**CALIFORNIA COASTAL COMMISSION**
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# W 12e

## Addendum

March 6, 2012

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item 12e**, **Solana Beach LUP**, for the Commission Meeting of March 7, 2012.

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Staff recommends the following changes be made to the above-referenced staff report:

New deletions are indicated by ~~double strike-out~~, and new additions by double underline.

1. On Page 14, suggested modification #19 shall be revised as follows:

**Policy 2.33**: Retention of existing, lower cost visitor serving and recreation facilities, including overnight accommodations, shall be encouraged and lower cost overnight accommodations shall be protected. If removal or conversion of existing lower or moderate cost overnight accommodations is proposed in the City, the inventory shall be replaced with units that are of comparable cost with the existing units to be removed or converted. The City shall proactively work with existing hotel/motel operators and offer incentives to maintain and renovate existing properties.

If replacement of the lower or moderate cost units is not proposed (either on-site or elsewhere in the City), then the new development shall be required to pay, as a condition of approval for a coastal development permit, a mitigation payment to provide significant funding for the establishment of lower cost overnight visitor accommodations within Solana Beach, preferably, or within North San Diego County consistent with Policy 5.8 of the Land Use Plan, for each of the low or moderate units removed/converted on a 1:1 basis. However, the mitigation payment may be adjusted, reduced, or waived if, after one year of non-operation of an existing hotel, it has been determined by the City that development of lower or moderate cost overnight accommodations at the site is financially infeasible, and provided that the City applies and receives approval for a site-specific LCP Amendment for the project in addition to any other required permits.

The City shall maintain an accounting of the number of existing motel and hotel rooms and room rates. When referring to overnight accommodations, lower cost shall be defined by a certain percentage of the Statewide average room rate as calculated by the Smith Travel Research website (www.visitcalifornia.com) or other comparable or similar website or study such as www.Calif.AAAcom. A suitable methodology would base the percentage on market conditions in San Diego County for the months of July and August and include the average cost of motels/hotels within five (5) miles of the coast that charge less than the Statewide average. High cost would be room rates that are 20% higher than the Statewide average, and moderate cost room rates would be between high and low cost. The range of affordability of new and/or replacement hotel/motel development shall be determined as part of the coastal development permit process and monitored as part of the City's inventory of overnight accommodations.

New lower cost visitor and recreation facilities, including overnight accommodations, shall be encouraged. New hotel/motel development within the City should, where feasible, provide a range of rooms and room prices in order to serve all income ranges. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to avoid impacts to ESHA and visual resources.

2. On Page 72, after the fourth complete paragraph, the following shall be added:

As an example, the Commission has approved coastal development permits for improvements or remodels to existing blufftop residential structures (ref. 6-09-061 (Di Noto) finding, "while the proposed improvements are substantial and clearly go beyond normal repair and maintenance…the proposed improvements do not result in a greater risk to the existing nonconforming residential structure over that which currently exists," because in that case, only a small area of the exterior walls was being modified, there was no new living area being added, no foundation work was proposed and the footprint of the structure remained the same. Therefore, the proposed improvements to the existing home did not require shoreline protection any more than currently existed with the present home. Such permits typically include a condition addressing future response to erosion, which requires consideration of feasible alternatives to shoreline and bluff protective works, including relocation of portions of the principal structures that are threatened, structural underpinning, and other remedial measures capable of protecting the principal residence and allowing reasonable use of the property, without constructing additional bluff or shoreline stabilization devices.

3. On Page 73, after the second complete paragraph, the following shall be added:

The Commission has approved a number of coastal development permits for different types of development along the stretch of coast in the City of Solana Beach since the Coastal Act has been in effect. Almost all the permits, whether for improvements to existing structures, additions, new development, redevelopment, seawalls or bluff retention devices, include a deed restriction addressing future

response to erosion. The conditions generally require that the blufftop property owner acknowledge that alternatives to bluff or shoreline protective devices on the adjacent public property must be considered as potentially feasible alternatives to avoid significant alteration of the natural landform or encroachment on the adjacent public bluffs and beach.

The LCP policies require consideration of past permits and conditions in any alternatives analysis for bluff retention devices. Specifically, with regard to any proposals for an upper bluff protective system, such as geogrid upper bluff repair or a caisson and tied-back alternative, Policy 4.56 (Suggestion Modification #102), requires a determination be made, taking into consideration applicable conditions of previous permit approval for development at the site, that no alternatives to the upper bluff system are currently feasible. The alternatives that must be considered include a revised building footprint and foundation system (e.g. caissons) with a setback that avoids future exposure and alteration of the natural landform, and/or removal and relocation of all, or portions of the affected structure. With this requirement in the LUP, the City or Commission will have the ability to acknowledge past permit actions that have, in some cases, allowed shoreline protective devices on public property with an acknowledgement that alternatives to further encroachment on public lands must be considered as feasible alternatives in the future.

An example of the condition of approval for a seawall permit addressing future response to erosion is as follows (ref. CDP # 6-99-100 Presnell et al for 352 ft. long seawall below eight properties and 70 ft. of geogrid reinforced slope):

> Future Response to Erosion. If in the future the permittee seeks a coastal development permit to construct bluff or shoreline protective devices, the permittee will be required to include in the permit application information concerning alternatives to the proposed bluff or shoreline protection that will eliminate impacts to scenic visual resources, recreation and shoreline processes. Alternatives shall include but not be limited to: relocation of all or portions of the principal structures that are threatened, structural underpinning, and other remedial measures capable of protecting the principal structures and providing reasonable use of the property, without constructing bluff or shoreline stabilization devices. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting existing structures that are in danger from erosion. No additional bluff or shoreline protective devices shall be constructed on the adjacent public bluff face above the approved seawall or on the beach in front of the proposed seawall unless the alternatives required above are demonstrated to be infeasible. No shoreline protective devices shall be constructed in order to protect ancillary improvements (patios, decks, fences, landscaping, etc.) located between the principal residential structures and the ocean.

For proposals including additions to existing residential structures, a typical condition of approval will address future response to erosion and will acknowledge the Commission will consider removal of the structures, including portions of the home or the entire home, as preferred and practical alternatives to bluff and shoreline protective devices. Most conditions require that should protection be contemplated in the future, the applicant is required to submit an analysis of alternatives to bluff protective works that may be considered by the Commission, including relocation of the principal structure, relocation of portions that are threatened, structural underpinning, or other remedial measures identified to stabilize the residence that do not include bluff or shoreline protective devices.

For new development, a typical condition requires that the applicant shall not construct any upper or lower bluff stabilization devices (other than preemptive filling of existing seacaves) to protect the subject residence.

4. On Page 88, after the second complete paragraph, the following new paragraph shall be added:

As modified, Policy 3.22 provides that the mitigation payment for the removal/conversion of mid or lower cost overnight accommodations may not be required, if, despite incentives and encouragement from the City, a hotel property remains vacant for an extended period of time because use of the site for development of a hotel is financially infeasible. Under those circumstances, the City may submit a site-specific LCP Amendment to adjust, reduce, or waive the mitigation payment, to allow redevelopment of the site for a use other than a hotel. By the time the Commission considers such an amendment request, the hotel must have been non-operational for at least one year. The Commission would have the opportunity at that time to examine the financial conditions affecting development of a hotel on the site, and determine if the fee should be reduced, removed, or some alternative mitigation imposed.

5. On Page 92, the second complete paragraph shall be revised as follows:

The Commission is aware that vacation rentals can be a highly contentious issue, and that significant public input at the local level led to the City's decision to prohibit rentals for less than seven days. However, the Commission's perspective must be to consider the statewide demand for overnight accommodations on California's shoreline. Visitors looking for weekend accommodations on Solana Beach's scenic shoreline are not represented at the City's local hearings on vacation rentals. There is abundant evidence that short-term rentals can be compatible with stable, well-maintained residential neighborhoods, and the small beach oriented town character of a city, particularly in high density zoned areas along the shoreline. Other California cities, including Imperial Beach and Encinitas that have placed some restrictions on short-term vacation rentals, typically allow them to occur somewhere in the City, rather than putting a blanket

prohibition on them. In February 2004, the Commission approved restrictions on vacation rentals in some residential areas of the City of Imperial Beach, because they are allowed in the City's visitor-serving designated area (the Seacoast Commercial Zone), and in the residential units located in the Seacoast commercial area (LCPA #1-03). Short-term rentals are also allowed in the City of Imperial Beach's General Commercial zone. In November 2006, in response to a proposal to prohibit vacation rentals in all residential zones, the Commission allowed the City of Encinitas to prohibit vacation rentals only in the portion of the City east of Interstate 5.

More recently, in December 2011, the Commission found in the City of Pismo Beach, an outright ban on vacation rentals was not consistent with the Coastal Act (LCPA PSB-1-10). In July 2011, the Commission determined that allowing vacation rentals with strict regulations on the implementation and number of rentals in Santa Cruz County would not unduly restrict or prohibit the availability of overnight visitor-serving accommodations (LCPA SCO-1-11).

