduced, and the issues/criteria that would be evaluated in making that determination. Why are only side yard setbacks being considered and not front yard setbacks? Other variances to the height or parking standards should also be addressed.

Policy I.2 *Preferred Bluff Retention Solutions to Streamline the Local Permit Process. A major goal of the LUP is to streamline and improve the City process for acting on*

Coastal Permits for Bluff Retention Solutions. In this regard, the City shall immediately identify Preferred Bluff Retention Solutions...

The “preferred bluff retention” concept should be approved as part of the LCP and not left to some time in the future. Our understanding is this feature is a primary means to reduce permit processing time through utilization of CEQA and City review already approved for the “preferred” design. Commission staff supports this concept.

Policy I.2.1 *Once the coastal Commission certifies the LCP containing these Preferred Bluff Retention Solutions...Applications for benefits and other related programs...would be available.*

What are the “benefits and other related programs” referred to here?

Policy I.2.3 A tiered coastal development permit process may be developed, but please be aware that Section 13566 of the Commission’s Code of Regulations requires that permits issued for developments within an area appealable to the Coastal Commission, must be approved through a public hearing process. The Commission’s appeal area includes all area between the sea and the first coastal roadway, and within 100 feet of any stream or wetland.

In addition, the Tier 1 process should only apply to repair and maintenance that falls within specifically developed criteria and should not be treated as an administrative permit if the existing structure can be brought into closer conformance with the LCP during the repair and maintenance phase.

Policy I.2.3 The City should develop clear criteria for evaluating, reviewing and approving such applications as part of the LUP.

Would this tiered approach apply to non-bluff homes in the rest of the City?

2.3.9.3 City Coastal Visual Resources and Special Communities Policy

The Scenic Area Overlay Policies referenced, plus the various maps and diagrams identifying the City’s scenic view corridors, street ends, scenic overlooks, and highways need to be specifically included in the LUP. Policies protecting view corridors should prohibit structures or other obstructions from impeding views within the boundaries of any visual corridor, with possible exemptions for open fencing and landscaping, provided such improvements do not significantly obstruct public views to the ocean. Policies should require that surrounding landscaping be maintained such that during growing stage and at maturity, it does not encroach into the view corridor or obstruct public views to the ocean.

The Highway 101 Corridor Specific Plan should be part of the LUP. Policies should address specific requirements for landscape buffers from Highway 101, requirements for landscape screening and color restrictions for development around designated scenic

areas, including San Elijo Lagoon and the San Dieguito River Valley. Signage policies and regulations should also be included in this section.

Policy J.1.1. This section should describe how development will be regulated to preserve and enhance the scenic resources, as suggested above with landscaping screening, coloring, etc.

Policy J.1.2. Views from the lagoon and river valley should be specifically included.

Policy J.1.3. The Coastal Act does not typically require the protection of private views. While the City is free to impose such regulations, protection of private views should not supersede the need to protect views from public recreational and resource areas, scenic roadways and major coastal access routes all of which should be identified in the certified LUP.

2.3.10.2 Geologic Hazards. The narrative is useful in helping the reader know that the coastal bluffs are hazardous. However, the sentence “A surfer nearly died in 1999 in Solana Beach after his wet suit was buried by a bluff failure” leads one to wonder about the connection between the wet suit and the surfer and lose the main focus. If this sentence remains it could be written differently to be more useful.

2.3.10.3 Hazard Areas Policy

A map of “target hazard” areas should be included in the LUP. It is not clear if there are any policies that apply to or are related to development in the target hazard locations. What is the purpose and significance of this classification?

Policy K.1. The Hillside/Coastal Overlay policies should be part of the LUP, and should apply if any part of the parcel contains slopes exceeding 25%.

Policy K.1.2. *Development proposals in certain areas must include a geologic reconnaissance report to determine the geologic stability of the area...*

Which “certain areas?” Certainly all bluff lots should be included, and probably inland hillside lots as well. This policy might best be revised to cover any development located in the Hillside or Coastal Overlay.

Policy K.1.3 The Commission typically accepts a factor of safety of 1.5; what factor of safety is the City using?

Policy K.1.5 The Commission has typically required the removal or capping of any permanent irrigation system within 40 feet of the bluff edge, not just those over permeable surfaces. The City should provide the reasoning that would document and support this exception.

Policy K.1.6 The meaning of “natural” is unclear. Whether native or non-native, it should be clear only non-invasive species are allowed.

Policy K.1.8. How does the City define “inland bluff areas?” Since the LUP has provided clear evidence that the coastal bluffs are hazardous, it would be more appropriate to minimize the number of structures that will be exposed to the hazard, and thus, this policy should prohibit any subdivision of land along the coastal bluff regardless of setback or lot size. Also, the application of a 25 foot setback, through definition, is neither an appropriate setback for the coastal bluffs of Solana Beach, nor an appropriate way to establish setbacks. Since site stability and erosion are based on site geology and wave conditions, setbacks, too, should be based on site geology and wave conditions and not established by a regulatory decree.

Policy K.1.9 How will development be “limited?” As noted under general comments, policies need to include the definition of ESHA and the strict limitations on development in ESHA. Development must avoid any impacts to environmentally sensitive habitat. This policy would be more appropriately located in the Environmentally Sensitive Habitat section of the LUP.

Policy K.1.10 - K.1.11 As discussed above under General Comments, more detail on floodplain policies should be included. The Floodplain Overlay should be included in the LUP and acknowledge limitations on channelization, etc. provided in Section 30236 of the Coastal Act.

Policy K.1.12 It is not clear how this policy works with the similar **Policy C.3.1**. How will restrictions on development in high hazard areas that are not coastal be addressed?

Policy K.1.13 As discussed above under General Comments, more detail on Steven’s Creek policies should be included.

Policy K.1.15 – K.1.16. As discussed above under General Comments, specific City brush management policies and requirements should be developed. What are “brush fire hazard areas?” Site plans should be reviewed by the Fire Department, but general guidelines and standards should be developed so that development can be designed and planned with brush management guidelines in mind. Brush management should not encroach into ESHA or require that ESHA be cleared or thinned to provide a safe building envelope.

Policy 2.3.10.5. Approval, Maintenance and Repair of Bluff Retention Devices. This seems to provide a good guide for how to apply for a permit. The City’s review process and issues of concern are not provided. It suggests that devices could be approved without public review or input, if the approved engineer were to find that some engineering structure were necessary. This is not consistent with the permitting and review requirements of the Coastal Act and Commission regulations.

Policy L.1. Is the Licensed Engineer, approved by the City, the same one who would be hired by the applicant to determine that an engineering device is needed to improve the stability of the site? If so, this should not be confused with an independent review. If the city uses a rotating group of third party reviewers, the review may be a bit more independent, but still draws upon a pool of engineers who will be representing the property owner or advocating the need for the project. It would be useful for the City to hire an engineer to work for the city to review bluff retention devices and to develop the proposed pilot programs and review criteria, before entirely turning over this process to outside engineers. The same would be true for geologic review and third party geologic evaluations.

