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Draft Residential Adaptation Policy Guidance

Revisions and FAQ Responses

March 2018

The Draft Guidance was released on the Coastal Commission’s website on July 28, 2017 for a 2-month public comment period. To solicit and encourage comments on the draft, Commission staff conducted 3 public webinars, 3 conference calls with local governments, and meetings with our district staff. Twenty-seven comment letters were received from private citizens, non-governmental agencies, local governments, state agencies, and others. The comment letters are posted on our website on the [Residential Adaptation Policy Guidance](#) page. Many similar themes and/or concerns were repeated in multiple comment letters and other feedback. A summary of the overall changes to the document, along with comprehensive responses to the more frequently asked questions (FAQs) and repeated themes, is provided below.

Summary of Draft Guidance Revisions

Commission staff revised the original Draft Guidance based on feedback from Commissioners, Commission staff, local governments, agency partners, non-governmental organizations, and the public, during the public comment period. These revisions include organizational changes, additional model policy language and user note clarifications, additional explanatory information for application of the model polices and a variety of minor editorial changes. Major revisions are summarized below.

1. Throughout the document, additional text was added to clarify the intent of the guidance, as described further in FAQ Response 1.
2. Highlighted the concept of ‘coastal squeeze’ and provided more details on coastal resources in a subsection of Section 1 Background.
3. Added text to Section 1 discussing connection between residential adaptation and public infrastructure, including roads.
4. Additional discussion and pictures in the document.
5. Moved the section of examples of adaptation by type to a highlighted box in Section 1, and placed model policies in Section 6.
6. Highlighted the importance of developing an adaptation plan and community engagement in a subsection of Section 2 – Policy Recommendations for All Hazardous Areas.
7. Added discussion in Section 2 subsection Regulate Redevelopment, to describe repair and maintenance, and redevelopment definitions. Also see FAQ Responses 2, 3, and 4.
8. Added a Section 2 subsection – Plan for Future Removal of Threatened Development
9. Added a discussion of emergency permits to Section 2, and emergency permit policy F.11.

10. Clarified managed retreat program considerations in Section 3 and added a California example in a highlighted box. Also see FAQ Response 8.
11. Revised and moved the flowchart (now Figure 5) describing the analytical process for considering approval of shoreline protective devices to protect residential structures.
12. Added a subsection on Regional Coordination to Section 5.
13. Described funding opportunities in a new subsection of Section 5, and added an appendix of potential funding sources. Also see FAQ Response 7.
14. Additional user notes were provided and clarification in policy language to describe sea level rise impacts on public trust resources in the Assumption of Risk Policy A.6. Also see FAQ Response 6.
15. Added more discussion of shoreline protection for existing structures (Policy F.1). Also see FAQ Response 2.
16. Added another design policy -- C.2 Design Guidelines to Reduce Greenhouse Gas Emissions.
17. Removed D.3 (Limited Authorization Period) and added a new policy for Mean High Tide Line survey conditions (renamed Model Policy D. 3).
18. Added user note and additional policy language for considering limitations on future shoreline protection in Model Policy F.9
19. Added a new policy for a neighborhood scale adaptation plan (Model Policy G.3– Adaptation Plan for Highly Vulnerable Areas) to provide strategies for hazardous areas where development must be approved to avoid an unconstitutional taking of private property
20. Added a new policy related to funding -- G.13 Aligning LCPs with LHMPs.

Frequently Asked Questions/Comments

Response 1

Intent of Draft Guidance

Comment: *Commenters requested confirmation that even if this Draft Guidance is adopted as an “Interpretive Guideline,” it will remain as guidance for local governments to consider and will not have the force of regulations or legal standards. Some commenters stated that this Draft Guidance is an underground regulation that must be submitted to the Office of Administrative Law as a formal rulemaking. Other commenters asserted that mandatory language in some model policies (e.g., “new development shall be conditioned . . .”) is inconsistent with the idea that this is a guidance document.*

The Draft Residential Adaptation Policy Guidance (Draft Guidance) is a tool to be used to help ensure that Local Coastal Program (LCP) policies and coastal development permits (CDPs) are developed and approved consistent with the Coastal Act and/or applicable LCP policies, in light of sea level rise. The Draft Guidance is provided pursuant to Public Resources Code Section 30620(a)(3), which allows the Commission to adopt “[i]nterpretive guidelines designed to assist

local governments, the commission, and persons subject to this chapter in determining how the policies of this division shall be applied in the coastal zone prior to the certification, and through the preparation and amendment, of local coastal programs. However, the guidelines shall not supersede, enlarge, or diminish the powers or authority of the commission or any other public agency.”

This statutory provision provides the Commission with the authority to adopt, through a public process, guidelines such as the ones proposed here. Pursuant to this statutory provision, and as stated in the Draft Guidance, these guidelines do not supersede the Coastal Act or change the legal standard of review applicable to LCPs or CDPs. Although this Draft Guidance is not a regulation, it provides direction to local governments and applicants on how to address sea level rise. The Commission will, and local governments should, consider the Draft Guidance when drafting or reviewing future, proposed LCP policies and when considering CDP applications. Application of the policies and implementing measures identified in the Draft Guidance will help ensure consistency with the Coastal Act, in light of sea level rise. However, there may be cases where application of the Draft Guidance would not result in consistency with the Coastal Act, or where an alternative approach would equally or better ensure consistency with the Coastal Act. In those cases, an alternative approach would be warranted.

The Draft Guidance document, including the user notes for the model policies, also provides guidance on the rationales for, and recommended use of, the various model policies and policy concepts. For example, it describes how some policy concepts should be included in LCPs in order to address sea level rise hazards because they are necessary to carry out specific Coastal Act requirements, how other policy concepts may have more limited application to particular circumstances or geographical areas, and how some of the model policies simply provide suggestions for consideration.