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W12e

March 5, 2012

Dr. Charles Lester, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

**Re: City of Solana Beach Local Coastal Program (LCP) Land Use Plan (LUP)**
**Wednesday March 7, 2012 (Item 12e)**

Dear Dr. Lester:

On behalf of the City of Solana Beach, I would like to thank you again for your willingness to speak with us regarding the proposed Land Use Plan (LUP) and our shared goal to certify a Local Coastal Program (LCP) for the City. As you're aware, the City has been working with CCC staff for over 10 years to develop an LUP that is protective of coastal resources while also being reflective of community goals. We are pleased to report that within the last week for several LUP policies, City staff has made great progress in working with CCC staff to come to an agreement on language that City staff can recommend to City Council for approval.

An understanding has been reached with CCC staff on the following major policy issues: 20-year permit for seawalls, creation of visitor-serving commercial land use zone, the addition of significant acreage added to the visitor commercial zone, acceptance of $30,000 fee for new high end hotels, concession on minimum-size bluff top home and adoption of $1,000 per foot mitigation fee for public recreation impacts associated with seawalls.

The March 2012 CCC Staff Report contains 153 suggested modifications. City staff agrees to and accepts the majority of these modifications for the purpose of submitting the changes to City Council for approval. While considerable progress has been made between the policy positions advanced by the CCC staff and City staff, and as of last Friday there were two major CCC staff suggested modifications to the City's LUP that City staff was unable to support. Late, last Friday, City staff and CCC staff tentatively agreed to revise language on one of these items of disagreement. In addition, there is some disagreement on the part of CCC staff as to the purpose and feasibility of the City's proposed policies in Chapter 4 related to the protection of environmentally sensitive habitat areas (ESHA), which this letter should clarify.

The CCC staff suggested modifications to LUP Policy 5.31 (Short Term Vacation Rentals) and LUP Policy 2.33 ($30,000 Mitigation Fee for any hotels that close) are contrary to expressed local preferences and would represent a major departure from City policy, thereby jeopardizing the

City Response to Staff Recommendation 7

City's ability to adopt the LUP as revised by CCC staff. However, City staff and CCC staff have been working diligently on revisions to CCC staff's suggested modifications to LUP Policy 2.33 and have a tentative agreement on revised language. The City has spent many years developing LUP policies that are protective of coastal resources in a manner that's reflective of the goals and wishes of the community, and we are committed to obtaining a certified LCP.

**Background to the Development of the Solana Beach LCP LUP**

To provide a little background, the City of Solana Beach is a thriving seaside visitor-serving community located 20 miles north of San Diego. The City is located entirely within the Coastal Zone. Incorporated in 1986, the City celebrated 25 years of cityhood in 2011. The City is fully built out, with a population of just under 14,000. The City encompasses 3.42 square miles of land and has approximately 1.7 miles of coastline and public beaches.

Since 2000, the City has been actively working with local residents, stakeholders and CCC staff to develop an LUP. The LUP under consideration represents the seventh LUP submitted by the City over a 12-year period. Development of the LUP has been a top municipal priority for more than 12 years, with other important City projects assigned lower priorities until the LUP was certified. Most recently, the LUP was tentatively scheduled for consideration by the Commission at its October 2011 meeting, but the hearing was postponed at the request of the City to allow additional time to work with CCC staff to resolve remaining policy differences.

The City has committed a tremendous amount of time and resources to developing a LCP in a good faith effort, has repeatedly made significant policy concessions, and has reorganized the entire document at the request of CCC staff. The City is confident that, as submitted, its LUP policies conform to the Coastal Act and remains optimistic that LCP certification can be achieved.

**Two Significant Issues Remain: Vacation Rentals and Hotel Mitigation Fees**

While tremendous progress has been made and we are still diligently working toward full agreement with CCC staff, there are two issues that we are attempting to resolve involving LUP Policies 5.31 and 2.33. The following contains a summary of the nature of the difference between the City's LUP and CCC staff, the rationale for the City's LUP policies, explanation of concerns regarding CCC staff suggested modifications, and the revised Policy 2.33.

**Issue #1 - LUP Policy 5.31 Short Term Vacation Rentals**

CCC staff in their letter to the City dated 2/7/12 (as well as in the Staff Report before you) suggested modifications to Policy 5.31 which would allow vacation rentals of 1 day to 30 days in the City's residentially zoned areas. The City has clearly and repeatedly stated it cannot support short term vacation rentals less than 7 days in length because it would create a significant and adverse impact on the existing quality of life in the City's residential neighborhoods by creating a hotel-type atmosphere in all residential areas. City staff provided CCC staff with substantial documentation from public meetings and City Council hearings regarding the establishment of a 7-day minimum for vacation rentals in the City. The City's LUP policy is provided below:

> **Policy 5.31:** A short-term vacation rental is the rental of any portion of a building in a residential district for 7 to 30 consecutive days regardless of building size, including multiple-family buildings, duplexes, and single-family residences. Short-term vacation rentals are permitted in all residential zones.

In 2003, following significant public outreach and community input and support, the City adopted an ordinance allowing short-term vacation rentals of 7 to 30 days in length throughout the City. The regulations adopted by the City were based on substantial input of the community and allowed vacation rentals in all residential neighborhoods ranging in length from 7 to 30 days. The background information related to this ordinance was provided to the CCC staff in January 2012 as requested.

Many of the City short-term vacation rentals, which are mostly bluff top condominiums, rent out at $3,000 to $4,000 per week. This equates to $428 to $571 per night during the peak season, similar to a 5-star hotel room rate, making these the most expensive overnight accommodations in the City. Therefore, the CCC staff recommendation to revise the City's current policy and allow short-term vacation rentals of private homes (for 1 to 30 days) does not promote more low cost overnight accommodations but may create more high-end overnight visitor serving accommodations in the City at odds with the Coastal Act.

In 2003, the City policy was developed to allow short-term vacation rentals throughout the City in all residential zones in response to community concerns and expressed community preference (as codified in Solana Beach Municipal Code Chapter 4.47). Prior to the establishment of these regulations, short-term vacation rentals of less than 15 days were prohibited throughout the City, but they were not regulated. Based upon past experiences and complaints received from neighbors, rentals of less than 7 days created a perceived negative effect on the community. City residents complained of short-term visitors' alcohol and drug use, overcrowding of rental units, excessive noise, early morning move-ins, and other disturbances to the peace, and safety of the community, which is significant given that 55% of the land in Solana Beach is for residential use.

The goal of the existing City regulations and LUP polices is to protect the residential character and existing quality of life in its neighborhoods while promoting the provision of additional visitor serving land uses. The permitting process encourages those property owners to promote respectful behavior from the tenants, provide safety information to the property owners, and it allows City staff and code enforcement to be aware of the locations of the short-term rental properties. The property owners of those short-term rental properties where ongoing violations occur face steep fines. The permitting process, the fines, and the 7-day minimum were based upon significant input from the community as a result of several Council meetings and a strong outreach program in 2003. Since the policy compromise with property owners who live on a year-around basis versus property owners who reside on a seasonal basis in these residential areas, the City has received almost no recorded complaints regarding the occupants of short-term vacation rentals. Those who

rent residential properties from 7 to 30 days appear to be more concerned about the property they are renting and the community they are visiting. In 2009, the City staff floated the idea of changing the short term vacation rental policies to the community again and received strong community opposition to shortening the minimum of 7 days to three days.

Regulating short-term rentals has been found to be a legitimate exercise of the police power to protect the residential character of neighborhoods. See *Ewing v. City of Carmel-by-the-Sea*, 234 Cal. App. 3d 1579, 1590-93 (1991). The court found that the city ordinance was not arbitrary or unreasonable because it was related to its goals of preserving single-family homes as the "heart and soul of the city" and for providing stability in the community. *Id.* at 1591-93.

The City has two hotels (Holiday Inn Express and Marriott Courtyard), and one resort (Winners Circle Resort) with standard rooms and larger suites, all located within a short walking distance to the beach. The City has approximately 289 rooms/suites available at these locations. All provide low cost overnight accommodations with the Holiday Inn Express starting at approximately $90 per night, which are generally much less expensive than these short-term rentals. Furthermore, this City is part of the larger San Diego metropolitan region, which offers over 500 lodging options of all types and costs within a short driving distance from the City. Keeping the 7-day minimum rental intact will not diminish the Coastal Act goal to maintain access to beach areas for the public or provide a range of overnight accommodations for various income levels.

**Issue # 2 - LUP Policy 2.33 - $30,000 per room fee for any hotels that close**

In a letter to the City dated February 7, 2012 (as well as in the Staff Report before you), CCC staff proposed changes to Policy 2.33 that would require a $30,000 per room fee be imposed on the would-be developer of any of the existing overnight accommodations in the City in the event the hotel closes or is redeveloped for another use even if the hotel chain files for bankruptcy because market conditions, which are totally out of the City's control, dictated that a hotel was no longer a financially viable use. As stated previously, City staff and CCC staff have tentatively agreed upon revision language. The following is an explanation of the City's concerns with the previously modified language by CCC staff.