Policy L.2. No analytic techniques available today can determine whether a bluff collapse is anticipated within two years. The analysis of site stability includes subjective examination of the site conditions. The finer the point is drawn, i.e., going from 4 years to 2 years, the more subjective this review becomes. As stated previously, the LUP should contain clear standards as to when a Coastal Structure is required to be approved and also, those circumstances when such structures may be approved as preventative measures.

Policy L.2.5 What actions will the City take if it can be determined that the applicant for a Bluff Retention Device acted intentionally or did not act "reasonably"? This finding is only useful if there will be some consequence.

Policy L.2.6 Some people would say that any structure is an unreasonable effect to public property and others would say that structures can never affect public property. This policy may be difficult to apply if "unreasonable" is the criterion. The City should identify a less subjective standard.

Policy L.2.7 Commission staff would not support giving property owners now or in the future the right to rebuild their backyards to where it existed on January 3, 1991 and we question the City's reasoning here. This would conflict with policies that protect natural landforms and would ignore the natural process of bluff retreat at the expense of public resources. The LUP policies should strike a balance between the need to protect existing bluff top development and public beaches in danger of erosion. Fixing the back of the beach with a hard structure is a significant impact that, in many cases, must be accepted given the pattern of development that has occurred in the City. The LUP policies should acknowledge the hazards associated with blufftop development and require the property owners to develop these properties recognizing current site constraints.

Policy L.3 How would a permittee/homeowner know when and how much to pay each year? Would it be added to the property tax bill or as a special assessment? What would be the consequence of non-payment?

A. This mitigation policy seems like a modification of the Commission's one-time only fee program and it does not take advantage of the City's ability to assess annual fees. For example, the fee for occupation of the beach is assessed only once in the Commission's

methodology, but in fact, the structure occupies the beach for an ongoing period. It does make sense and relates to the overall impact from a new structure, to have an initial high fee to cover those impacts. However, the fee could and should cover the ongoing impacts in a manner that is tied more directly to beach monitoring and direct beach losses. For example, the property owners who install a bluff retention device could be assessed some portion of the annual costs to maintain the beach of some specified width, adequate for public recreation and bluff protection. The fee would be set based on the volume of sand necessary to achieve this width beach, and if erosion increases over time, the volumes would be likely to increase. The Commission's fee program is designed as an In-lieu nourishment effort because the Commission does not have the authority to build projects. The City does have the authority to build projects and do beach nourishment. The fees for seawalls could connect directly to the sand volumes needed to build the required beach widths. We suggest the Mitigation Program be re-examined from this perspective and optimize strengths of the City's administration of a beach fee program.

B. This policy states that the rate will be determined by the City, but it does not indicate how. Will it be through a public hearing? By City staff? It appears there would be one lease rate for the entire City. In the Commission's experience, even along the City of Solana Beach's limited shoreline, the identified variables (access, parking, beach width, etc) vary considerably. How is this going to be addressed? Staff is unclear on how the "present value" will be calculated without an inflation rate, discounting, etc.

C. Commission staff feels strongly that "enhanced safety to beachgoers" is an erroneous and irresponsible characterization of the result of shoreline protection. Seawalls do not and cannot render the inherently risky, changing natural shoreline environment "safe." Upper bluff failures can continue in the presence of shoreline stabilization measures. Adjacent bluff failures can continue, and possibly even worsen as a result of activity associated with the construction of bluff retention devices and the changes in wave energy resulting from new structures on the beach. Therefore, it would be inappropriate to suggest a public safety benefit from the presence of a seawall could offset the adverse public impacts.

Staff questions the assumption that greater property tax revenues result from construction of a seawall. The presence of shoreline protection on a site is an indication that the site and any improvements on it are in a hazardous area. If and when the City's long-term goals for the removal of shoreline protection are firmly established, market forces will likely reflect the disadvantages to construction of shoreline protection.

It would be helpful if the City would develop a model application of the sand mitigation and land lease fee program utilizing an existing seawall and upper bluff retention device so the public and Commission staff can better understand its potential application in the field.

Policy L.4 This policy, as written, is problematic to Commission staff for several reasons; however, the way to revise the policy is not clear without further discussion regarding the "preferred" bluff retention device design and long-term goals for the City

regarding avoiding the need for upper bluff retention. General comments at this time are the potential need for upper bluff protection should be considered at the same time as review for a coastal structure or cave fill and measures should be taken to avoid the need for future upper bluff stabilization that result in greater alteration of the natural landform and increased visual impact. The proposed criteria for approval are subjective and indefensible. If it can be determined the home may be in danger in five years, measures could be taken to reduce that risk that do not involve further armoring. The policies should be designed to consider total bluff armoring a last resort.

Policy L.10.1 *If the Bluff Property Owner voluntarily moves all or significant portions of the Bluff Home at least twenty feet landward of the existing most seaward Floor Area of the Bluff Home, then the Bluff Property Owner shall not be obligated to pay permitting fees, Sand Mitigation Fees, or Land Lease Fees, even if a Bluff Retention Device is ultimately constructed.*

Staff is concerned this policy distorts the purpose and intent behind both concept of planned retreat (the relocation of existing structures) and mitigation fees. The rationale for moving existing structures inland is to remove the risk that the structure will be threatened by erosion resulting in the construction of protective structures, which in turn adversely impact public access and recreation. If a structure is to be moved inland, it should be to a location at which it can be shown will be safe from the threat of erosion for its lifespan. Mitigation fees are intended to offset the actual cost to the public associated with the loss of public access, public recreation, and sand. "At least twenty feet" is an arbitrary number which may or may not achieve the goal of removing the threat to the structure. If moving a structure twenty feet inland is sufficient to avoid the construction of a shoreline protective device, then no mitigation fee would be required in any case. It is unclear what benefit the public would receive from a homeowner relocating a home twenty feet inland and having the required mitigation fees waived, if the relocation does not result in an avoidance of impacts to the shoreline.

CONCLUSION

It is clear that the City has expended considerable time and effort to bring together various stakeholders and to identify long-term goals consistent with Coastal Act such as the removal of at-risk bluff-top structures and shoreline protective devices. The City's Draft LUP is the only planning document I am aware of in San Diego County that acknowledges the desirability of removing shoreline protective devices. Solana Beach's planning efforts in establishing citizen and stakeholder input suggests that the City is taking a leadership role in developing innovative shoreline and bluff top strategies. However, as we have indicated in our comments, we do not believe the Draft LUP policies at this time clearly establish how these goals would be reached in the long-term, or how impacts of such development would be mitigated in the meantime. Staff appreciates the difficulty in establishing a broad mandate and funding for such goals, but unless these measures are actually viable, there is nothing suggested in the LUP to offset the impacts that shoreline development permitted under the LUP would have on public


January 25, 2008

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access and recreational resources. As proposed, the remedies are not yet defined, while the impacts are immediate and remain very clear.