Public Resources Code Section 30333(b) permits the Commission to adopt guidelines such as this, as well as its 2015 Sea Level Rise Policy Guidance, without proceeding through formal rulemaking procedures pursuant to the California Administrative Procedures Act. Courts have upheld the Commission’s authority to adopt guidance without proceeding through formal rulemaking. *Pac. Legal Found. v. California Coastal Com.* (1982) 33 Cal. 3d 158, 169, n. 4; *California Coastal Com. v. Office of Admin. Law* (1989) 210 Cal.App.3d 758, 762. Public Resources Code Section 30620(b) does require that interpretive guidelines only be adopted after a public hearing. Here, the Commission has already held one public hearing regarding this Draft Guidance and will hold at least one more public hearing on it. In addition, Commission staff provided a public comment period for the Draft Guidance, will hold another public comment period for a revised draft, and convened numerous calls, webinars and other forums for obtaining feedback from the public, affected government entities, and others.

The model policies contain terms such as “shall” or other mandatory language because they are presented as examples of possible language to use, and are shown as the policy would appear in an LCP. This presentation of the information does not transform this Draft Guidance into a regulation or a new legal standard of review. Rather, it reflects the fact that LCPs often need to contain policies with requirements in order to be consistent with and adequate to carry out the

Coastal Act. The model policies are written for local governments to customize and create their own LCP policies, and in many instances such policies may need to include these requirements.

In sum, the Draft Guidance is not a regulation or a mandate; however, it does provide the Commission's direction on how LCP's should address sea level rise. Using the model policies can help ensure Coastal Act consistency, but jurisdictions remain free to develop other policies, so long as they are consistent with the Coastal Act. The Draft Guidance is not the legal standard of review for the actions that the Commission or local governments take under the Coastal Act. Such actions are subject to the applicable requirements of the Coastal Act, the federal Coastal Zone Management Act, certified Local Coastal Programs, and other applicable laws and regulations as applied in the context of the evidence in the record for that action.

Response 2

Shoreline Protection for Existing Structures

Comment: *Commenters disagree with how the Commission's 2015 Sea Level Rise Policy Guidance and this Residential Adaptation Policy Guidance interpret the term "existing structure" as used in Section 30235 of the Coastal Act to mean a structure in existence at the time the Coastal Act went into effect. Commenters note that this interpretation is contrary to the interpretation advanced by the Commission in some prior circumstances and assert that "existing" should mean "currently existing," rather than existing as of January 1, 1977.*

Public Resources Code Section 30235 states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect *existing structures* or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible. (emphasis added.)

Both this Draft Guidance and the Commission's 2015 Sea Level Rise Policy Guidance acknowledge that neither the Coastal Act nor its implementing regulations explicitly define what qualifies as an "existing structure" for the purposes of Section 30235. However, interpreting and defining this term in specific cases and through LCPs will likely have a substantial effect on the amount of shoreline armoring that may be permitted and constructed. Thus, interpreting and defining the term is important for ensuring the protection of shoreline resources, including public access and recreation, consistent with the Coastal Act, especially in light of current planning efforts to address future sea level rise impacts.

As described in the Draft Guidance, shoreline armoring generally causes a variety of impacts that are inconsistent with the Coastal Act's resource protection policies. For example, hard armoring can reduce public access along the shoreline due to the armoring physically occupying beach space. It can also cause greater erosion of sand and fix the back of the beach, thereby preventing the natural retreat of beaches. Other detrimental impacts may include negative visual impacts,

alterations to natural landforms, recreation impacts (e.g., surfing limitations), interference with intertidal and beach habitat and ecosystem service functions, and nuisance conditions for neighbors who suffer increased flooding or erosion as a result of nearby armoring. These impacts are generally inconsistent with policies such as Coastal Act Sections 30210, 30220, 30221, 30230, 30233, 30240, 30251, and 30253.

Because of the impacts that shoreline armoring has, such armoring is disfavored under the Coastal Act, and it is explicitly forbidden in certain contexts. In particular, Coastal Act Section 30253 reads, in relevant part:

New development shall do all of the following: (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (b) 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.” (emphasis added.)

Although shoreline protective devices are generally disfavored under the Coastal Act, the law recognizes that they should still be permitted in some circumstances. Section 30235 is essentially an “override” provision that requires approval of shoreline protection in certain situations even when such devices conflict with other Coastal Act resource protection policies. Accordingly, defining what constitutes an “existing structure” subject to the override provision in Section 30235 is a consequential decision.

If ‘existing structure’ is understood to mean structures permitted prior to the Coastal Act, then non-coastal dependent structures permitted after 1976 would not be allowed to obtain shoreline armoring under Section 30235. However, owners of such structures could still obtain armoring if such armoring is consistent with relevant LCP and Coastal Act policies, or in certain other instances (e.g., if it is necessary to protect adjacent structures that are allowed protection under Section 30235). On the other hand, if “existing structure” means any structure in existence at the time that an applicant applies for shoreline armoring to protect it, then every structure built along the coast over the past 40 years (and before) would be allowed to have shoreline armoring if the provisions of Section 30235 are met, even if the armoring is otherwise inconsistent with the Coastal Act. Arguably, even *new* structures could eventually be allowed to obtain shoreline armoring that is otherwise inconsistent with the Coastal Act under this interpretation because, once a structure is constructed, it would become an “existing structure” that is allowed protection under this interpretation of 30235.

Read together, the most reasonable and straight-forward interpretation of Coastal Act Sections 30235 and 30253 is that they demonstrate a broad legislative intent to allow shoreline protection for development that was in existence when the Coastal Act was passed, but to require any *new* development approved after that date to be designed and sited in a way that avoids the need for shoreline protection. Grandfathering existing structures and allowing owners to protect those structures—subject to the restrictions in Section 30235—would have been allowed in order to protect investment-backed expectations related to existing development that predated the Coastal Act’s requirements. However, for structures permitted after the Coastal Act went into effect,

such protective structures would generally be disallowed due to the well-known adverse impacts to coastal resources typically caused by shoreline protection.

The history of Section 30235 supports this interpretation. The Legislature added the word “existing” in front of the term “structure” in the final version of the Coastal Act bill. Without the word “existing,” the provision would have already protected any “structure” in danger of erosion. If the Legislature had intended for 30235 to allow protection of *any* structure, including post-Coastal Act structures, there would have been no reason to add the word “existing.” Likewise, there was no need to add the word “existing” to clarify that planned, future structures were not allowed protection per Section 30235. This is because Section 30235 only requires approval of shoreline protection for structures *in danger of erosion*, and a planned future structure—by definition—cannot be in danger of erosion. Also, Section 30253 already prohibited armoring for most new, or planned, development. Thus, the most logical reason to add the term was to clarify that “existing structures” meant pre-Coastal Act structures.