Such a fee, as previously written, would have acted as a strong disincentive for any future development or redevelopment of a hotel site. The net effect of this CCC staff suggested policy would be to discourage any reuse of the hotel. The City also would want to strongly encourage hotel use at existing hotel sites. However, if market conditions rendered a hotel use not financially feasible, a financial penalty could make other uses infeasible. A financial penalty could potentially blight the City with a vacant unoccupied building(s) because a purchaser of the hotel buildings and site would first have to pay approximately $3 million in arbitrarily assessed hotel mitigation fees. In real terms this policy would result in the following fees per property:

- Holiday Inn Express, 80 suites and rooms = $2.40 million penalty/fee
- Marriott Courtyard, 115 suites and rooms = $3.45 million penalty/fee
- Winners Circle Resort, 94 suites and rooms = $2.82 million penalty/fee

In addition, if any new hotels are developed in the City over time they will become part of the inventory that the City (under the CCC staff policy) would be required to maintain. Since the City has no ability to require a hotel stay in business or occupy a site, the City would have to impose a $30,000 per room fee on any additional future hotels that are forced to close or otherwise cease doing business in the City. Thus, the burden becomes increasingly onerous over time because the bar keeps rising, potentially causing a disincentive for the City to attempt to attract new hotels.

As submitted to CCC staff and tentatively agreed to by CCC staff on March 1, 2012, City staff would agree to propose to City Council the revised policies and LUP text changes as shown below in yellow highlight:

> **Policy 2.33**: Retention of existing, lower cost visitor serving and recreation facilities, including overnight accommodations, shall be encouraged and lower cost overnight accommodations shall be protected. If removal or conversion of existing lower or moderate cost overnight accommodations is proposed in the City, the inventory shall be replaced with units that are of comparable cost with the existing units to be removed or converted. The City shall proactively work with existing hotel/motel operators and offer incentives to maintain and renovate existing properties.

If replacement of the lower or moderate cost units is not proposed (either on-site or elsewhere in the City), then the new development shall be required to pay, as a condition of approval for a coastal development permit, a mitigation payment to provide significant funding for the establishment of lower cost overnight visitor accommodations within Solana Beach, preferably, or within North San Diego County consistent with Policy 5.8 of the LUP, for each of the low or moderate units removed/converted on a 1:1 basis. However, the mitigation payment may be adjusted, replaced, or waived if, after one year of non-operation of an existing hotel, it has been determined by the City that development of lower or moderate cost overnight accommodations at the site is financially infeasible, and provided that the City applies and receives approval for a site-specific LCP Amendment for the project in addition to any other required permits.

The City shall maintain an accounting of the number of existing motel and hotel rooms and room rates. When referring to overnight accommodations, lower cost shall be defined by a certain percentage of the statewide average room rate as calculated by the Smith Travel Research website (www.visitcalifornia.com) or other comparable or similar website or study such as www.Calif.AAAcom. A suitable methodology would base the percentage on market conditions in San Diego County for the months of July and August and include the average cost of motels/hotels within five miles of the coast that charge less than the statewide average. High cost would be room rates that are 20% higher than the statewide average, and moderate cost room rates would be between high and low cost. The range of affordability of new and/or replacement hotel/motel development shall be determined as part of the coastal development permit process and monitored as part of the City's inventory of overnight accommodations.

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New lower cost visitor and recreation facilities, including overnight accommodations, shall be encouraged. New hotel/motel development within the City should, where feasible, provide a range of rooms and room prices in order to serve all income ranges. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to avoid impacts to ESHA and visual resources.

**Clarification of ESHA Policies**

**Issue #3 - ESHA Protection and Fire Management**

In addition to the two significant issues described above, the City wants to bring to the attention of the Commission its LUP policies regarding Environmentally Sensitive Habitat Areas (ESHA" protection and fire management. The City strongly believes that its LUP policies are more protective of ESHA because City's LUP policies for the wildland-urban interface (WUI) reduce the amount of habitat that would have to be removed or disturbed. An opportunity to afford better protections may be lost if the City's proposals are not accepted. Specifically, under the City's LUP policies:

- No vegetation management beyond fire resistant wall is required because alternative methods of fire protection are implemented;
- Alternative compliance methods that do not involve vegetation clearing or thinning are inherently more protective of ESHA; and,
- Properties can be deed restricted to protect ESHA in perpetuity.

The City's LUP contains policies that allow for a reduced WUI fire protection setback on private property (<100 feet) where alternative methods of fire protection are approved by the Fire Marshal. The goals of these policies are twofold: (1) minimize wildfire risk to life and property while (2) ensuring the protection of ESHA. City staff believes that the City's LUP policies are more protective of ESHA than CCC staff's suggested revisions. It is the City's intent to avoid ESHA impacts in the WUI by reducing the number of instances where vegetation clearing/thinning would be allowed under the State Fire Code. New development and remodels of existing structures encroaching closer to any ESHA would only be allowed if the Fire Marshal determines that adequate fire protection can be provided onsite based on specialized construction techniques and construction of non-combustible walls. Whereas a homeowner currently could thin or clear ESHA on private property to achieve the required fire protection standard allowed by the State Fire Code "defensible space" regulations, implementation of the LUP and the City's policies would result in cases where vegetation thinning or clearing would not be allowed or required because equivalent methods of fire protection would have been utilized.

One method of reducing fire risk to properties adjacent to the WUI is to install a non-combustible wall, thereby reducing the vegetation management zone. This type of policy would allow for additions to existing homes or construction of new homes within the WUI while protecting ESHA because fuel modification requirements are avoided. Under this policy, no vegetation thinning or clearing in any adjacent ESHA would be allowed because the risk of wildfire has been minimized

using an alternative means of achieving fire protection and any property owner who requests to encroach closer to any existing ESHA for construction of a new home or an addition to an existing home would be required to waive their right to thin any ESHA located on or adjacent to their property.

The City's LUP policies are consistent with Coastal Act Section 30523 requiring that development minimize risks to life and property in areas of high fire hazard, and Coastal Act Section 30240 that requires ESHA protection. The LUP policies acknowledge that vegetation is sometimes required by the Fire Marshal to be removed, thinned or otherwise modified in order to minimize the risk of hazard for properties located in the WUI. The City's LUP policies are listed below which have been modified since the October 2011 LUP Submittal as shown in redline/strikeout:

> **Policy 4.77:** All discretionary permit applications for projects in the WUI shall be subject to review by the City's Fire Marshal, on a case by case basis, to ensure wildfire risk is minimized. The Fire Marshal may reduce the 100' fuel management requirement for existing development, additions to existing structures and new development when equivalent methods of wildfire risk abatement are included in project design.
>
> **Policy 4.82:** Fuel Modification Requirements for Existing Development - The City shall encourage property owners to implement fire risk reduction alternatives, including those listed in Policy 4.78, as a priority over fuel modification in ESHA. However, the City Fire Marshal may require fuel modification to occur adjacent to existing development as outlined in the established zones. If fuel modification is required by the Fire Marshal for existing development that would impact ESHA, the alternative that has the least impact on ESHA shall be implemented where feasible.
>
> **Policy 4.83:** Fuel Modification Requirements for Additions to Existing Structures - Where a new addition would encroach closer to an ESHA than the existing structure, the City shall require property owners to implement fire risk reduction alternatives, including those listed in Policy 4.78. Where the new addition to the existing structure sits on or adjacent to the WUI, property owners are prohibited from using fuel modification efforts in an ESHA located on or adjacent to their property. A deed restriction shall be recorded on the property to waive the property owner's right to use fuel modification efforts in an ESHA located on or adjacent to their property.
>
> **Policy 4.84**: Fuel Modification Requirements for New Development - The City Fire Marshal may require that new development, including subdivisions and lot line adjustments, be sited and designed so that no brush management impacts to ESHA occur. In addition, the City shall require property owners to implement fire risk reduction alternatives, including those listed in Policy 4.78. Where the new development sits on or adjacent to the WUI, property owners are prohibited from using fuel modification efforts in an ESHA located on or adjacent to their property. A deed restriction shall be recorded on the property to waive the property owner's right to use fuel modification efforts in an ESHA located on or adjacent to their property.

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In addition, the City does not accept CCC's proposed additional Policy 4.84.5, defining "encroachment."

**Conclusion and Recommendations**

For 12 years the City has worked diligently in pursuing a certified LCP and has made significant concessions to CCC staff. The City is encouraged with the progress made in the last few days on narrowing the range of issues on which City staff and CCC staff disagree. Because the City has finite resources, we are appealing to you to assist the City in resolving these remaining issues which are critically important to the City (e.g., short term vacation rentals and mitigation fees for closed hotels).

Although the LCP has been a top municipal priority for more than a decade, the CCC staff revisions to Policies 5.31 and 2.33 jeopardize the ability of the City Council to adopt the LUP as revised. However, City staff remains confident that with your executive leadership, and the strong spirit of cooperation that has been fostered, the remaining policy differences can be eliminated prior to or at the March 7th 2012 public hearing. The City is optimistic that with your guidance and direct involvement, additional productive discussion will occur leading to the resolution of the City's remaining concerns, enabling City staff to fully recommend adoption of the LUP by City Council following Commission approval. We believe that a mutually beneficial outcome is possible on March 7th - one that would truly be an achievement for both the Coastal Commission and the City of Solana Beach.