At this time, Commission staff could not recommend approval of the Draft LUP, as submitted, and it would not be possible for Commission staff to develop suggested modifications to address the scope of issues raised herein. Our hope would be for the City to withdraw this submittal and work with Commission staff toward addressing the concerns and deficiencies identified in the above comments. Please give either me or Deborah Lee a call at your earliest convenience to discuss future steps toward developing a certifiable LCP Land Use Plan and ultimately a fully certified Local Coastal Program for the City.

Sincerely,

A handwritten signature in black ink that reads "Diana Lilly". The signature is written in a cursive, flowing style.

Diana Lilly
Coastal Planner

cc: Sherilyn Sarb
Deborah Lee
Gary Cannon

CALIFORNIA COASTAL COMMISSION

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April 9, 2001

Mr. Steve Apple
Planning Director
City of Solana Beach
635 South Highway 101
Solana Beach, CA 92075-2215

Re: Draft City of Solana Beach Local Coastal Program dated June 9, 2000

Dear Mr. Apple:

Thank you for the opportunity to comment on the City's draft Local Coastal Program (LCP). I apologize for how long it has taken for Commission staff to review your draft submittal and provide these comments. As you know, it is difficult to find the time to spend on items that are not formally submitted or do not have a processing deadline or agenda date. We very much appreciate this opportunity to provide comments on the draft LCP at this stage of the process. Hopefully the following comments will aid in completion of your LCP and allow for its review by the City Council and ultimately the Coastal Commission in a timely manner from this point forward.

We have concentrated most of our review and comments on the Land Use Plan (LUP) portion of the LCP. As you know, the standard of the review for the LUP is Chapter 3 of the Coastal Act. The Implementation Plan (IP), which includes in your submittal portions of the Zoning Ordinance, must be adequate to carry out the policies of the certified LUP. It is, therefore, very important to have clear and specific policy direction in the LUP to carry out the policies of the Coastal Act. Section 30108.5 of the Coastal Act defines "land use plan" as "the relevant portion of the local government's general plan, or local coastal element which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions".

As you will see from the following comments, we believe, in general, the format of the LUP should be revised to contain more specific land use policies. The references to sections in the municipal code should be replaced with specific policy direction which will be carried out by the ordinances in the municipal code. We also question the note on Table 2-1 which states the Highway 101 Corridor Specific Plan and Fletcher Cove Master Plan are secondary components of the LCP which implement the Solana Beach General Plan. These plans have not been included in this submittal as part of the LUP but may contain some of the detail on kinds, location and intensity of use and the specific policy direction addressed in the following comments. If the City intends to use these plans as a standard of review for development requiring a coastal development permit pursuant to the Coastal Act, they must be included as part of the certified LCP.

The following comments are responding to the issues in the order they are presented in the draft LCP. Our comments are meant to raise questions and identify policy issues

Section 13577(b) of the Commission regulations. In addition, the water and marine resource inventory should include any intermittent or blue-line streams, their associated floodplain and/or riparian corridors and all other wetland resources outside the lagoon system.

- Figure 2-7 titled wetlands should be revised to include all of the water and marine resources as identified above;
- Also, a separate exhibit would be preferable to map the sand and reef biological habitats identified on page 30 which occur offshore;
- Policy 3.1 on page 32 is an example of a land use policy that is too general. It indicates the City should "manage development or land alteration in coastal lagoon wetland areas to protect these important resources". The following discussion then indicates Section 17.40.040 of the Municipal Code includes specific requirements related to permitted uses in coastal lagoon wetland areas and identifies buffer requirements. All the discussion on page 32 which addresses permitted uses in wetlands, identifies wetland buffer requirements, acknowledges the need to reduce sediment loading and adverse impacts on downstream resources and limits development in environmentally sensitive habitat areas should be rephrased and numbered into specific LUP policies consistent with Section 30233, 30230 and 30240, and the reference to the municipal code section should be eliminated;
- There should be a specific LUP policy that addresses the functional value of wetland buffers;
- The LUP should contain specific resource protection policies which apply to streams, riparian corridors and other wetland resources outside the lagoon system consistent with Section 30233 and 30236 of the Coastal Act;
- The general discussion on page 33 addressing non-point source pollution measures should be rephrased into numbered LUP policies which require compliance with current permit requirements and the numeric sizing criteria established by the Regional Water Quality Control Board. The Commission has recently established suggested land use plan policy language to address water quality related concerns in review of the City of Del Mar LCP which we will provide to City staff;
- The offshore extension of the Fletcher Cove storm drain should be identified as a specific goal with measures identified toward implementation of that goal;
- The general discussion on page 34 under Policy 3.2 should be rephrased into numbered LUP policies that address permitted uses on the beaches and bluffs, beach replenishment and monitoring requirements. The specific reference to the section of the municipal code should be eliminated.

2.3.4 Diking, Dredging and Filling

- This section should address the diking, dredging and filling of open coastal waters and other wetlands within Solana Beach, not just the lagoons as stated and described;
- Section 30233 should be incorporated in its entirety;
- The discussion under Policy 4.1 on page 36 should be rephrased into specific policy language which addresses diking, filling or dredging of wetlands and indicates such activity should be avoided, if possible, and permitted only for the specific purposes identified in Section 30233 when there is no feasible less environmentally damaging alternative.

2.3.5 Shoreline Structures

Conservation Plan for north San Diego County. The LUP should contain specific habitat protection policies which address both Coastal Act and Natural Communities Conservation Plan (NCCP) Act requirements regarding potential development of such areas. Protection of coastal sage scrub on both steep (slopes greater than 25% grade) and non-steep areas should be addressed;

- The discussion on page 41 identifies coastal bluff areas and sandy beach/ocean shoreline as environmentally sensitive habitat, but the LUP does not contain any specific policies designed to protect these areas for their habitat value. Section 30240 requires that development adjacent to environmentally sensitive habitat areas and park and recreation areas shall be sited and designed to prevent impacts that would significantly degrade such areas. Therefore, the LUP should contain specific policies addressing development adjacent to coastal bluffs and the shoreline which include measures to avoid or mitigate adverse impacts on habitat value and sand supply;
- Specific policies addressing development adjacent to or immediately upstream of the Holmwood Canyon Ecological Reserve, San Elijo Lagoon and San Dieguito Lagoon should also be developed and included in the LUP;
- On Figure 2-8, we question the white area in the middle of Holmwood Canyon and why it is not part of the Hillside Overlay Zone. Also, does the City intend for the coastal bluffs to be regulated through the Hillside Overlay Zone as this figure suggests? If so, perhaps a title of resource protection overlay zone would be more appropriate since there is a significant difference between coastal bluffs and inland hillsides.