As some commenters noted, the Commission has previously taken the position that “existing structures” means any pre- or post-Coastal Act structure currently in existence. See *Surfrider Foundation v. California Coastal Comm’n* (Cal. Ct. App. June 5, 2006, No. A110033) 2006 WL 1430224. However, in the time since the Commission briefed the *Surfrider* case, the issues of sea level rise and seawalls have become far more prominent, and the Commission has comprehensively considered its position on the meaning of “existing structures.” In particular, in 2015 the Commission adopted interpretive guidelines, in the form of its Sea Level Rise Guidance, pursuant to Coastal Act Section 30620(a)(3). The Sea Level Rise Guidance discusses the interpretation of “existing structures” in the context of the growing issue of sea level rise and in light of a deeper consideration of the Commission’s public trust duties, and it states that structures built after 1976 pursuant to a coastal development permit should not be considered “existing structures” pursuant to Section 30235. The Commission’s extensive public process in developing these formal guidelines stands in sharp contrast to its project-driven, informal interpretation of the LCP provision in *Surfrider*.

Construing the term “existing structures” in Section 30235 to mean pre-Coastal Act structures is the most consistent with the language, context, and history of the provision. It also best carries out the Commission’s duty to protect public trust resources and to follow courts’ mandate to construe the Coastal Act “liberally to accomplish its purposes and objectives, giving the highest priority to environmental considerations.” *McAllister v. California Coastal Comm’n* (2009) 169 Cal.App.4th 912, 928.

See Appendix A for a more detailed legal analysis of this issue.

Response 3

Redevelopment

General Comment: *Commenters assert that the term “redevelopment” is not defined in the Coastal Act and request that the Draft Guidance clarify whether this definition is an optional standard that local jurisdictions may or may not choose to adopt, or alternatively if its inclusion is intended to establish a new requirement to be imposed through the LCP update process.*

Definitions of redevelopment are common in land use planning and not inconsistent with policies in the Coastal Act. The purpose for defining redevelopment is to avoid the conversion of an existing, non-conforming structure into a new, non-conforming structure through either a single renovation or through incremental changes to the structure. As described in the Commission's 2015 Sea Level Rise Policy Guidance, "LCPs should encourage and require, as applicable, existing at-risk structures to be brought into conformance with current standards when redeveloped. Improvements to existing at-risk structures should be limited to basic repair and maintenance activities and not extend the life of such structures or expand at-risk elements of the development, consistent with the Coastal Act."

Accordingly, while "redevelopment" is not explicitly defined in the Coastal Act, limiting redevelopment in hazardous areas is critical in order to avoid the expansion and perpetuation of existing structures in at-risk locations and protective devices that adversely affect natural shoreline processes, and therefore to carry out the Coastal Act's goal of minimizing hazards and protecting public access and coastal resources. Ensuring that existing structures are not redeveloped in a manner that harms current or future public access to the coast, current or future wetlands or other wildlife habitat, or other public trust resources is also consistent with public agencies' duty to exercise continuous supervision and control over public trust resources, including tidelands.

The example definition of redevelopment found in Model Policy B.7 is derived from specific Coastal Commission regulations and is consistent with the overall Act. It is also consistent with the Commission's 2015 Sea Level Rise Policy Guidance, which states: "Define 'redevelopment' as, at a minimum, replacement of 50% or more of an existing structure. Other options that may be used to define what constitutes redevelopment or a replacement structure could include 1) limits on the extent of replacement of major structural components such as the foundation or exterior walls, or 2) improvements costing more than 50% of the assessed or appraised value of the existing structure. The redevelopment definition should take into consideration existing conditions and pattern of development, potential impacts to coastal resources, and the need for bluff or shoreline protective devices if the structure remains in its current, non-conforming location."

The standard that replacement of 50% or more of a structure constitutes new development derives from 14 Cal. Code Regs. section 13252(b), which provides that replacement of 50% or more of a structure, unless destroyed by natural disaster, constitutes a new structure. Likewise, the requirement that redevelopment definitions address cumulative improvements derives, in part, from 14 Cal. Code Regs. sections 13250(b)(4) and 13253(b)(4), both of which articulate the principle that separate individual improvements made over time should be considered cumulatively for the purpose of determining whether additional improvements to the structure are exempt from permitting requirements. The other examples for how to define redevelopment along with implementing measures that limit development in at-risk locations are intended to be practical suggestions that may be considered on a case-by-case basis to help ensure that LCP policies are consistent with and adequate to carry out the Coastal Act.

Additionally, failing to define redevelopment, and thereby allowing unlimited, cumulative repair and improvements over time would allow piecemeal, complete redevelopment of a non-conforming property in a hazardous location – a result directly at odds with Coastal Act policies that require new development to minimize risks and protect coastal resources, including public trust resources. Depending on the facts of the situation, piecemealing of improvements over time—especially if undertaken in an attempt to avoid otherwise applicable permitting standards—could also violate the requirement that functionally related development performed by the same applicant shall be the subject of a single permit application, to the maximum extent feasible. 14 Cal. Code Regs § 13053.4.

This Draft Guidance does not supersede exemptions established pursuant to the Coastal Act and its implementing regulations, nor does it supersede existing categorical exclusions certified by the Commission. That said, the Coastal Act does not limit the authority of local governments to establish requirements that go beyond the minimum requirements of the Coastal Act, so long as they do not conflict with the Act. (Public Resources Code § 30005(a).) Accordingly, local jurisdictions have discretion to define redevelopment in ways that go beyond the minimum standards articulated above. For example, local jurisdictions could include a 50% valuation criterion for redevelopment, which is consistent with FEMA’s definition for Substantial Improvements, 44 Code of Federal Regulations 59.1.

As stated throughout the Draft Guidance, the information and recommendations should be considered on a location-specific and case by case basis in a way that fulfills the requirements of the Coastal Act, certified LCPs, and other relevant laws and policies and includes consideration of local conditions. Recommendations within the Draft Guidance do not supersede any applicable Coastal Act provisions or other laws.