Sincerely,

*Signature on file*

David Ott
City Manager

CC: California Coastal Commissioners
Diana Lilly
Deborah Lee
Sherilyn Sarb
Mayor and Members of the Solana Beach City Council
Johanna N. Canlas, Solana Beach City Attorney

Wize

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*Gordon H. Hanson, Director*
*Center on Emerging and Pacific Economies*



March 4, 2012

To whom it may concern:

For many years now the City of Solana Beach has been seeking to develop a Local Costal Program that includes mitigation fees for the construction of seawalls. These fees are to offset the negative impact that seawalls have on sand supply and public recreation.

In 2008, the City initiated a process to identify a reliable methodology for setting mitigation fees. The City hired consultants to collect data (which was completed in 2009), to assess alternative methodologies, to implement a cost-effective methodology, and to use this methodology to propose a fee for past and future construction of seawalls. In 2010, the City released a draft Land Lease/Recreation Fee Study produced by its hired consultants for public comment. Dr. Ken Baerenklau, Associate Professor of Environmental Economics and Policy and the University of California, Riverside, reviewed the study and provided extensive comments to the City, outlining a plan to use the study's results to establish a mitigation fee consistent with cost-benefit analysis. I examined Dr. Baerenklau's assessment and recommendations and found his comments rigorous and constructive.

The City of Solana Beach would seem to have all the information it needs to propose mitigation fees for seawalls. Yet, now in 2012 we still lack a LCP that establishes mitigation fees, there are hundreds of additional feet of new seawall (with no mitigation for impacts on beach access), and the City is calling for continued study before a mitigation fee can be established. As a resident of Solana Beach, I respectfully request that the City make good on its promises by producing a LCP that include mitigations fee for seawall construction.

Sincerely yours,

*Signature on file*

Gordon Hanson

Letter of Comment 15

To: Diana Lilly, California Coastal Commission
FAX (619) 767-2384

From: Gordon Hanson, Professor, University of California, San Diego, Department of Economics



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February 24, 2012

**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 March 7-9, 2012**

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## SYNOPSIS

The subject LCP Land Use Plan (LUP) was submitted and filed as complete on October 24, 2011. A one-year time extension was granted on February 8, 2012. As such, the last date for Commission action on this item is January 22, 2013.

## SUMMARY OF REQUEST/HISTORY OF LUP SUBMITTAL

The subject 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. Subsequent to its initial filing, City staff developed an updated version of the draft land use plan based on working group discussions with Commission staff. The current version of the LUP was approved by the Solana Beach City Council on June 29, 2011 for formal adoption and transmittal to the Commission. In October 2011, a staff report and recommendation on the LUP was released. After consultation with Commission staff, in order to allow additional time to discuss the LUP and respond to staff's recommendation, the City withdrew the LUP and resubmitted the same document.

The current submittal is comprised in a binder, entitled City of Solana Beach Local Coastal Plan, and dated April 13, 2011; the binder includes the draft land use plan document, along with various color exhibits and maps. In addition, an e-mail clarification, dated July 11, 2011, was also received from the City that provided changes to Policies 4.42, 4.54 and 4.74; all of the revisions dealt with the Public Recreation/Land Lease Fee, and those changes have been reflected in the current analysis.

The subject Land Use Plan is the second version of the City of Solana Beach LUP to be reviewed by the Commission. At the November 2008 hearing, after public testimony and Commission discussion, the Commission postponed action on the LUP to a later date. At that time, staff was recommending denial of the LUP, due to significant deficiencies in the scope and specificity of the submitted policies. In order to address the Commission's and staff's concerns, the City withdrew the LUP to revise and augment the Land Use Plan and the protection for coastal resources.

The proposed plan has been significantly revised and updated from the plan previously reviewed by the Commission. The LUP contains policies that have been developed to address coastal issues that have been identified by Commission staff, 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. The entire City's incorporated boundary lies within the coastal zone.

## SUMMARY OF STAFF RECOMMENDATION

Staff is recommending denial of the LUP as submitted, then approval with suggested modifications.

The City's LUP addresses a wide range of issues and planning concerns relevant to the City of Solana Beach. The entire City is within the coastal zone and is a prime tourist destination with its bluff-backed beaches, Cedros Avenue Design District, Highway 101 Commercial core and transit center in the heart of downtown, all within walking distance of the beach. As such, there are a number of significant Coastal Act issues to be addressed regarding development within the City and along the shoreline. In terms of an overview, the following Coastal Act issues and priority concerns are not sufficiently addressed in the LUP as submitted and are either missing, unclear or incomplete. These issues must be addressed in order to adopt a land use plan that is consistent with the Chapter 3 policies of the Coastal Act. The outstanding issues and concerns are cited here, along with a brief summation of proposed modifications:

- The draft land use plan does not include a Visitor Commercial land use category and no lands have been specifically designated, and thus reserved, for this priority land use. The City's plan does include a proposed "Visitor Serving Commercial Overlay (VSCO) as a land use category but it is drafted broadly, including public recreational uses, and does not apply to the City's existing tourist commercial center on Cedros Avenue, or the commercial developments next to the freeway. Parcels that currently support existing hotels and the one undeveloped parcel at the northern entrance to the City that has been historically identified for new overnight accommodations need to be clearly reserved in a "visitor commercial", rather than "general commercial" land use category. Therefore, the proposed modifications establish a Visitor Serving Commercial Overlay I, where specific sites currently contain high-priority uses and/or must be redeveloped only with high-priority commercial recreation and visitor serving uses, and a Visitor Serving Commercial Overlay II that identifies areas currently developed with visitor-serving commercial uses that should be encouraged and promoted, but are not specifically restricted to these uses. (Reference Suggested Modification #s 122, 123 and 124)

- The City of Solana Beach has only two properties developed with hotels, both on the Highway 101 corridor. In terms of lower cost overnight accommodations and the availability of such priority visitor serving facilities, two hotels does not represent a large inventory of hotel/motel rooms and the room rates of the two existing hotels fall into the moderate range. The draft land use plan does not include policies requiring protection of the existing small supply of affordable overnight accommodations or any mitigation program to assist in the future development of lower cost overnight accommodations as has been established in many other coastal communities. In addition, the draft land use plan specifically prohibits any short-term vacation rentals less than seven (7) days in length and most of the City's southern stretch of blufftop properties is developed with high density condominiums that could provide expanded opportunities for overnight accommodations. The proposed modifications therefore establish an in-lieu fee mitigation program to help develop lower cost overnight accommodations in the coastal zone, protect the existing inventory of 195 hotel rooms in two hotels on the Highway 101 corridor and encourage development of additional overnight accommodations, and allow short-term vacation rentals of any duration to increase the stock of nightly visitor accommodations in the Solana Beach coastal zone. (Reference Suggested Modification #s 18, 19, 20, 124, 125, 129, and 130)

- Relative to Environmentally Sensitive Habitat Areas (ESHA), the draft land use plan has been updated and now includes the specific identification of properties that currently support ESHA, as well as policies for the identification of ESHA on properties over time that would reflect site-specific conditions. Therefore, the draft land use plan appropriately provides for the preservation of ESHA in the future on presently undesignated sites; this is important given that sensitive resources and/or their particular function and value in the ecosystem can change over time. The draft policies similarly provide direction on how a current ESHA designation could be deleted or revised on a site given changes in the environment. However, the draft policies fail to require a LUP/LCP amendment in association with such a reclassification; a LUP/LCP amendment is important both to include the Commission's evaluation in this critical determination and to keep the LUP/LCP updated. Therefore, the proposed modifications clarify the review procedures for these determinations. (Reference Suggested Modification #s 31, 34 and 35)

- Another outstanding issue involving ESHA protection is the possible encroachment and impacts into ESHA areas for brush management or fuel modification. The principal areas of concern are the hillsides and slopes along the southern side of San Elijo Lagoon and its watershed within the City. The City did develop a citywide fire protection and management map. The draft land use plan does establish two specific fuel modification zones and provides for the City's Fire Marshal to consider alternate compliance as a means to further limit impacts to sensitive habitat. However, the standards contained in the draft land use plan policies discuss "minimizing" rather than "avoiding" impacts to ESHA. Given that Section 30240 of the Coastal Act specifies that only resource dependent uses are permitted within ESHA, habitat impacts and encroachment from new

development, most likely residential development, would not be permissible. Therefore, when considering new development, including subdivisions, redevelopment and additions to existing structures, the land use plan policies need to be revised to recognize environmentally sensitive habitat areas either on- or off-site and preserve them intact. For additions to existing development, the suggested modifications do allow for some improvements as long as the addition would not encroach closer to ESHA than the line of existing development. (Reference Suggested Modification #s 113, 116, and 117)

- Another fundamental concern presented in the draft land use plan is the City's approach to shoreline and bluff management. Previously, the City had proposed a long-term plan that established a goal to remove all shoreline protection by 2081. However, in the interim, blufftop development could continue and pre-emptive measures for shoreline protection would have been allowed rather than limiting any shoreline protection to only those cases where principal structures were in imminent danger and there were no other viable alternatives. The current draft has removed those provisions and presents a more typical approach to shoreline and bluff management.