2.3.8 Locating and Planning New Development and Public Works

- On page 47, Sections 30250(a), 30252 and 30253(4) should be incorporated into the LUP;
- The discussion under Policy 8.1 on page 48 refers to the adopted General Plan, Zoning Ordinance, the Highway 101 Corridor Specific Plan, the Fletcher Cove Master Plan and the Municipal Code as providing policy, regulations and development standards for residential, commercial, industrial, public and open space land uses; however, there are no clear goals or objectives identified. The purpose of the land use plan is to indicate the kinds, location and intensity of land uses and include the applicable resource protection and development policies. This entire section is critical for any LUP land use plan and should be rephrased and expanded with references to sections of the municipal code eliminated.
- The LUP should contain more policies which promote transit, including policies which address land-use patterns to facilitate transit, as suggested in the following comments;
- The LUP policies should encourage a multi-modal pedestrian, bicyclist, mass-transit, shuttle and automobile-based system to provide low-cost opportunities for the public to access the beaches and visitor-serving nodes within the City;
- The LUP policies should encourage coordination with applicable transit providers to provide low-cost transit service to beaches, parks, and major commercial, retail, and employment centers and to provide transit service within walking distance of higher density residential areas;
- The LUP policies should encourage higher density development within walking distance of the transit station and any other transit nodes within the City;
- The LUP policies should facilitate access to the transit station by buses and other alternatives to single occupancy vehicles;

visible from the beach, such as the blufftop properties seaward of the first coastal roadway.

2.3.10 Hazard Areas

This section of the land use plan deals with hazard areas within the City. The general discussion beginning on page 55 acknowledges three types of hazards including geologic hazards, flood hazards and fire hazards. The section includes Section 30253 of the Coastal Act, Figure 2-11 showing the Floodplain Overlay Zone, and Figure 2-12 showing Brush Fire Hazard Areas. There is one policy statement, Policy 10.1, which states: Minimize the exposure of new development to geologic, flood and fire hazards. Following this general statement is discussion which references sections of the municipal code and the above mentioned figures and addresses Hillside Hazards, Flood Hazards and Fire Hazards.

This section, as written, does not contain any specific policy direction for development along the shoreline, which is an area of geologic hazard within the City. We believe this section is one of the most important for any LCP, but particularly for the City of Solana Beach due to the number of applications which have been processed recently for shoreline protection. Recognition by the general public and the private blufftop property owners of the shoreline and blufftop areas as "hazard areas" is the first step toward acknowledging the problem and working toward a solution. The LCP land use plan should provide specific policy direction for managing the City's shoreline and balancing the need to protect private property with the need to protect the beaches and bluffs as resources of public importance. We recognize this is a difficult task and offer the following suggestions which should be developed into specific LUP policy guidance and direction to help the City form a comprehensive bluff and shoreline management plan.

New Development:

- The City should consider establishing the bluff and shoreline area as a hazard overlay zone. Development within such a zone should comply with specific land use plan policies and implementing ordinances contained in the certified LCP;
- Policies should be developed to address new development and redevelopment which reduce the need for shoreline and bluff protection over the long-term;
- Such policies should provide incentives for locating new development and redeveloped structures away from hazardous areas and removing threatened portions of structures as an alternative to shoreline protection;
- The LUP should contain specific policies which address existing nonconforming structures and, specifically, the extent of redevelopment that can occur which increases the value and economic life of an existing structure in a nonconforming location, i.e. with insufficient geologic setback. Where extensive renovation of and/or major addition to a nonconforming structure is proposed, or the project would greatly extend the life of nonconforming development, or eliminate the need for the nonconformity, the residence should be brought into compliance with the current standards of the LCP;
- Policy guidance should assure new development will not need shoreline protection for the duration of its economic life. The economic lifetime of structures should be a minimum of 75 years (preferably 100 years). For Solana Beach, given the size of the existing blufftop parcels, there should be an acknowledgement that new development will be smaller than existing structures due to the need to move the line

- The LUP policies should require applications for shoreline protective devices to include an analysis of alternatives that are capable of protecting the existing structure from erosion including, but not limited to: 1) no action; 2) involvement in regional beach nourishment; 3) the relocation of the threatened structure; 4) underpinning the residence; and, 5) a below grade retention system;
- Applications for shoreline protection should also include the following information: amount of beach that will be covered by the shoreline protective device; the amount of beach that will be lost over time through passive erosion; total lineal feet of shoreline protective devices within the littoral cell where the device is proposed; and, the cumulative impact of added shoreline protective devices for the littoral cell within which the proposed device will be located;
- The policies should encourage the relocation of threatened structures, rather than constructing shoreline protective devices, by waiving permit filing fees for applications to relocate structures or providing variances from zoning requirement to reduce front and side yard setbacks;
- The policies should minimize encroachment of any permitted shoreline protective devices on the beach;
- The City should consider a policy which prohibits upper bluff retaining walls which alter natural landforms and contribute to geologic instability on the public bluffs;
- The LUP should provide that as a condition of approval of a permit for a shoreline protective device, the City should require payment of an in-lieu fee to support beach nourishment efforts in a manner proportionate to the quantifiable effects of the shoreline protective device on the amount of sand that would have been nourishing the beach in the absence of the shoreline protective device;

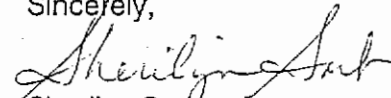
Long-range planning:

- The LUP should contain policies that set up an inventory of available studies on local and regional coastal processes and beach resources. The City should participate in studies to fill information gaps about regional effects of shoreline protective structures on beach and bluff erosion and methods to counteract beach and bluff erosion.
- The City should consider whether or not to establish an assessment district or other comprehensive means to address the need for lower bluff protection, while avoiding upper bluff protective devices which significantly alter the natural landforms and contribute to erosion and geologic instability;
- The City should consider creation of a database of geotechnical reports from individual projects for use in analysis of regional effects of shoreline protective structures, including documentation of interference with sand transport, loss of sand from the beach, the amount of beach area covered by seawalls, and the cumulative impacts on public recreational use;
- The City should develop a comprehensive shoreline protection program that includes regular shoreline surveys to develop short and long-term shoreline trends, identifying priorities for types of shoreline protection, and developing programs for opportunistic beach nourishment using clean dredge material, clean material from flood control structures, clean excavation material and other innovative sources. This program should also identify the locations along the City's shoreline which have priority for nourishment;
- The LUP should rank the types of permissible shoreline protective devices in order of least to most potential coastal impact and set forth technical criteria and standards

Mr. Steve Apple
April 9, 2001
Page 11

That concludes Commission staff comments on the draft LCP land use plan which we hope will be of help to City staff in its preparation of a final plan for City Council and Coastal Commission review. As stated previously, the LCP implementation plan must contain ordinances that are adequate to carry out the land use plan policies. We have chosen not to provide detailed comments on the implementation plan at this time. Any revisions to the LUP should result in corresponding changes to the implementation plan. We look forward to our meeting later this week to discuss these comments and coastal issues in greater detail. Please don't hesitate to call at any time with questions regarding the content of this letter and/or the LCP process. Thanks again for your patience and understanding.