Response 4

Repair and Maintenance of Development

Comment: *Commenters expressed concern that the redevelopment definition unfairly restricts residents from necessary routine maintenance and upkeep of their homes and could discourage residents from elevating homes to make them safer from flooding.*

Generally, routine repair and maintenance of, and improvements to, residential structures are exempt from coastal development permitting requirements unless the structures are located in sensitive habitat areas or adjacent to coastal bluffs, beaches, or the sea.¹ Repairs or improvements that are not exempt, and that do not constitute redevelopment, generally may be allowed if the new development is consistent with relevant LCP and Coastal Act policies and does not increase an existing structure’s non-conformity with relevant standards. However, at a certain point, improvements and replacement projects—either individually or cumulatively—can be so substantial that they effectively create a new structure. Including redevelopment standards in LCPs is crucial to ensure that existing, non-conforming structures in hazardous or sensitive

¹ See Public Resources Code § 30610(a), (d), 14 Cal Code Regs §§ 13250, 13252, and corresponding LCP provisions. Some jurisdictions may also have categorical exemptions that have been certified by the Commission that exempt other types of development from permitting requirements.

locations are not allowed to be completely rebuilt and to remain in perpetuity, despite their inconsistency with current LCP and Coastal Act policies and public trust principles.

The Model Policy [B.7] defining redevelopment is primarily intended to address situations where major structural elements of a home are replaced. Normal maintenance or improvement work, such as reshingling a roof, repainting, replacing siding or plumbing fixtures, or remodeling a kitchen, would not normally trigger redevelopment standards because they would not affect major structural components of a home. Additionally, if an LCP defined redevelopment to include development that costs at least 50 percent of the market value of the structure, it is unlikely that routine repair and improvements would meet that standard. However, local governments can tailor redevelopment definitions to some extent (as described further in Response 3) to ensure they make sense in that particular jurisdiction. Finally, jurisdictions should consider whether defining redevelopment in a certain way will act as a disincentive for at-risk property owners to raise their homes consistent with LCP or federal (FEMA) policies for flood and storm safety. If elevating a home is needed to provide flood safety, then such elevation may be consistent with relevant LCP policies, if the elevation would minimize flood risk and help ensure structural stability, while also protecting coastal resources. Thus, even if the structural work necessary to elevate the structure constitutes redevelopment, such work may still be approvable.

Response 5

Shoreline Armoring Mitigation

Comment: *Some commenters asserted that Coastal Act Section 30235 requires that construction be “designed to eliminate or mitigate adverse impacts on local shoreline sand supply,” not that it be the “least environmentally damaging feasible alternative.” Commenters also asserted that Section 30235 only specifies that impacts on local shoreline sand supply must be mitigated, and that it does not require mitigation for other impacts of shoreline protection. They claim that Section 30235 addresses the requirements for shoreline protection in specific terms, taking precedence over more general standards and that, although local governments often choose to implement the least environmentally damaging alternative, nothing in the Coastal Act requires adoption of such an alternative.*

Section 30235 contains some standards applicable to shoreline protection, but other provisions of the Coastal Act, its implementing regulations, and the California Environmental Quality Act also apply. It is these other provisions that require agencies to analyze alternatives to shoreline protection and to adopt an alternative that substantially lessens any significant adverse impacts that the protective device might have on the environment, if feasible. See 14 Cal. Code Regs §§ 13053.5(a) (applications for development “shall [] include any feasible alternatives or any feasible mitigation measures available which would substantially lessen any significant adverse impact which the development may have on the environment.”), 13540(f) (a Land Use Plan must ensure “that an activity will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.”); Public Resources Code § 21080.5(d)(2)(i).

In addition, courts have ruled that Section 30235's requirement to mitigate impacts on local shoreline sand supply does not allow agencies to ignore the impacts that shoreline protective devices have on public access and other coastal resources. Specifically, in *Ocean Harbor House Homeowners Assn. v. California Coastal Commission* (2008) 163 Cal.App.4th 215, 241, the court held that section 30235 is permissive, not exclusive, and that "section 30235 does not limit the type of conditions that the Commission may impose in granting a permit to construct a seawall. Rather, the Commission has broad discretion to adopt measures designed to mitigate all significant impacts that the construction of a seawall may have." Pursuant to these standards, the Coastal Commission and local jurisdictions may permit shoreline protective structures only when they are the least environmentally damaging feasible alternative to protect a structure in danger from erosion, the protective device is designed to eliminate or mitigate adverse impacts on local shoreline sand supply, and the approving agency adopts all feasible mitigation measures to address the protective structure's impacts on coastal access, biology, aesthetics, and other coastal resources.

Response 6

Public Trust

Comment: *Commenters questioned the Coastal Commission's role in protecting tidelands that are under State Lands Commission's jurisdiction and questioned the respective roles of the State Lands Commission, local governments, and the Coastal Commission in making public trust boundary line determinations. One commenter asked: "Is the State Lands Commission entrusted with making, arbitrating, or taking legal action to enforce property line determinations as part of its exclusive jurisdiction, or is the Coastal Commission sharing or assuming some of that authority?"*

An important consideration for jurisdictions planning for sea level rise is that, in many locations, the public trust boundary will migrate inland as sea levels rise. As described in the legal section of this Draft Guidance, the ordinary high-water mark, which is generally measured by the mean high tide line, delineates the boundary between public and private property. If the shoreline naturally accretes and a beach gets larger, the new land belongs to the landowner. But if it naturally erodes, or if sea levels rise and the mean high tide line moves landward, then the property line generally moves inland as well.² What used to be private, dry land does not remain private, nor does it remain private while becoming encumbered with the public trust; rather, it generally becomes public property. This public property is subject to the public trust, and the State, and local governments, including through their Coastal Act obligations, have a duty to protect public trust uses of such property.

² There are, however, some exceptions where the public trust boundary is fixed and does not move with natural changes in mean high tide line, such as if there has been a prior boundary settlement agreement. See Center for Ocean Solutions, Stanford Woods Institute for the Environment. 2017. *The Public Trust Doctrine: a Guiding Principle for Governing California's Coast under Climate Change*. Available at http://centerforoceansolutions.org/sites/default/files/publications/The%20Public%20Trust%20Doctrine_A%20Guiding%20Principle%20for%20Governing%20California%2527s%20Coast%20Under%20Climate%20Change.pdf, p. 21.