  The proposed suggested modifications are intended to present a comprehensive set of policies that address proposals for improvements to and redevelopment of the existing homes located along the blufftop, recognizing all the existing structures are located further seaward than would be allowed today taking into consideration the stability of the bluffs, potential sea level rise and the projected bluff retreat rate. Given that the City's ocean blufftop parcels are all developed, it is foreseeable that the Commission will have to consider some shoreline protection for principal structures in the future pursuant to Section 30235 of the Coastal Act. However, recognizing the long-term, adverse impacts of shoreline protection on public access and recreational opportunities on the beach, and the fact that within Solana Beach the scenic coastal bluffs are also in public ownership, Commission staff has consistently advised the City to develop long-term shoreline and blufftop development standards that deter the complete armoring and hardening of the City's coastline from the base of the bluffs to the blufftop, encourage planned retreat and a more landward line of development along the bluffs and emphasize alternate means, such as beach nourishment, to provide public access and protect property. With those objectives in mind, the suggested modifications seek to establish a rigorous approach to establishing the geologic setback line; require a thorough alternatives analysis and site reassessment when considering any approval or reauthorization of lower, mid or upper bluff protective work; restrict additions and improvements to non-conforming structures that perpetuate an inappropriate line of development in a hazardous location; clarify what legitimate repair/maintenance activities can continue on non-conforming blufftop residences; incorporate the Commission's best efforts on sea level rise projections and adaptation planning and reflect the Commission's current regulatory precedents. Specifically, the draft land use plan does not include provisions that establish a conservative threshold for abatement of non-conforming structures and it lacks a public recreation mitigation program

to offset some of the significant impacts of shoreline protection on public access and recreation. The proposed modifications address these deficiencies. (Reference Suggested Modification #s 59, 61, 67, 70, 78 – 89, 91- 93, 95, 97 -99 , 102 - 104 and 107).

In summary, it is clear the City, blufftop property owners and some specific interest groups who have been involved with the LUP have put a great deal of time and effort into developing the LUP policies. 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 the detail, specificity and comprehensive scope required of an LUP. Therefore, the City and Commission staff have worked closely together to supplement and refine the draft policies through suggested modifications to address all of the critical Coastal Act issues and to narrow the potential areas of disagreement.

At the time of this writing, the following known areas of disagreement remain between the City and Commission staff:

- **Short-term rentals**

As proposed, the City prohibits short-term vacation rentals less than 7 days in length. Suggested modifications remove this prohibition.

- **Protection of, and mitigation fees for the removal or conversion of low or moderate priced overnight accommodations**

Suggested modifications require that existing low or moderate cost overnight accommodations be protected; or alternatively, if they are removed or converted to another use, or to high-cost accommodations, that a $30,000 mitigation fee be imposed for each unit lost.

- **Brush management**

Suggested modifications require that new development, including subdivisions, maintain a minimum distance of 100 feet from environmentally sensitive habitat area (ESHA) to avoid the need to remove vegetation in ESHA. Additions, which also constitute new development, would also be required to maintain a 100 ft. distance unless they extended no closer than the line of existing development on immediately adjoining lots; the LUP as proposed would allow development closer than 100 feet to ESHA, if alternative means of fire protection are implemented.

- **Use of caisson foundations**

Suggested modifications would allow the use of caisson foundations for new (rebuilt) bluff top homes to achieve the required factor of safety, as long as the home is located far enough inland such that the caissons would never become exposed.

The appropriate resolutions and motions begin on Page **9**. The suggested modifications begin on Page **10**. The findings for denial of the Land Use Plan Amendment as submitted and approval if modified, begin on Page **62**.

**ADDITIONAL INFORMATION**

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

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## 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 second time the City of Solana Beach Land Use Plan will be formally heard 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.

On May 25, 2007, a revised Land Use Plan (LUP) was filed in the San Diego District office. On January 25, 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. 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 plan to remove the devices by 2081, 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.

The revised LUP still presented many of the recurring issues from earlier versions. Staff completed a staff report recommending denial of the resubmittal without any suggested modifications given the extent of the issue areas and the item was heard by the Commission at its November 2008 hearing. It was continued after some discussion and direction from the Commission; the City subsequently withdrew that submittal.

A revised LUP was submitted on September 9, 2009; however, the application was not filed complete pending submittal of additional information regarding the geology of the bluffs in Solana Beach. In the meantime, staff provided direction and draft suggested modifications on the revised plan. The City significantly revised and updated the LUP and held a public hearing on the revised document in February 2010. This revised LUP was resubmitted to the Commission, and was filed complete on August 11, 2010.

On September 21, 2011, staff completed a staff report recommending approval of the LUP with extensive suggested modifications. The revised LUP addressed a great many of the concerns previously identified by staff and the Commission, but additional modifications were suggested to ensure protection for visitor-serving commercial uses, overnight accommodations, short-term vacation rentals, environmentally sensitive habitat, visual resources, and shoreline sand supply.

While the majority of the suggested modifications were acceptable to the City, many were not, and the City withdrew and resubmitted the LUP to allow for further discussion

between City and Commission staff on standards for bluff-top development, lower-cost overnight accommodations, the designation of land for visitor-serving commercial uses, brush management policies, and restrictions on short-term vacation rentals.

## 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 submitted 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.

II. **MOTION:** ***I move that the Commission certify the Land Use Plan for the City of Solana Beach if modified as suggested in this staff report.***

**STAFF RECOMMENDATION TO CERTIFY IF MODIFIED:**

Staff recommends a **YES** vote. Passage of this motion will result in certification of the land use plan with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of a majority of the appointed Commissioners.

**RESOLUTION TO CERTIFY THE LAND USE PLAN WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the Land Use Plan for the City of Solana Beach if modified as suggested and adopts the findings set forth below on grounds that the land use plan with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or

2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the land use plan if modified.

## PART III. SUGGESTED MODIFICATIONS

Staff recommends the following suggested revisions to the proposed LCP be adopted.

The suggested modifications are shown with underlined sections representing language that Commission recommends be added to the certified LUP, and ~~struck-out~~ sections representing language which the Commission suggests be deleted from the language as originally submitted.

### Chapter 1 Introduction

1. The last paragraph on the bottom of page 4 shall be revised as follows:

The City's LCP consists of (1) a LUP and (2) a Local Implementation Plan (LIP) (i.e., zoning ordinances and maps which together meet the Coastal Act requirements and implement its provisions and policies within the City. ~~Section 30600.5 of the California Coastal Act authorizes local governments to start issuing Coastal Development Permit (CDP) after they have a certified LUP, but before they have a certified LIP, under certain circumstances, with all such permits appealable to the CCC. It is the City's intent to issue CDPs before a full LCP is certified.~~

2. On page 5, the following bullet on the list of LCP/LUP Benefits shall be revised as follows:

- Recognition of private property rights including the right to protect~~,~~ and maintain ~~and improve~~ existing blufftop homes, ~~and the right to at least a minimum home of 2,000 square feet on each lot, (not including an existing enclosed garage area~~).

3. On page 8, the second paragraph under D. General Goals and Objectives shall be revised as follows:

If there is a provision of the LCP that ~~is more restrictive than~~ conflicts with a provision of the General Plan, or any other City-adopted plan, resolution, or ordinance not included in the LCP, and it is not possible for the development to comply with both the LCP and such other plan, resolution or ordinance, the LCP shall take precedence and the development shall not be approved unless it complies with the LCP provision.

**Chapter 2 Public Access and Recreation**

4. The paragraph beginning at the bottom of Page 2 and continuing to the top of page 3 shall be revised as follows:

In the City of Solana Beach there are eight vertical access points (Exhibit 2-1) that provide access to the beach below. No additional access points are planned. Four of these vertical access points are public and four are private. Public access points exist at Tide Park, Fletcher Cove, Seascape Sur, and adjacent to Del Mar Shores Terrace. These public access points are located from 1,000 to 2,000 feet of one another and other public access points, such as Cardiff State Beach in Encinitas. Private access points exist at Solana Palisades, Seascape Shores, Seascape I, and at the Del Mar Beach Club. In addition, there is a public view overlook at the border of the Cities of Solana Beach and Del Mar.

**This Suggested Modification is also a requirement to add this view point to Exhibit 6.1, Citywide View Corridors.**

5. The first paragraph on Page 4 shall be revised as follows:

The City's San Elijo Lagoon access points provide public coastal access and recreation opportunities in the City, and are as important to coastal access as shoreline accessways. San Elijo Lagoon trailhead access points are shown on Exhibit 2-1. There are ~~five~~ seven public San Elijo Lagoon trailheads in the City. The ~~two~~ four west of I-5 are located at the terminus of Rios Avenue, the terminus of ~~and~~ North Solana Hills Drive, on Holmwood Lane, and at the terminus of Canyon Drive, where it meets Ridgeline Place. East of I-5, there are public access points to the Lagoon at Sana Inez, Santa Carina, and Santa Helena and North Solana Hills Drive (Exhibit 2-1).

**This Suggested Modification is also a requirement to add the Canyon Drive view point to Exhibit 2.1, Public and Private Coastal and Lagoon Access Points.**

6. The last paragraph on Page 9 shall be revised as follows:

Under these circumstances, maintaining safe lateral sea level beach access along the City shoreline is important. Bluff retention devices ~~enhance safety along the beach by~~ prevent~~ing~~ sudden episodic deposits of sandstone and sand on the beach (some of which have resulted in injury or death in San Diego County)~~, and thereby increase lateral access opportunities~~. However, some bluff retention devices may encroach onto public beach areas that would have been otherwise available for lateral access and recreation.