Sincerely,


Sherilyn Sarb
District Manager

Cc: Deborah Lee
Lee McEachern
Gary Cannon
Chris Pederson
John Bridges

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Water Quality Protection

The Coastal Act requires the protection and enhancement of marine and coastal water quality. In the last twenty-five years experts have identified nonpoint source (NPS) polluted runoff as the leading cause of water pollution both at the coast and inland. The federal government has responded with mandates to States under the Clean Water and Coastal Zone Management Acts to address the issue. In California, the Coastal Commission and the State Water Quality Control Board have developed a joint nonpoint source pollution control program that provides a single unified, coordinated statewide approach to dealing with NPS pollution. A total of 28 state agencies are working collaboratively through the Interagency Coordinating Committee to implement the NPS Program Plan.

Review the principal Coastal Act policies concerning Marine Resources and Water Quality at Sections 30230 through 30236. These statutes can be found at:
<http://www.coastal.ca.gov/coa/statact.pdf>

Given the widespread nature of nonpoint source pollution, managing land use on a watershed basis is critical. In the coastal zone, LCPs are a key mechanism for achieving coastal water resource protection. In conjunction with the State's Stormwater and Total Maximum Daily Load (TMDL) Programs, which are administered by the State and Regional Water Quality Control Boards, LCPs can provide the planning and regulatory framework for addressing NPS water quality impacts. LCPs should include policies, ordinances, and programs that establish Best Management Practices (BMPs) for new development both during construction and for the life of a project. They should also incorporate appropriate aspects of local or regional stormwater permits, statewide nonpoint source policies and TMDL requirements.

➤ **What should an updated water quality component include?**

It is important that LCPs reflect the many advances in water quality planning and regulation including:

- ☐ Identify and update the mapping of watersheds in your jurisdiction to support watershed assessment and planning.
- ☐ Identify the land uses in the watershed and their relative impacts on coastal water resources.
- ☐ Identify land areas that support maintenance of the hydrologic cycle (e.g. open space where rainfall can infiltrate or drain slowly to surface waters).
- ☐ Incorporate evaluation of potential pollutant sources and changes to local hydrology.

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Water Quality

- Update Land Use designations and development standards to reflect watershed management and protection of water quality, including for example: designation of conservation areas and buffers to protect riparian vegetation and wetland areas, and land use designations that prevent long term or cumulative adverse impacts on water quality from non-sewered development.
- Update LCP policies to ensure implementation of appropriate polluted runoff management measures as found in the California Nonpoint Source Encyclopedia.
- Implement Best Management Practices through revisions to policies and ordinances on Grading, Drainage and Erosion Control, Landscaping Requirements and Post-Construction water quality control requirements.
- Integrate NDPES permit, TMDLs and other requirements of the State and Regional Water Resources Control Boards into provisions of the LCP.

◆ **The Updated LCP Should Also Provide:**

- Guidance on review of permit applications for potential impacts on coastal water quality, including approval from public works staff that the new development will not adversely impact stormwater quality.
- Guidance on incorporation of appropriate Best Management Practices (BMPs) in new or expanding development. Examples can be found in the Stormwater BMP Handbooks.
- Requirements for Treatment Control BMPs for significant development that comply with applicable water quality permits (e.g., municipal stormwater permits) and that will address potential adverse impacts of development.
- Requirements that significant development include a plan, certified by an appropriate licensed professional, that describes how Site Design, Source Control and Treatment Control BMPs will be used to mitigate adverse impacts of a development.
- Identification of the size of storm that will dictate the design of BMPs (typically the “85th percentile storm event”).

➤ ***What are some examples of water quality policies?***

◆ **General Policies**

- Minimize Introduction of Pollutants

Design and manage development to minimize the introduction of pollutants into coastal waters (including the ocean, estuaries, wetlands, rivers, streams and lakes) to the maximum extent practicable.

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Water Quality

- Minimize Increases in Peak Runoff Rate

Design and manage development to minimize increases in peak runoff rate, to avoid detrimental water quality impacts caused by excessive erosion or sedimentation.

- Protect Water Quality and Restore Impaired Waters

Promote both the protection of unimpaired water quality and the restoration of impaired waters.

- ◆ **Site Design and Source Control Policies**

- Incorporate Effective Site Design and Source Control BMPs

Include effective site design and source control Best Management Practices (BMPs) in all developments, where feasible.

- Apply and Maintain Source Control BMPs

Require the property owner, homeowners' association, or local government, as applicable, to apply and maintain source control BMPs throughout the life of the development.

- Preserve Functions of Natural Drainage Systems

Site and design development to preserve the infiltration, purification, and retention functions of natural drainage systems that exist on the site.

- Minimize Impervious Surfaces

Minimize impervious surfaces in new development, especially directly connected impervious areas, and where feasible, increase the area of pervious surfaces in redevelopment.

- Infiltrate Runoff

Retain or infiltrate dry weather runoff and runoff from the design storm on the development site, so that the impacts of new or redeveloped impervious surfaces are avoided or minimized. Preserve natural hydrologic conditions to the maximum extent practicable. Alternative management practices may be substituted where it can be shown that infiltration BMPs may result in adverse impacts (e.g., significantly increased risk of slope failure or impacts to an unconfined aquifer).

- Engage in Water Quality Public Education and Outreach

Encourage and support public outreach and education about the water quality impacts of development and other land uses.

- ◆ **Construction Pollution Control Policies**

- Minimize Polluted Runoff from Construction

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Minimize erosion, sedimentation, and other polluted runoff from development's construction-related activities, to the maximum extent practicable.

- Minimize Land Disturbance During Construction

Minimize land disturbance during construction (e.g., clearing, grading, and cut-and-fill), especially in erosive areas (including steep slopes, unstable areas, and erosive soils), to avoid increased erosion or sedimentation. Incorporate soil stabilization BMPs on disturbed areas as soon as feasible.

- ◆ **Treatment Control Policies**

- Incorporate Treatment Control BMPs Where Necessary

Require structural treatment BMPs along with site design and source control measures when the combination of site design and source control BMPs is not sufficient to protect water quality.

- Size Treatment Controls Appropriately

Where structural BMPs are required for post-construction treatment of runoff, structural BMPs (or "suites of BMPs") shall be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event (with an appropriate safety factor of 2 or greater) for flow-based BMPs.

- Maintain Structural Treatment Control BMPs

Require the inspection, cleaning, and repair of structural treatment control BMPs as necessary, to ensure proper functioning for the life of the development.

➤ ***Where can I read some examples of water quality policies and LCP updates?***

- California Nonpoint Source Encyclopedia at www.swrcb.ca.gov/nps/encyclopedia.html.
- The California Association of Stormwater Agency's Stormwater BMP Handbooks at www.cabmphandbooks.com.
- The Commission's Water Quality Program website at <http://www.coastal.ca.gov/nps/npsndx.html>.

Here are some updated LCP Water Quality Components:

- City Of Malibu LUP – see the water quality sections in Chapter 3.C.4 and Chapter 5.C.9 at <http://www.coastal.ca.gov/ventura/malibu-lup-final.pdf>.
- City of Malibu Zoning Ordinance provisions in Chapters 17 and 18 at

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Water Quality

<http://www.coastal.ca.gov/ventura/malibu-lip-final.pdf>.