As described in the Draft Guidance, the State Lands Commission and Coastal Commission have separate but complementary roles to play in protecting public trust resources. For example, the Coastal Commission must ensure that applicants for new development have adequate legal title to the land underlying the proposed development. 14 Cal. Code Regs. §§ 13053.5(b), 13169(a)(2). A failure to demonstrate such legal title is a ground for denial of the development. *Lechuza Villas West v. California. Coastal Com.* (1997) 60 Cal.App.4th 218, 225. Additionally, although the State Lands Commission has sole authority to determine whether to lease public trust lands under its jurisdiction, local governments and the Coastal Commission both have the authority and duty to regulate uses of land in a manner that protects the public trust. One way to carry out this duty, in part, is by requiring applicants for development that may be subject to sea level rise to submit periodic evidence that the development remains on private property. The revised Draft Guidance adds new Model Policy D.4., which demonstrates how local governments could implement permit conditions related to these boundary issues. If there were disputes about the location of the public trust boundary, the State Lands Commission would need to be involved in any resolution.

Structures constructed at grade and not protected by shoreline armoring will likely be threatened, moved, or destroyed long before they come to be located seaward of the mean high tide line, and thus come to be located on public tidelands. However, elevated structures that allow waves and water to flow beneath them might come to be located on public tidelands before they are in danger. Revetments and other types of shoreline armoring also may come to be located on public trust lands. Having development encroach on public trust lands will almost certainly present new public access or other public trust impacts that would not have been present at the time the development was permitted on private land. It also raises a jurisdictional issue because, at such time as any structure that used to be on private land comes to be located on public trust land, it will be located in an area where the Coastal Commission, rather than a local government with a certified LCP, has authority to regulate any new development associated with it. See Public Resources Code § 30519(b).

LCP policies should require development permits to address these potential issues, and could do so by clearly stating that development is only authorized for so long as it remains on private property, and that the permit does not allow encroachment on public trust property. For example, Model Policy A.6 permits new development only for so long as it does not encroach on public trust lands, and any future encroachment must be removed unless both the Coastal Commission and State Lands Commission (or other trustee agency, if appropriate) authorize the development to remain. In considering any such authorization, the State Lands Commission would have to consider whether the development substantially impairs public trust values in the land and whether allowing it on trust lands is consistent with the statutory framework that the State Lands Commission implements. The Coastal Commission would have to consider consistency with Chapter 3 of the Coastal Act as well as consistency with the public trust doctrine. More clarification was added in the Model Policy A.6 note to describe these issues.

Response 7

Funding

Comment: *Commenters stated that the costs of implementing adaptation measures are not addressed in a meaningful way in this document.*

A section on funding has been added to the Implementation section of the Draft Guidance as well as an appendix of funding sources. The Commission recognizes that funding opportunities are constantly evolving, that demand for funding is increasing, and that there is a significant need for the development of additional funding opportunities to plan for and implement adaptation to sea level rise.

Response 8

Managed retreat

Comment: *Many commenters state that retreat is not a feasible option for adaptation in their communities.*

California beaches, both wide sandy beaches and pocket beaches, as well as many nearshore coastal areas, are significant financial assets to coastal communities and the state. Beaches and other shoreline areas also provide remarkable ecological value, including unique and important ecological services such as filtering water, recycling nutrients, buffering the coast from storm waves, and providing critical habitats for hundreds of species. When habitats backed by fixed development are not able to migrate inland as sea level rises, they will become permanently inundated over time, which presents serious concerns for future public access and habitat protection. Retreat strategies might be suited to preserving these resources in the long term, especially as the costs of protection strategies will increase as sea level rises.

A key message of the first five sections of this Draft Guidance is to communicate that, although local jurisdictions may wish to explore a range of residential adaptation strategies, it is important to begin a sea level rise planning process now that considers both short and longer-term impacts so as not to preclude opportunities for implementing future adaptation options. Communities should explore all their options for adaptation, and the Draft Guidance recommends a pathways approach using locally relevant triggers and vulnerability assessments to develop different strategies to address both near term and long-term impacts. The document has been revised to include additional context for potential challenges and opportunities for implementing retreat-based approaches.

The Commission understands that planning and implementing managed retreat strategies will be complicated and challenging in many ways. Nonetheless, retreat-based approaches for residential areas may often be the approach that best carries out Coastal Act policies that require development to be safe from hazards. Coastal Act Section 30235 permits shoreline protection when necessary to protect existing residential structures in danger from erosion and when designed to mitigate adverse impacts on local shoreline sand supply. But Section 30253 requires new and redeveloped residential structures to minimize risk from flooding and coastal hazards, and to assure structural stability, without the need for shoreline protection that substantially alters natural landforms. Thus, in many cases, as sea levels rise, and hazardous areas migrate inland,

the Coastal Act will require new development to be located further inland, essentially resulting in managed retreat on a parcel scale. On a neighborhood or community scale, there may also be cases where a managed retreat program is necessary to comply with Coastal Act policies that require minimizing hazards, protecting coastal resources and maximizing public access.

This Draft Guidance provides background information and sample policy language for communities to consider in developing a range of residential adaptation strategies. It also provides context for considering which adaptation strategies/approaches may be most relevant or successful in minimizing hazard risks from sea level rise and protecting coastal resources. For purposes of implementing the Coastal Act statewide, no single category or even specific strategy should be considered the “best” option as a general rule. Different types of strategies will be appropriate in different locations and for different hazard management and resource protection goals. In addition, this Draft Guidance deals only with residential adaptation; different tools and strategies may apply in the context of adaptation planning for infrastructure, coastal-dependent development, public beaches, or other facilities. The legal context of various options will need to be considered in each situation and, ultimately, adaptive responses will need to be consistent with the Coastal Act and other legal principles. The selection of adaptation strategies for any given community should also be informed by public participation that allows for maximum community and stakeholder input into the planning process.