7. On Page 10, the following new paragraph shall be added after the third complete paragraph in italics:

However, conditions do change over time, and future projects must be evaluated individually to determine the appropriate and feasible mitigation for shoreline protection projects.

8. The last paragraph starting on Page 10 and continuing to Page 11 shall be revised as follows:

Historically, the City shoreline consisted of a sandy beach, bounded by the ocean and coastal bluffs that was wider than it is today. Maintenance and expansion of the existing beach width will help to establish a safe distance for the public from unstable bluffs. Bluff retention devices may limit sudden episodic deposits of bluff sand from falling on the beach and they close seacaves, which is one method for preventing the public from entering into seacaves and other hazardous areas along the bluff face.

9. Policy 2.4 shall be revised as follows:

**Policy 2.4:** New development shall ~~minimize~~ avoid impacts to public access along the shoreline and inland trails. The City shall assure that the recreational needs resulting from any proposed development will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition at three acres per 1000 population, and/or development plans with the provision of onsite recreational facilities to serve new development.

10. Policy 2.5 shall be revised as follows:

**Policy 2.5:** Public prescriptive rights may exist in certain areas along the shoreline and trails within the City. Development shall not interfere with the public's right of access to the sea where acquired through historic use or legislative authorization. These rights will be protected through public acquisition measures or through permit conditions for new development, which incorporate measures to provide or protect access where prescriptive rights ~~legally~~ exist

11. Policy 2.7 shall be revised as follows:

**Policy 2.7:** New development shall be sited and designed to ~~minimize~~ avoid impacts to public access and recreation along the shoreline and trails. If there is no feasible alternative that can eliminate or avoid all access impacts, then the alternative that would result in the least significant adverse impact shall be required. Some ~~I~~impacts may be mitigated through the dedication of an access or trail easement where the project site encompasses an LCP mapped access or trail alignment, where the City, County, State, or other public agency has identified a trail used by the public, or where prescriptive rights exist. Mitigation measures required for impacts to public access and recreational

opportunities shall be implemented prior to, or concurrent with construction of the approved development.

12. Policy 2.14 shall be revised as follows:

**Policy 2.14:** Open space easements and dedications should be utilized, where ~~required~~ warranted, to facilitate the objectives of the City's recreational and/or public access program.

13. Policy 2.22 shall be revised as follows:

**Policy 2.22:** Advertising signs and banners shall be prohibited in public beaches and beach parks. ~~Replacement of signs on lifeguard towers authorized by the City may be allowed.~~

14. Policy 2.23 shall be deleted:

~~**Policy 2.23:** No new structures may be permitted on a bluff face, except for permitted bluff retention devices, routine repair and maintenance, public stairways, access ways and lifeguard stations, or observation platforms to the beach for up to two lifeguards of the minimum size required to monitor public safety. The replacement of any structure on a bluff face that was destroyed by a disaster shall conform to applicable existing planning and zoning requirements, and shall be comparable in size, and function to the destroyed structure.~~

15. Policy 2.27 shall be revised as follows:

**Policy 2.27:** The implementation of restrictions on public parking, which would impede or restrict public access to beaches, trails or parklands, (including, but not limited to, the posting of "no parking" signs, red curbing, physical barriers, imposition of maximum parking time periods, and preferential parking programs) shall be prohibited except where such restrictions are needed to protect a documented threat to public safety and where no other feasible alternative exists to provide public safety ~~and except where the restrictions have the effect of improving access to parking for coastal visitors~~. Where feasible, an equivalent number of public parking spaces should be provided nearby as mitigation for impacts to coastal access and recreation.

16. Policy 2.28 shall be revised as follows:

**Policy 2.28:** Gates, guardhouses, barriers or other structures designed to regulate or restrict access shall not be permitted within private street easements where they have the

potential to limit, deter, or prevent public access to the shoreline, inland trails, or parklands ~~except~~ where there is substantial evidence that prescriptive rights exist.

17. Policy 2.30 shall be revised as follows:

**Policy 2.30:** A program to utilize existing parking facilities for office and commercial development located near beaches for public access parking during periods of normal beach use when such development is not open for business ~~should~~ shall be developed. As feasible, new non-visitor serving office or commercial development may be required to provide public parking for beach access during weekends and holidays.

18. Policy 2.32 shall be revised as follows:

**Policy 2.32:** Priority shall be given to the development of visitor serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation. On land planned for visitor serving commercial and/or recreational facilities, priority shall be given to such uses over private residential or general commercial development~~, except for the provision of affordable housing~~. New visitor serving uses may not displace existing low-cost visitor serving uses unless an equivalent replacement is provided.

19. Policy 2.33 shall be revised as follows:

**Policy 2.33**: Retention of existing, lower cost visitor serving and recreation facilities, including overnight accommodations, ~~may~~ shall be encouraged ~~to the maximum feasible extent~~ and lower cost overnight accommodations shall be protected. If removal or conversion of existing lower or moderate cost overnight accommodations is proposed in the City, the inventory shall be replaced with units that are of comparable cost with the existing units to be removed or converted. The City shall proactively work with existing hotel/motel operators and offer incentives to maintain and renovate existing properties.

If replacement of the lower or moderate cost units is not proposed (either on-site or elsewhere in the City), then the new development shall be required to pay, as a condition of approval for a coastal development permit, a mitigation payment to provide significant funding for the establishment of lower cost overnight visitor accommodations within Solana Beach, preferably, or within North San Diego County consistent with Policy 5.8 of the Land Use Plan, for each of the low or moderate units removed/converted on a 1:1 basis.

The City shall maintain an accounting of the number of existing motel and hotel rooms and room rates. When referring to overnight accommodations, lower cost shall be defined by a certain percentage of the Statewide average room rate as calculated by the Smith Travel Research website (www.visitcalifornia.com) or other comparable or similar website or study such as www.Calif.AAAcom. A suitable methodology would base the

percentage on market conditions in San Diego County for the months of July and August and include the average cost of motels/hotels within five (5) miles of the coast that charge less than the Statewide average. High cost would be room rates that are 20% higher than the Statewide average, and moderate cost room rates would be between high and low cost. The range of affordability of new and/or replacement hotel/motel development shall be determined as part of the coastal development permit process and monitored as part of the City's inventory of overnight accommodations.

New lower cost visitor and recreation facilities, including overnight accommodations, ~~may~~ shall be encouraged. New hotel/motel development within the City should, where feasible, provide a range of rooms and room prices in order to serve all income ranges. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to ~~minimize~~ avoid impacts to ESHA and visual resources.

20. Policy 2.34 shall be revised as follows:

**Policy 2.34**: Coastal recreational and visitor serving uses and opportunities, especially lower and moderate cost opportunities, ~~should~~ shall be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities ~~should~~ shall be discouraged unless the use will be replaced with another use offering comparable visitor serving or recreational opportunities.

21. On Page 20, the parking standards for Residential care facilities shall be revised as follows:

| | |
|---|---|
| Residential care facilities | ~~As prescribed in SBMC 17.60.100~~. 1 parking space per employee and one parking space for every 7 beds, unless the director of community development determines that additional parking spaces are required. |

22. On Page 20, the parking standards for Religious and civic assembly facilities shall be revised as follows:

| | |
|---|---|
| Religious and civic assembly facilities.** This requirement may be modified pursuant to Policy 2.36.5~~SBMC 17.52.050~~, Shared parking | 1 space for each 4 fixed seats, or 1 space for each 35 s.f. of non-fixed seating area in the principal sanctuary or auditorium, whichever is greater. 18 inches of bench shall be considered a fixed seat. |

23. On Page 23, the following parking note and Policy 2.36.5 shall be added at the end of the parking standards:

NOTE: A calculated parking requirement resulting in a fractional space shall be rounded up to the nearest whole space.

**POLICY 2.36.5 SHARED PARKING.** In all zones, parking facilities may be shared by multiple uses whose activities are not normally conducted during the same hours, or when hours of peak use vary. The applicant shall have the burden of proof for a reduction in the total number of required off-street parking spaces for shared parking arrangements. Shared parking may be permitted pursuant to a conditional use permit issued by the director of community development or concurrently with another application reviewed by the city council subject to the following minimum conditions:

A. A sufficient number of spaces (both shared and separate) are provided to meet the greater parking demand of the participating uses.

B. Satisfactory evidence, as deemed by the hearing authority, has been submitted by the parties operating the shared parking facility, demonstrating that substantial conflict will not exist in the principal hours or periods of peak demand for the uses for which the shared parking is proposed.

C. Shared parking facilities shall not be located further than 600 feet from any structure or use served, unless it can be shown that increased distances are feasible through use alternative transportation modes such as shuttle services.

D. A written agreement, covenant, deed restriction or other document as determined necessary by the hearing authority shall be executed by all parties to assure the continued availability of the shared parking spaces for the life of the proposed development or use.

24. Policy 2.37 shall be revised as follows:

**Policy 2.37:** The City shall not close, abandon, or render unusable by the public any existing access-ways which the City owns, operates, maintains, or is otherwise responsible for without first obtaining a CDP unless it is determined to be necessary on a temporary basis for ~~a~~ public safety. Any access-ways which the City or any other managing agency or organization determines cannot be maintained or operated in a condition suitable for public use ~~should~~ shall be offered to another public agency or qualified private association that agrees to open and maintain the access-way for public use.