- City of Newport Beach LCP water quality policies at:
<http://www.city.newport-beach.ca.us/Pln/LCP/Internet%20PDFs/CLUP%20Part%204.pdf>.
- The City of Laguna Beach Topic 4 of Conservation /Open Space Element at
<http://www.lagunabeachcity.net/development/informationguides/pdf/plans/Open%20Space-Conservation.pdf>.
- Title 16 of the City of Laguna Beach Code: at
http://bpc.iserver.net/codes/lagunab/_DATA/TITLE16/Chapter_16_01_WATER_QUALITY_C.html.

➤ ***What are some current issues in water quality management?***

The following information should be considered in updating policies for protection of coastal water quality.

◆ **Low Impact Development**

Low Impact Development (LID) is intended to benefit water supply and contributes to water quality protection. Unlike traditional stormwater management, which collects and conveys storm water runoff through storm drains, pipes, or other conveyances to a centralized storm water facility, LID uses site design and storm water management to maintain the site's pre-development runoff rates and volumes. The goal of LID is to mimic a site's predevelopment hydrology through techniques that infiltrate, filter, store, evaporate, and detain runoff close to the source of rainfall. LID has proven effective in other parts of the country. More information can be found in the following fact sheet:

<http://www.coastal.ca.gov/nps/lid-factsheet.pdf>.

◆ **Effects of Impervious Surfaces on the Hydrologic Cycle**

With natural groundcover, 25% of rain infiltrates into the ground and only 10% ends up as runoff (65% is shallow surface evapotranspiration—meaning that some travels to the aquifer, some stays in the shallow ground and flows downhill to a wet feature like a creek or seep, and some evaporates over the following season). As imperviousness increases, less water infiltrates and more runs off. In highly urbanized areas, over one-half of all rain becomes surface runoff, and deep infiltration is only a fraction of what it was naturally. The increased surface runoff requires more infrastructure to minimize flooding. Natural waterways end up being used as drainage channels, and are frequently lined with rocks or concrete to move water more quickly and prevent erosion. In addition, as deep infiltration decreases, the water table drops, reducing groundwater for wetlands, riparian vegetation, wells, and other uses.

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More information can be found in the following fact sheet:
<http://www.coastal.ca.gov/nps/watercyclefacts.pdf>.

♦ Runoff Controls In Landscape Plans

Recent legislation (AB 1881 effective January 1, 2007) requires the Department of Water Resources to update, and local agencies to adopt, the model local water efficient landscape ordinance, including restrictions on overspray and runoff. Your LCP should be updated to address these new requirements. For more information see:

http://www.leginfo.ca.gov/pub/bill/asm/ab_1851-1900/ab_1881_bill_20060928_chaptered.html.

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October 2, 2008

Tina Christiansen
Community Development Director,
City of Solana Beach
635 South Highway 101
Solana Beach, CA 92075

Re: City of Solana Beach Draft LCP Land Use Plan dated June 2008

Dear Ms. Christiansen:

Attached are DRAFT suggested modifications for the City's revised Land Use Plan (LUP) dated June 2008. The attached modifications address all of the LUP policies except for the shoreline protection/bluff top development policies; we anticipate giving you separate draft suggested modifications for these policies very soon.

While the suggested modifications reflect staff's current position on the LUP, they are draft and staff expects there may be some changes and additions as the Commission's technical services staff complete their review of the policies. In addition, we know there are specific areas where further consultation with City staff will result in other requirements.

You will find that the attached modifications address essentially the same issues brought up by staff in our previous correspondence in January of this year, and add new policy language addressing public access, biological resources, public recreation, water quality, and hazards.

We would like to bring to your attention several specific areas of concern that we think may be controversial or will require significant additional attention:

- Suggested Modification #1 adds a new Visitor Commercial designation around Plaza Street, on the northern portion of Highway 101, and on the City's existing hotel sites.
- Suggested Modification #23 and #24 institute a mitigation fee for the demolition of existing lower cost overnight accommodations, and a mitigation for the construction of high cost accommodations.
- Suggested Modification #39 requires that amendments to the City's water quality protection measures be processed through an amendment to the LCP.
- Suggested Modification #45 includes new policies protecting Environmentally Sensitive Habitat Area. However, the LUP must include a map that specifically identifies existing areas of known ESHA.
- Suggested Modification #49 states that the Highway 101 Corridor Specific Plan regulations, while referenced, are not part of the LUP (except for the land use

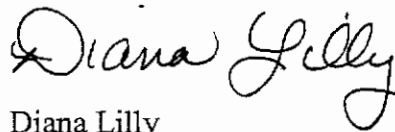
(Attachment not included)

designations and the parking requirements). However, we think this needs further discussion. If the City wants the Plan's land use standards, for example, landscaping requirements, to be controlling, those regulations should be incorporated into the LUP.

- Suggested Modification #55 raises the same concerns for the Fletcher Cove Master Plan.
- Suggested Modification #62 will need to be revised depending on the status of the city-wide fuel modification plan the City intends on adopting.

Staff looks forward to meeting with you next week and continuing to work with you towards certification of the LUP.

Sincerely,

A handwritten signature in black ink that reads "Diana Lilly". The signature is fluid and cursive, with the first name "Diana" being larger and more prominent than the last name "Lilly".

Diana Lilly
Coastal Planner

cc: David Ott
Leslea Meyerhoff
Sherilyn Sarb
Deborah Lee
Gary Cannon

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October 20, 2008

Tina Christiansen
Community Development Director,
City of Solana Beach
635 South Highway 101
Solana Beach, CA 92075

Re: City of Solana Beach June 2008 Draft LCP Land Use Plan Bluff and Shoreline
Policies

Dear Ms. Christiansen:

Commission staff is still in the process of finalizing specific suggested modifications for the City's shoreline protection/bluff top development policies of the revised Land Use Plan (LUP) dated June 2008. However, this letter is intended to provide Commission staff's general response and evaluation of this portion of the LUP to the City. We are well aware that bluff and shoreline issues are a significant part of the City's LUP and the Coastal Act, and staff feels the majority of the proposed policies are supportive of and implement the Coastal Act goals of protecting coastal access, public recreation, and visual quality. The plan's approach to bluff protection and bluff-top development, with the objective of eventually removing all shoreline protection in the City, is innovative and original, and we commend the community outreach and coalition-building the City did to develop the shoreline policies.

Ultimately, however, staff's conclusion of the plan's effectiveness in protecting public coastal resources and consistency with the Coastal Act is the same as we stated in January of this year. The City's proposed LUP sets up a process of tradeoffs whereby various bluff top and shoreline structures could be permitted despite not meeting the criteria expressly prescribed under the Coastal Act, because of the LUP's overarching policy goal of eventually removing all shoreline protective devices in 2081. Almost 75 years is a long time to wait for the public benefits of a plan. If, in the meantime, impacts to public coastal resources were to be permitted, the net benefit to the public would have to be clear, considerable, and irrefutable. While the LCP policies attempt to provide this balance, in the end, we do not think the LUP policies as proposed provide adequate assurance that shoreline protection would ever be removed, that adequate short-term mitigation would be provided for the shoreline protection permitted under the LUP, or that the public would benefit from the tradeoffs offered in the plan.