Appendix A

Detailed Legal Analysis of Coastal Act: Shoreline Protection for Existing Structures

Interpreting the term “existing structures” for the purpose of Coastal Act Section 30235 is critical in order to appropriately define when structures are allowed to obtain shoreline armoring that harms coastal resources. For the reasons described below, interpreting the term to mean structures permitted prior to the effective date of the Coastal Act is the interpretation that is most consistent with the language and purpose of the Coastal Act and that best protects coastal and public trust resources.

Harmonizing 30235 and 30253

When read together, Coastal Act Sections 30235 and 30253 demonstrate a broad legislative intent to allow shoreline protection for development that was in existence when the Coastal Act was passed and to require any new development approved after that date to be designed and sited in a way that avoids the need for shoreline protection. Grandfathering existing structures and allowing owners to protect those structures would have been allowed in order to protect investment-backed expectations related to existing development that predated the regulatory requirements imposed by the Coastal Act (subject to other requirements of Section 30235). However, for structures permitted after the Coastal Act went into effect, such protective structures would generally be disallowed due to the well-known adverse impacts to coastal resources typically caused by shoreline protection. For post-passage of the Coastal Act development approvals, new development (other than coastal-dependent development) is required to “minimize risk to life and property” and to “assure stability and structural integrity” through siting and design measures rather than by relying on protective devices that would substantially alter natural landforms along bluffs and cliffs or have other negative coastal resource impacts.

In this way, the Coastal Act’s broad purpose to protect natural shoreline resources and public access and recreation would be implemented when new, post-Coastal Act development was under consideration, while shoreline development that was already existing in 1976 would be “grandfathered” and allowed to protect itself from shoreline hazards if it otherwise met the requirements of Section 30235, even if this resulted in adverse resource impacts. Such grandfathering of existing conditions is typical in the land use and permitting context when new land use and resource protection policies are enacted that would in turn, make existing development “legal non-conforming.” These provisions protect investment-backed expectations and assure orderly application of new laws (i.e., the Coastal Act).

To interpret “existing structures” otherwise (i.e., to include post-Coastal Act structures) would undermine the design and siting requirements for new development set forth in 30253. Although applicants would still be required to design new development to minimize hazards and assure structural stability without the need for shoreline protection, there are many uncertainties inherent in projecting future bluff retreat, sea level rise, and other coastal hazards. If applicants know that their new structures will be allowed shoreline armoring even if they underestimated

the extent of future hazards, they will have less reason to be cautious when siting and designing their projects. But if they know their right to shoreline armoring is limited, they will likely design their projects more cautiously.

In part, this is a question of appropriately allocating risk when building in the highly dynamic and hazardous shorefront zone. If applicants and local jurisdictions miscalculate risks and allow structures to be built in areas where they soon come to be endangered, more requests for armoring will likely result. Allowing owners a right to obtain shoreline protection would cause the public to bear the costs of the owners' decision to build in a hazardous location, because such armoring would impact public resources such as the beach, public access, and wildlife habitat. On the other hand, allowing post-Coastal Act development to obtain shoreline armoring only when consistent with relevant Coastal Act and LCP policies would cause owners to more fully internalize the risks and costs of building in such locations.

Plain Language and Legislative History

A plain language reading of Section 30235 also demonstrates that the most logical interpretation of “existing structures” is that it means pre-Coastal Act structures. The term “existing” is used twice in the section: once to describe “existing structures” that are allowed to have protective devices that alter natural shoreline processes, and once to describe how “[e]xisting marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.” The reference to existing marine structures clearly refers only to those structures in existence at the time the Coastal Act was adopted. Such structures should be phased out or upgraded, if feasible, and that provision would not make sense if applied to new marine structures constructed after the Coastal Act’s enactment. Rather, any such new structures would have to comply with all Coastal Act requirements, including ensuring that they are not built in a manner that harms marine waters or marine life. New structures should also be subject to permit conditions to ensure that they are modified or removed before they deteriorate and harm coastal waters. As a matter of statutory interpretation, it is most logical to interpret the term “existing structure” consistently within Section 30235 so that “existing structure” and “existing marine structure” both refer to structures that predate the Coastal Act.

The legislative history of Section 30235 also supports interpreting “existing structures” to mean pre-Coastal Act structures. SB 1277 is the bill that eventually was codified as the Coastal Act in 1976. An earlier version of SB 1277 (as last amended on June 24, 1976) contained former Section 30204, which did not include the term “existing” to modify “structures.”³ But the final version of SB 1277 (as last amended on August 2, 1976) appears to wholesale replace the then-existing draft of SB 1277 and is the first instance where former Section 30204 was replaced with

³ 30204, as set forth in SB 1277, as last amended on June 24, 1976, stated: “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 **structures**, developments, beaches, or cliffs 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 possible” (emphasis added).

now Section 30235, which is also the first instance where the term “existing” was included to modify “structures.”⁴ Thus, the Legislature added the term “existing” when describing what structures should be allowed shoreline protection, and by adding this term late in the bill drafting process, the Legislature presumably intended for it to mean something, rather than to be superfluous.

The most logical reason to add the term “existing” would be to clarify that only structures existing on the date the Coastal Act took effect should be allowed shoreline protection under Section 30235, for the following reasons. First, if “existing” meant any structure existing at the time that a person sought a permit for shoreline armoring, there would have been no need to clarify that only “existing” structures should be allowed armoring. Rather, if Section 30235 stated that “Revetments . . . shall be permitted when required to . . . protect structures . . . in danger from erosion,” it would have already required jurisdictions to permit armoring for any structure in existence that was in danger from erosion. Adding the word “existing” would have been wholly unnecessary.

A second possible reason the Legislature could have added the term “existing” would be to clarify that proposed *future* structures in danger of erosion should not be allowed protection—i.e., that applicants could not build a protective device to protect a planned future home. However, that rationale does not seem likely because a proposed future structure, by definition, cannot be in danger of erosion because it does not yet exist. Also, Section 30253 already restricts shoreline protection for proposed, new development. Accordingly, there would have been no need to add the word “existing” to clarify that planned future development should not be allowed protection. The wording of Section 30235 and the existence of Section 30253 would already have forbidden the construction of armoring for planned future structures.