25. On Page 24, continuing to Page 25, Policy 2.39, subsection 5b. shall be revised as follows:

5. Manufacturing:
   a. Manufacturing and incidental office use areas: One off-street parking space per 400 square feet of gross floor area.
   b. Warehouse use areas: One off-street parking space per 1,000 square feet of gross floor area.

- No parking shall be permitted in a required front yard.
- ~~Parking and loading requirements for use not listed above shall be as prescribed in Chapter~~ 17.52 ~~SBMC.~~

26. Policy 2.58 shall be revised as follows:

**Policy 2.58**: Erosion of the bluffs should be minimized by constructing and maintaining additional barriers to discourage any access to bluff faces and on private developments including condominium projects (with enforcement on private lands to be self-policing) by the use of barriers such as low fences or railings which should be sensitively designed to discourage foot traffic onto the bluff face without obscuring views and vistas. In addition, no new ~~public or~~ private walking paths shall be permitted on the coastal bluff face.

27. Policy 2.60 shall be revised as follows:

**Policy 2.60:** No new private beach stairways shall be constructed. Existing permitted or private beach stairways constructed prior to the Coastal Act may be maintained in good condition with a CDP, but shall not be expanded in size or function. Routine repair and maintenance shall not include the replacement of the stairway or any significant portion of the stairway. As feasible, private beach accessways shall be phased out or converted to public accessways.

28. Policy 2.61 shall be deleted:

~~**Policy 2.61:** The shared use of private stairways with the public as a means of providing improved public access and as a potential means of mitigating impacts from bluff retention devices shall be encouraged.~~

29. Policy 2.68 shall be revised as follows:

**Policy 2.68:** Consistent with the policies below, maximum public access from the nearest public roadway to the shoreline and along the shoreline ~~may~~ shall be provided in new development. Exceptions may occur only where (1) it is inconsistent with public safety or the protection of fragile coastal resources; or where (2) adequate access exists nearby. Lateral access is defined as an access-way that provides for public access and use along the shoreline. Vertical access is defined as an access-way which extends to the shoreline, or perpendicular to the shoreline in order to provide access from the first public road to the shoreline.

30. Policy 2.75 shall be revised as follows:

**Policy 2.75:** Offers to dedicate public access may be accepted for the express purpose of opening, operating, and maintaining the access-ways for public use. Unless there are unusual circumstances, the access-ways shall be opened within five years of acceptance. If the access-way is not opened within this period, and if another public agency or qualified private association expressly requests ownership of the easement in order to open it to the public, the easement holder ~~should~~ shall transfer the easement to that entity within six months of the written request. A CDP that includes an offer to dedicate public access as a term or condition shall require the recorded offer to dedicate to include the requirement that the easement holder may transfer the easement to another public agency or private association that requests such transfer, if the easement holder has not opened the access-ways to the public within five years of accepting the offer.

**Chapter 3 – Marine and Land Resources**

31. On the bottom of Page 13, the first paragraph under 2. Land Use Plan Provisions shall be revised as follows:

The LUP contains policies that protect the ESHA of the City. The LUP ESHA Maps (Exhibits 3-6 through 3-10) show the areas that are designated ESHA. The ESHA Maps will be reviewed and updated periodically to reflect up to date information and necessary revisions shall be made as an amendment to the LUP. As explained in more detail below, even if an area is not designated on the ESHA Map as ESHA, it will be treated as ESHA if a site-specific study at the time of proposed development shows that it is ESHA.

32. On Page 22, the second paragraph shall be revised as follows:

The LUP establishes policies calling for the protection of areas adjacent to ESHA through the provision of buffers. Native vegetation buffer areas must be provided around ESHA that are adequate to prevent impacts that would significantly degrade these areas. Development, excluding required fuel modification activities in accordance with the County Fire and Fuel Hazard Management Plan, shall not be permitted within required buffer areas. The LUP policies require that new development be sited and constructed to avoid impacts, including fuel modification, which could significantly degrade ESHA. Graded and other disturbed areas in or adjacent to ESHA must be landscaped or revegetated with native, tolerant, salt-tolerant, non-invasive drought and fire resistant plants at the completion of grading. If new development removes or adversely impacts native vegetation, measures to restore disturbed or degraded habitat on the project site shall be included as mitigation. Fencing should be limited, in or adjacent to ESHA, and should be sited and designed to allow wildlife to pass through except where needed to mitigate fire risk. The LUP requires exterior lighting to be of low intensity and shielded to minimize impacts on wildlife.

33. On Page 26, the first complete paragraph shall be revised as follows:

Beach grooming or other activities on the dry beach can also have negative impacts to grunion. The grunion is a fish that comes ashore in the spring and summer during particularly high night-time tides to reproduce and lay their eggs. The eggs develop while buried in the sand and hatch two weeks later when high tides again wash the high-shore and enable the baby grunion to reach the sea.

Beach maintenance must strike a balance between protection of this habitat and maintaining the recreational value of sandy beach. In the absence of focused surveys, grunion eggs must be presumed present from March 1 through August 31. Sand disturbing activities are prohibited when grunion eggs are present. During those periods, beach grooming and other disruptive activities shall only take place above the semi-lunar high tide mark.

34. Policy 3.1 shall be revised as follows:

**Policy 3.1:** Areas 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 are ESHAs and are generally shown on the LUP ESHA Maps. The ESHAs in the City of Solana Beach are shown in Exhibits 3-6 through 3-10~~, unless there is site-specific evidence that establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem~~. Regardless of whether streams and wetlands are designated as ESHA, the policies and standards in the LCP applicable to streams and wetlands shall apply.

35. Policy 3.7 shall be revised as follows:

**Policy 3.7:** If a site-specific biological study contains substantial evidence that an area previously mapped as ESHA does not contain habitat that meets the definition of ESHA ~~for a reason other than those set forth in Policy 3.1~~, the City Community Development Director shall review all available site-specific information to determine if the area in question should no longer be considered ESHA and not subject to the ESHA protection policies of the LUP. If the area is determined to be adjacent to ESHA, LUP ESHA buffer policies shall apply. The Community Development Director shall provide recommendations to the City Council as to the ESHA status of the area in question. If the City Council finds that an area previously mapped as ESHA does not meet the definition of ESHA, a modification shall be made to the LUP ESHA Maps, as part of an LCP map update and LCP Amendment. If an area is not ESHA or ESHA buffer, LCP policies and standards for protection of ESHA and ESHA buffer shall not apply and development may be allowed (consistent with other LCP requirements) ~~even~~ after~~if~~ the ESHA map and LCP has ~~not~~ been amended.

36. Policy 3.10 shall be revised as follows:

**Policy 3.10:** If the application of the policies and standards contained in this LCP regarding use of property designated as ESHA or ESHA buffer, including the restriction of ESHA to only resource-dependent use, would ~~deprive the property owner reasonable use of the property~~ constitute a taking of private property for public use without just compensation, then a use that is not consistent with the ESHA provisions of the LCP shall be allowed on the property, provided such use is consistent with all other applicable policies of the LCP, the approved project is the alternative that would result in the fewest or least significant impacts, and it is the minimum amount of development necessary to avoid ~~the deprivation of reasonable use of the property~~a taking of private property for public use without just compensation. In such a case, the development shall demonstrate the extent of ESHA on the property and include mitigation, or, if on-site mitigation is not feasible, payment of an in-lieu fee, for unavoidable impacts to ESHA or ESHA buffers from the removal, conversion, or modification of natural habitat for new development, including required fuel modification and brush clearance per Policy 3.12. Mitigation shall not substitute for implementation of a feasible project alternative that would avoid adverse impacts to ESHA.

37. Policy 3.11 shall be deleted:

~~**Policy 3.11:** Applications for development of a non-resource dependent use within ESHA or for development that is not consistent with all ESHA policies and standards of the LCP shall demonstrate the extent of ESHA on the property.~~

38. Policy 3.12 shall be revised as follows:

**Policy 3.12:** New development shall be sited and designed to avoid impacts to ESHA. For development permitted pursuant to Policy 3.10, ~~I~~if there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. Impacts to ESHA that cannot be avoided through the implementation of sit~~t~~ing and design alternatives shall be fully mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site or where off-site mitigation is more protective. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA. Mitigation for impacts to ESHA shall be provided at a 3:1 ratio.

39. Policy 3.16 shall be revised as follows:

**Policy 3.16:** The use of insecticides, herbicides, rodenticides or any toxic chemical substance which has the potential to significantly degrade ESHA, shall be prohibited within and adjacent to ESHAs, except where necessary to protect or enhance the habitat itself, such as eradication of invasive plant species, or habitat restoration or as required

for fuel modification. Application of such chemical substances shall not take place during the winter season or when rain is predicted within a week of application.

40. Policy 3.17 shall be revised as follows:

**Policy 3.17:** The use of insecticides, herbicides, rodenticides or other toxic substances by City employees and contractors in construction and maintenance of City facilities and other development shall be minimized in and adjacent to ESHA.