Coastal Act Policy

As you know, shoreline protective devices have a number of adverse consequences on coastal resources, including shoreline sand supply, visual quality, public access, and

public recreation. Thus, typically, the Coastal Act does not support the construction of shoreline protective devices unless required to protect an existing principal structure (such as a private residence) in danger from erosion. Even then, the shoreline protection must be the least environmentally damaging feasible alternative, must minimize all impacts to coastal resources to the greatest extent feasible (for example, the structure must be the minimize size necessary and minimize encroachment on the beach), and mitigation to compensate for any remaining impacts must be provided. Mitigation measures typically include making the structure as visually compatible with the surrounding environment as possible, and payment of a fee to offset the impacts to sand supply and public recreation.

The Coastal Act does not allow the construction of shoreline protection for new or existing non-primary structures such fences or gazebos, or for backyards or landscaping. In addition, the Coastal Act typically does not allow the construction of new development that would require shoreline protection within the life of the development, except as required to allow a minimum reasonable use of the site. This includes the construction of new structures, but also additions that would increase the need for shoreline projection beyond that the existing structure might require.

LUP Policies Allow Exceptions to Coastal Act Policy

The City's LUP would allow development to occur that is inconsistent with the above guidelines, because of other policies that support the goal of eventually removing all shoreline protective devices in 2081. Specific policies that allow the most significant deviations from the above-described Coastal Act standards include the following:

Policy E.1. states that the purpose of Bluff Retention Devices is to protect Bluff Properties, which includes the entire parcel. Typically, the Coastal Act permits the construction of shoreline protection only when required to protect existing, principal structures.

Policy E.1.2 states that Bluff Retention Devices must be preventative in nature; that is, that they can, or are to be constructed before there is a threat from erosion. Typically, the Coastal Act permits the construction of shoreline protection only when required to protect existing principal structures.

Policy H.7, Policy I.1.10, Policy I.1.11: and the definition and policies relating to an **Extensive Remodel** all affect when and where non-conforming structures are allowed to be repaired and remodelled. These policies are inconsistent in several ways with how the Coastal Act typically deals with non-conforming structures; for example, only looking at demolition of the portion of the structure within the Geologic Setback area, and allowing reconstruction of a damaged residential structure that requires construction of a new bluff retention device.

Policy I.1.11 allows additions to non-conforming structures as long as they do not encroach into a 25 foot Geologic Setback area. Typically, the Coastal Act would not

permit any additions that would need, or increase the need, for shoreline protection, regardless of how far back from the bluff the addition was proposed.

Policy I.1.14 would allow the construction of a Minimum Home, defined as a home of at least 1,600 sq.ft. plus a 400 sq.ft. garage in an area considered at risk of erosion, with a waiver of any rights to a shoreline protection. Typically the Coastal Act would allow only the minimum reasonable use of the site (which may not necessarily be a new 2,000 sq.ft. foot home) if the structure would be at risk for erosion.

Policy K.1.3 would allow bluff top development to be sited based on a set erosion rate of four tenths of a one foot per annum. Typically, the Coastal Act would require that bluff top development be sited based on the most current known or estimated erosion rates, since these will change as sea level increases, and historic trends cannot adequately anticipate future hazards. As a result, erosion rates must be reassessed at least every 5 years.

Policy L.1 would allow seacaves and notch infills when not required to protect existing principal structures. While in the past the Commission did approve some seacave and notch fills as preventative measures with the goal of avoiding more significant shoreline protection, experience has shown that seacaves and notch fills usually have the same adverse impacts on public access, public recreation, and sand supply as seawalls, and the Commission now typically permits the filling seacaves only when the same criteria is met as for seawalls.

Policy L.2 would allow the construction of shoreline protective devices on the beach and bluff face if a slope stability analysis determines a bluff failure could occur on the site that "has the potential to cause damage to life, health or property, or which could cause a future emergency to occur." This is an extremely broad standard that could most likely be met on any bluff top property at any point in time. The Coastal Act standard for the construction of shoreline protective device is that a principal structure is threatened, and the protection is the minimize size necessary, has been designed to minimize all environmental impacts, and provides mitigation for all coastal and environmental impacts.

The City's proposed policy would also allow reconstruction of the bluff face to a location as far as 10 feet seaward of the bluff to edge as it existed on January 3, 1991, and creation of a backyard area at the top of the bluff as large as it existed on January 3, 1991. Coastal Act policies do not support the reclamation of backyards or bluff edges beyond that necessary to construct the measures needed to protect existing principal structures.

Policy L.3 requires a mitigation fee for the sand supply and recreational impacts of shoreline protection. The formula for determining the mitigation fee is located in the "Glossary and Definitions" section. The City's formula is similar but not identical to the Commission's formula (which we believe the City is familiar with, but please let me know if you need a copy of it). The formula the Commission uses has been peer reviewed and in use for many years now, and we believe further discussion and

documentation on why the City has made changes to it is warranted. The Commission's geologist and engineer are available to speak directly with the City's technical staff as needed. However, because the fee would include "Offset Credits" for various perceived monetary public benefits resulting from the shoreline protection, staff must assume the mitigation provided would be less than the fee typically imposed by the Commission. More discussion on the mitigation fee is included below.

Policy L.4 would allow the construction of upper bluff structures if an upper bluff failure is likely to fail within two to four years, and "the Bluff Home, or City Facility is more likely than not to be in danger within five years." No alternatives analysis is required. While not quite as broad as the criteria permitting construction of shore-level protection, this is still more permissive than typically allowed by the Coastal Act. Typically, the Coastal Commission requires the same criteria be met for the construction of upper bluff protection as for beach level protection; that is, a principal structure is actually threatened (not that *might* be threatened within five years), the protection is the least environmentally damaging feasible alternative, is the minimize size necessary, has been designed to minimize all environmental impacts, and provides mitigation for all coastal and environmental impacts. There could be cases where, for example, a City facility could feasibly be relocated (e.g., an overlook, or infrastructure, or recreational facility), and the City's proposed policy would not require this option to be exercised before allowing the construction of bluff structures.

Policy L.10.1 states that if bluff top property owners moves all or significant portions of the Bluff Home at least twenty feet landward of the existing most seaward Floor Area of the Bluff Home, then the Bluff Property Owner shall not be obligated to pay permitting fees, Sand Mitigation Fees or Land Lease Fees, even if a Bluff Retention Device is ultimately constructed. The Coastal Act requires mitigation for all impacts, regardless of whether a property owner previously attempted to delay the need to construction shoreline protection.

25-foot setback: Several policies, exhibits, and definitions in the LUP establish a 25 foot setback for development. This setback is not based on any geologic evidence that a 25 foot setback is safe or would avoid the need for shoreline protective structures. Typically, the policies of the Coastal Act require site-specific geotechnical studies relying upon scientifically-based erosion rates, anticipation of sea level rise and other changing coastal conditions as well as site geology and local soil and stability conditions to establish the appropriate distance to site new development.