Thus, the most logical reason to add the term “existing” to this provision was to clarify that only development existing at the time the Coastal Act when into effect should be allowed shoreline protection pursuant to Section 30235. This is the interpretation that best gives meaning to the addition of the term “existing” in the bill and that harmonizes Sections 30235 and 30253.

Recent Commission Interpretation in Sea Level Rise Guidance

Section 30620(a)(3) of the Coastal Act authorizes the Commission to prepare interpretive guidelines designed to assist local governments and the Commission in determining how the policies of the Coastal Act should be applied in the Coastal Zone prior to the certification, and through the preparation and amendment, of local coastal programs (“LCPs”). In 2015, the Commission unanimously adopted its 2015 Sea Level Rise Policy Guidance Document, which

⁴ 30235, as set forth in SB 1277 (as last amended on June 24, 1976) and in its current form, states: “Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect **existing structures** or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible” (emphasis added).

states that structures built after 1976 pursuant to a coastal development permit are not “existing” as that term is intended to be understood relative to applications for shoreline protective devices, and that the details of the development history of the structure at issue and any prior coastal development approvals should be fully understood before concluding that a post-Coastal Act development should be allowed shoreline protection under Section 30235. The 2015 Sea Level Rise Guidance is not a binding regulation, but it was unanimously adopted by the Commission pursuant to Section 30620 and thus represents the Commission’s established, current interpretation of the term “existing structures” for purposes of 30235.

Notably, the Commission’s interpretation has not led to denial of all new oceanfront development. Rather, the Commission has used a number of different approaches to approve new development consistent with Section 30253 and related LCP policies without relying on shoreline and bluff armoring. Instead of permitting new shoreline protection for post-Coastal Act structures built in hazardous locations, the Commission has used setback requirements, assumption of risk conditions, and waivers of any potential rights under Section 30235 to allow development in these hazardous areas.

Interpretation Most Protective of Coastal Resources and Public Trust Responsibilities

Public Resources Code section 30009 states: “This division shall be liberally construed to accomplish its purposes and objectives.” (See *Pacific Palisades Bowl Mobile Estates LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 796 [expansive construction of term “development” is consistent with mandate to liberally construe Coastal Act to accomplish purposes and objectives].) Even assuming that the Coastal Act on its face does not settle the question of whether “existing” should be interpreted to mean pre-Coastal Act or to also include post-Coastal Act structures, the interpretation which “liberally construes” the Coastal Act “to accomplish its purposes and objectives” supports an interpretation that “existing structures” means pre-Coastal Act. As explained above, consideration of Section 30253 in relation to 30235 supports a pre-Coastal Act interpretation of “existing structures.” For example, 30253 requires that new development “minimize risks to life and property in areas of high geologic, flood, and fire hazard” without “requir[ing] the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.” In other words, if new development is designed and sited to comply with 30253, the approved development would never need to trigger 30235’s mandate to approve shoreline protection for “existing structures.”

Given the myriad impacts that shoreline protective devices generally have on beach sand supply, public access, aesthetics, natural landforms, ecology, public trust land, and other coastal resources, the Coastal Act should be interpreted to limit the situations in which shoreline protection is required to be approved. Under the Commission’s current interpretation of Section 30235, there are only limited circumstances in which shoreline protection that has negative coastal impacts may be approved. However, if “existing structures” was interpreted to mean any structure currently in existence, the Commission and local governments would be required to approve applications for shoreline protection in far more circumstances, including far more circumstances where the armoring would have significant, negative impacts on coastal resources.

Although the Coastal Act protects private property rights as well as public access and other resources (see Sections 30001(c), 30001.5(c), 30210, 30214(b)), interpreting 30235 to apply only to pre-Coastal Act structures gives due weight to private property rights. In particular, owners of pre-Coastal Act structures retain their rights to obtain shoreline protection for such structures if certain criteria are met. And owners of post-Coastal Act structures will also have the right to seek a permit for, and to obtain, shoreline protection for their structures if the shoreline protection is consistent with relevant Coastal Act and LCP resource protection policies. This ensures that owners of pre-Coastal Act structures, which were constructed before state law required the same rigorous setback requirements and hazard minimization standards now required for new development, are granted more leeway in protecting their structures. On the other hand, those who built structures after the Coastal Act went into effect were on notice that their shoreline development would be regulated more heavily and would have to meet strict standards. As the Court of Appeal stated in *Whaler's Village Club v. California Coastal Comm'n* (1985) 173 Cal.App.3d 240, 253, a property owner's right to construct shoreline armoring is not absolute; rather, it is "subject to 'reasonable restraints to avoid societal detriment'" (citation omitted). This interpretation best carries out the intent of the Coastal Act to protect the coast while still providing owners with an appropriately regulated right to protect their property.

In addition, Section 30010 of the Coastal Act states that the Act "is not intended, and shall not be construed as authorizing the commission . . . or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use without the payment of just compensation therefor." Accordingly, if there were ever a particular situation where denial of shoreline armoring would constitute a taking of private property, the Coastal Commission or local government could approve the armoring pursuant to Section 30010 or a corresponding LCP provision even though the armoring was inconsistent with other LCP or Coastal Act provisions.

Interpreting "existing structures" in Section 30235 as meaning only pre-Coastal Act structures is also more consistent with the Commission's duty to protect public trust resources. Shoreline protection has well-known impacts to public trust resources, including but not limited to physical occupation of beaches, fixing of back beach and subsequent loss of creation of beach/sand, and scouring of beach due to wave impacts rebounding off seawalls. For example, when shoreline protection fixes the back of the beach and causes beach to be lost as the mean high tide line moves up to the protective device, the public loses access to public land.

In describing the state's duty to protect public trust lands, the California Supreme Court has ruled that state agencies have a duty to "exercise [...] continuous supervision and control over the navigable waters of the state and the lands underlying those waters." *Nat'l Audubon Soc'y v. Superior Court* (1983) 33 Cal.3d 419, 425. Thus, when considering how to regulate development that may affect public trust lands, the Commission and local jurisdictions must consider the effects that the development will have on "interests protected by the public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests." *Id.* at 426. Interpreting "existing structures" in Section 30235 as meaning only pre-Coastal Act structures is more consistent with the Commission's duty to protect the public trust and minimize harm to trust resources. This is because it ensures that shoreline protection is only constructed to protect new

development if it is fully consistent with the Coastal Act and any relevant LCP provisions, including policies to protect public access and recreation and ecological resources. An interpretation of “existing structures” to include post-Coastal Act structures would undermine the Commission’s duty and ability to carry out its public trust obligations because it would allow, or even compel, the approval of many more shoreline protective devices that have adverse impacts on public trust resources.

Commission Briefing in *Surfrider Foundation v. California Coastal Commission*

As some commenters noted, the Commission has previously taken the position that “existing structures” means any pre- or post-Coastal Act structure currently in existence. In particular, the Commission took this position nearly twelve years ago in litigation that involved an LCP policy similar to Section 30235. See *Surfrider Foundation v. California Coastal Comm’n* (Cal. Ct. App. June 5, 2006, No. A110033) 2006 WL 1430224. However, there is a ready explanation for why the Commission took the position that it did in the *Surfrider* case and for why the Commission recently revisited this interpretation in its 2015 Sea Level Rise Guidance.

First, in the 1990’s (at the time the development which resulted in the *Surfrider* lawsuit was initiated), the Commission did not often have to consider whether the Coastal Act compelled shoreline protection for post-Coastal Act structures. As stated in the 2015 Sea Level Rise Guidance, there have not been many cases where the Commission has had to determine whether or not structures built after 1976 should be treated as “existing” and thus allowed shoreline protection pursuant to Section 30235. Oftentimes, shoreline protection being proposed to protect a post-Coastal Act structure has also been identified as necessary to protect adjacent pre-Coastal Act structures.

Indeed, the *Surfrider* case involved a situation where the Commission had approved shoreline protection for two, adjacent structures, one of which was pre-Coastal and one post-Coastal. Although the Commission found that both homes qualified as “existing structures” that should be allowed protection, it did not actually need to make this finding to permit the seawall. Rather, the seawall could have been approved even under the current, recommended interpretation of 30235 because the entire wall may have been necessary to protect one pre-Coastal home in danger of erosion. This fact demonstrates that seawalls will not be prohibited if LCPs define “existing structures” in the manner recommended in this Guidance and the 2015 Sea Level Rise Guidance. However, the use of seawalls will lessen over time as fewer grandfathered homes remain that would be allowed protection. In contrast, if “existing structures” is interpreted to mean any structure that currently exists, the amount of coastal armoring would likely grow substantially, as far more structures would be allowed to obtain protection as sea level rise and coastal erosion eventually cause them to be at risk.

Second, in the twelve years since the Commission briefed the *Surfrider* case, the issues of sea level rise and seawalls have become far more prominent, and the Commission has had the opportunity to comprehensively consider its position on the meaning of “existing structures.” In the Commission’s unanimous adoption of its 2015 Sea Level Rise Guidance, it articulated and explained its current interpretation that structures built after 1976 pursuant to a coastal development permit are not “existing” as that term was originally intended relative to

applications for shoreline protective devices. The Commission’s extensive public process in developing its formal guidelines in 2015 stand in sharp contrast to its project-driven, informal interpretation of the LCP provision in *Surfrider*. Its more recent interpretation was also developed in the context of the growing issue of sea level rise and in light of a deeper consideration of the Commission’s public trust duties to protect tidelands and trust resources.

Finally, although the trial court in the *Surfrider* case rejected *Surfrider*’s argument that “existing structures” means pre-Coastal Act structures, that decision was appealed, and the Court of Appeal decision—which is the only controlling decision—did not rule on the meaning of the term “existing structures.” Rather, it disposed of the case on other grounds. Additionally, as the unpublished Court of Appeal opinion held, the underlying Commission action in that case involved application of LCP policies, not Section 30235. For both of these reasons, the case is not legal precedent that governs the interpretation of Section 30235. The fact that the Commission took one position in prior litigation does not prevent it from reconsidering its position at a later time, particularly in the context of formal, Commission-adopted guidance that addresses the mounting threat of sea level rise and that specifically considers the Commission’s public trust obligations.

AB 1129

It is also worth noting that the Legislature recently considered, but did not pass, a bill (AB 1129) that would have modified Section 30235 to explicitly state that “‘existing structure’ means a structure that is legally authorized and in existence as of January 1, 1977.” The proposed legislation does not affect the Commission’s interpretation of the term “existing structure” for the purposes of Section 30235. By its terms, the bill was not intended to *change* the meaning of “existing structure,” but rather was intended to *affirm* it. The bill would have created a subsection (b) in Section 30235 that stated: “For purposes of this section, *and consistent with existing practice*, ‘existing structure’ means a structure that is legally authorized and in existence as of January 1, 1977.” (emphasis added.)

Additionally, the bill contained changes to Coastal Act provisions other than Section 30235. Thus, the Legislature’s failure to pass the bill last session does not evince any clear Legislative intent regarding the meaning of the term “existing structures.” Rather, as the California State Supreme Court has noted, “[u]npassed bills, as evidences of legislative intent, have little value. [Citations.]” (*Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 746; *Ingersoll v. Palmer* (1987) 43 Cal. 3d 1321, 1349.)

Conclusion

Interpreting the term “existing structures” for purposes of Section 30235 is important, and the interpretation that best carries out the language and purpose of the Coastal Act is if the term means structures permitted prior to the Coastal Act’s effective date. This will appropriately limit the circumstances in which the Commission and local governments are required to permit coastal armoring. Importantly, the Commission’s definition will not necessarily preclude structures built after 1976 from obtaining shoreline protection in appropriate circumstances. If a residential

structure does not qualify as “existing” under Section 30235, it means that the Commission or applicable local government is not *required* to issue a CDP for armoring in circumstances where such armoring is inconsistent with relevant LCP or Coastal Act policies. However, the owner may still be able to obtain a permit for constructing or altering a shoreline protective device if, for example, the protective device in that location is necessary to protect adjacent structures that are allowed protection pursuant to Section 30235, or if it would be consistent with all relevant Coastal Act and/or LCP policies⁵. For more discussion on this issue, see Section 4, Legal Considerations, of the Draft Guidance.

⁵ Additionally, if an existing, certified LCP defines “existing structures” differently, that provision would continue to govern approval of armoring within that city or county’s permitting jurisdiction.