LUP Policies Supporting Removal of Shoreline Protection

As staff understands it, the tradeoff for allowing these exceptions is that the LUP requires the removal of all shoreline protective devices in 2081. **Policy L.7** is the main LUP policy that requires the eventual removal of shoreline protection or the removal of blufftop structures. This policy states that, in 2081, all existing Bluff Retention Device permits, regardless of when issued, shall come due and expire resulting in removal of all the Bluff Retention Devices, **unless** the City Council finds there is no reasonably feasible

alternative to protect the bluff top structures, and that “important matters will not be accommodated financially and/or logistically to provide for prudent removal of the Bluff Retention Device,” and there is not adequate money to pay for the removal and all economic, safety and environmental consequences associated with the removal.

This policy provides such a broad exception to the requirement that bluff retention devices be removed, that it does not provide any level of confidence that the removal would ever occur. For example, a reasonably feasible alternative to protecting bluff top structures might be removal of the structures or portions of the structure. But Policy L.2 suggests removal of all or portions of a threatened structure could be feasible only when taking into account “the cost to the Bluff Property Owner, the loss of value associated with diminishing the Floor Area of the Bluff Home, any reduced functionality of the Bluff Home, any other costs, hardship or consequences associated with demolishing and rebuilding the Bluff Home or portions thereof which are suffered by the applicant Bluff Property Owner and any other nearby public and private property owners.” There would always be some loss of value associated with removing of a structure. It is difficult to see how any removal could ever be found feasible under this definition.

It is impossible to say with any certainty that economic, financial, or logistical considerations in 2081 will support removal of the shoreline protection. Staff understands that the LUP identifies a number of very important planning documents that are intended to support the goal of removing shoreline protection, and would lay out explicitly how it would be done, when, by whom, the costs involved, funding sources, etc. Specifically, the Logistics Plan, required in **Policy A.4.1** would address the costs and logistics associated with relocation or protection of bluff structures, **Policy A.4.2** requires development of a Long Term Cost Benefit Analysis of removal of bluff retention devices, **Policy A.4.3** requires incentives be developed for the early removal of shoreline protection. **Section 2.3.1.7** requires adoption and implementation of a Financing Plan that “the success of many of the key programs” contained in the LUP depend on.

Commission staff is hopeful that these plans will lay out a realistic, achievable program for removing shoreline protection. But none of these plans or incentives have been developed yet, and most are not expected to be completed until 2013. There is no guarantee that the programs will be developed by the deadline, or that when developed, they will conclude that the goal of removing shoreline protection is attainable. Yet in the meantime, the LUP would allow the construction of both blufftop development in hazardous locations and shoreline protection devices that are inconsistent with the Coastal Act goals of minimizing the construction of shoreline protective devices.

As noted above, the proposed mitigation fees that would be provided for the impacts of bluff protective devices have not been not adequately defined at this time. In addition to the Commission's detailed formula for estimating the impact of bluff protective devices on sand supply, the Commission has also recently been working on developing a formula or process to assign a monetary value to the public access and recreational impacts of shoreline protection. **Policy L.3** of the LUP indicates that a sand mitigation fee and land/lease recreation fee would be established, but exactly how the land lease fee rate

would be determined has not yet been developed.

Potentially, the exact formula for calculating the fee could be deferred to the LCP Implementing Ordinances, if the LUP contained very specific policies describing how the fee would mitigate impacts to various coastal resources. However, the proposed mitigation fee includes a number of different offsetting "credits" that would significantly reduce the amount of any fee, unacceptably undermining the adequacy of the mitigation. The proposed mitigation fee would be "subject to any offset for the cost of the Coastal Structure." The purpose of the mitigation fee is compensate for the impact to public resources caused by shoreline protection; the cost of the structure must be borne by the private property owner, not used to reduce the mitigation fee. Nor can the fee be reduced "equal to the value of the amount of any quantifiable natural deposit of sand on the beach prior to or after the issuance of the permit from the bluff area landward of the Coastal Structure." The bluffs are publicly owned resources that naturally contribute sand to the littoral system. The mitigation fee estimates the approximate amount of sand that will not reach the beach as a result of the shoreline structure; there is no "credit" given for sand that falls naturally to the beach prior to or after construction of the shoreline protection.

The Mitigation Offset Credit (**Policy L.3C and E.1.5**) would allow both the sand mitigation fees and the land lease fees to be offset for any "proven quantified monetary public benefit flowing from the Coastal Structure or Seacave or Notch Infill (e.g., enhanced safety to beachgoers; protection of City Facilities, City Properties, City Infrastructure, greater property tax revenues, etc.) that exceeds the quantified monetary private benefit (e.g., the increase in the value of the Bluff Property)." The methodology for determining these public benefits has not be established. This policy appears to substantially undermine the purpose and intent of the mitigation fee.

Commission staff is unconvinced that there are or can be proven quantified monetary public benefits from shoreline protection, and without an explicit accounting of what the fee would cover and how it would be calculated, we are very concerned that the effective outcome of this process would be to eliminate the mitigation fee at the expense of the public. This is not an item than can be deferred to the future outcome of a City public hearing process, and the staff cannot recommend approval of the mitigation fee in concept if it includes a mitigation offset credit.

As a final note, staff disagrees with the policy language in the LUP that describe and promote shoreline protection as beneficial to public safety. As we have previously conveyed to the City, Commission staff, including the Commission's geologist and engineer, feel strongly that "enhanced safety to beachgoers" is a factually incorrect and misleading characterization of the result of shoreline protection. Seawalls do not and cannot render the inherently risky, changing natural shoreline environment "safe." Upper bluff failures can continue in the presence of shoreline stabilization measures. Adjacent bluff failures can continue, and possibly even worsen as a result of activity associated with the construction of bluff retention devices and the changes in wave energy resulting from new structures on the beach. Therefore, staff cannot recommend approval of

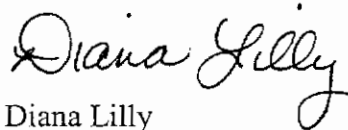
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policies that suggest a public safety benefit results from the presence of a seawall, or that require this benefit be used to reduce the mitigation required to offset the adverse public impacts.

We had anticipated having specific draft suggested modifications to you by this point, but the significant staffing constraints the Commission continues to be under have resulted in this delay. We sincerely apologize for this, and we still intend to give the City specific modifications to many of the particular beach, blufftop, and shoreline protection policies as soon as possible. However, because some of the policies, as described above, are so unsubstantiated at this time and are very problematic from a policy perspective, staff cannot attempt to make individual suggested modifications to them. Thus, staff must recommend denial of the LUP at this time, until significant elements are completed and substantive changes are made to the City's approach to shoreline management. Commission staff is interested in working closely with the City to design a certifiable LUP for the City's shoreline, and remain available to discuss these issues and the LUP process.

Sincerely,

A handwritten signature in cursive script that reads "Diana Lilly".

Diana Lilly
Coastal Planner

cc: David Ott
Leslea Meyerhoff
Sherilyn Sarb
Deborah Lee
Gary Cannon