41. Policy 3.22 shall be revised as follows:

**Policy 3.22:** Walls, fences, and gates situated along coastal bluffs and adjacent to the San Elijo Lagoon Reserve should be constructed with materials designed to minimize bird-strikes with the wall, fence, or gate. As feasible, material selection and structural design shall be made in consultation with a qualified biologist, CDFG, or USFWS. Such materials may consist, all or in part, of wood, wrought iron, frosted or partially-frosted glass, plexiglass or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or plexiglass should not be installed unless appliqués (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency are also used. Use of opaque or partially opaque materials is preferred to clear glass or plexiglass and appliqués. All materials shall be maintained throughout the life of the development to ensure continued effectiveness.

42. Policy 3.23 shall be revised as follows:

**Policy 3.23:** Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect.

All buffers around (non-wetland) ESHA shall be a minimum of 100 feet in width, or a lesser width may be approved by the Planning Department and Fire Marshal ~~except~~ as addressed in Policy 3.67. However, in no case can the buffer size be reduced to less than 50 feet.

43. Policy 3.25 shall be revised as follows:

**Policy 3.25:** New development, including, but not limited to, vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted in required ESHA or park buffer areas, ~~except for that case addressed in Policy 3.67~~. Habitat restoration and invasive plant eradication may be permitted within required buffer areas if designed to protect and enhance habitat values.

44. Policy 3.27 shall be deleted:

~~**Policy 3.27:** Variances or modifications to buffers or other ESHA protection standards shall not be granted, except where there is no other feasible alternative for siting the development and it does not exceed the limits on allowable development.~~

45. Policy 3.30 shall be revised as follows:

**Policy 3.30:** Permitted development located within or adjacent to ESHA and/or parklands that can adversely impact those areas ~~may~~ shall include open space or conservation restrictions or easements over ESHA, ESHA buffer, or parkland buffer in order to protect resources.

46. Policy 3.33 shall be revised as follows:

**Policy 3.33:** If located in, or adjacent to, ESHA new development shall include an inventory conducted by a qualified biologist of the plant and animal species present on the project site. If the initial inventory indicates the presence or potential for sensitive species or habitat on the project site, a detailed biological study shall be required. Sensitive species are those listed in any of three categories: federally listed, state listed, and California Native Plant Society (CNPS) categories 1B and 2.

47. The following bullet point in Policy 3.33 shall be revised as follows:

- Slopes of 25 percent and over shall be preserved in their natural state unless the application of this policy would ~~preclude any reasonable use of the property~~result in a taking of private property for public use without just compensation, in which case an encroachment (including grading) not to exceed ten percent of the steep slope area over 25 percent slope may be permitted.

48. Policy 3.40 shall be revised as follows:

**Policy 3.40:** New development shall be sited and designed to minimize impacts to ~~ESHA~~ coastal resources by: […]

- Grading for access roads and driveways should be minimized; the standard for new on-site access roads shall be a maximum of 300 feet or one-third the parcel depth, whichever is less. Longer roads may be allowed on approval of the City Council or Commission on appeal, if the determination can be made that adverse environmental impacts will not be incurred. Such approval shall constitute a conditional use to be processed consistent with the LIP provisions. […]

49. Policy 3.41 shall be revised as follows:

**Policy 3.41:** New septic systems shall be sited and designed to ensure that impacts to ~~ESHA~~ coastal resources are minimized, including those impacts from grading and site disturbance as well as the introduction of increased amounts of water. Adequate setbacks and/or buffers shall be required to protect ESHA and to prevent lateral seepage from the leach field(s) or seepage pit(s) into stream waters or the ocean.

50. Policy 3.42 shall be revised as follows:

**Policy 3.42:** Land divisions, including certificates of compliance, ~~except for mergers and lot line adjustments for property which includes area within or adjacent to an ESHA or parklands~~ shall only be permitted if each new parcel being created could be developed (including construction of any necessary access road), without building in ESHA or ESHA buffer.

51. Policy 3.43 shall be revised as follows:

**Policy 3.43:** Grading or earthmoving exceeding 50 cubic yards shall require a Development Review Permit from the City. Grading plans shall meet the requirements of the LIP with respect to maximum quantities, maximum cuts and fills, remedial grading, grading for safety purposes, and maximum heights of cut or fill. ~~Grading proposed in or adjacent to an ESHA shall be minimized to the maximum extent feasible.~~

52. Policy 3.64 shall be revised as follows:

**Policy 3.64:** Identification of wetland acreage and resource value shall precede any consideration of use or development on sites where wetlands are present or suspected. With the exception of development for the primary purpose of the improvement of wetland resource value, all public and private use and development proposals which would intrude into, reduce the area of, or reduce the resource value of wetlands shall be subject to alternatives and mitigation analyses, and shall be limited to those uses listed in Policy 3.63. Practicable project and site development alternatives which involve no wetland intrusion or impact shall be preferred over alternatives which involve intrusion or impact. Wetland mitigation, replacement or compensation shall not be used to offset impacts or intrusion avoidable through other practicable project or site development alternatives.

53. Policy 3.65 shall be revised as follows:

**Policy 3.65:** Where wetland fill or development impacts are permitted in wetlands in accordance with the Coastal Act and any applicable LCP policies, mitigation measures shall include, at a minimum, creation or substantial restoration of wetlands of the same

type lost. Adverse impacts will be mitigated at a ratio of 4:1 for all types of wetland, and 3:1 for non-wetland riparian areas.~~seasonal wetlands, freshwater marsh and riparian areas, and at a ratio of 4:1 for vernal pools and salt marsh~~. The mitigation ratio may be 1:1, if, prior to the development impacts occurring, the mitigation is completed and is empirically demonstrated to meet performance criteria that establish that the created or restored wetlands are functionally equivalent to relatively pristine natural wetlands of the same type as the impacted wetlands. Replacement of wetlands on-site or adjacent to the project site, within the same wetland system, shall be given preference over replacement off-site or within a different system. Areas subjected to temporary wetland impacts shall be restored to the pre-project condition at a 1:1 ratio. Temporary impacts are disturbances that last less than 12 months and do not result in the physical disruption of the ground surface, death of significant vegetation within the development footprint, or negative alterations to wetland hydrology.

54. Policy 3.66 shall be revised as follows:

**Policy 3.66:** Provide a buffer of at least 100 feet in width from the upland edge of wetlands and at least 50-feet in width from the upland edge of riparian ~~wetlands~~habitat. Buffers should take into account and adapt for rises in sea level. Under this policy, the CDFG, USFWS, and USACE must be consulted in such buffer determinations and in some cases the required buffer, especially for salt marsh wetlands, could be greater than 100 feet. Uses and development within buffer areas shall be limited to minor passive recreational uses, with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area; however, water quality features required ~~for~~ to support new development shall not be constructed in wetland buffers. All wetlands and buffers identified and resulting from development and use approval shall be permanently conserved or protected through the application of an open space easement or other suitable device. All development activities, such as grading, buildings and other improvements in, adjacent to, or draining directly to a wetland must be located and built so they do not contribute to increased sediment loading of the wetland, disturbance of its habitat values, or impairment of its functional capacity.

55. Policy 3.67 shall be revised as follows:

**Policy 3.67:** In some cases, smaller buffers may be appropriate, when conditions of the site as demonstrated in a site specific biological survey, the nature of the proposed development, etc. show that a smaller buffer would provide adequate protection. In such cases, the CDFG must be consulted and agree that a reduced buffer is appropriate and the City, or Commission on appeal, must find that the development could not be feasibly constructed without a reduced buffer. However, in no case shall the buffer be less than 50 feet.

56. Policy 3.103 shall be revised as follows:

**Policy 3.103:** Permits for new development shall be conditioned to require ongoing maintenance where maintenance is necessary for effective operation of required ~~BMPS~~BMPs. Verification of maintenance shall include the permittees signed statement accepting responsibility for all structural and treatment control BMP maintenance until such time as the property is transferred and another party takes responsibility, at which time the new permittee will be obligated to comply with all permit conditions, including on-going maintenance.

57. Policy 3.113 shall be revised as follows:

**Policy 3.113:** The City's water quality protection measures are primarily based on ensuring that all development is conditioned to meet, at a minimum, the requirements of the Stormwater Permit 2007-0001 approved by the RWQCB. The City will make amendments to its Ordinances, Policies and Regulations so that they comply with the Stormwater Permit 2007-0001 and other applicable water quality regulations as required by law. Changes to those ordinances, policies and regulations that apply to development in the Coastal Zone, will require amendments to the Solana Beach Land Use Plan or LCP Implementation Plan**.** All permits issued by the City, or the Commission on appeal, must meet all requirements of the LCP, even if those requirements are more protective than those required by Stormwater Permit 2007-0001 or its successor permits.

58. Policy 3.114 shall be revised as follows:

**Policy 3.114:** Development involving onsite wastewater discharges shall be consistent with the LCP as well as the rules and regulations of the San Diego RWQCB, including Waste Discharge Requirements, revised waivers and other regulations that apply.

**Chapter 4 – Hazards & Shoreline/Bluff Development**

59. On Page 10, continuing on to Page 11, the bullet items under Section 2. Land Use Plan Provisions shall be revised as follows:

The LUP policies, goals, and requirements regarding natural hazards and shoreline and bluff development can be summarized as follows:

- Maintaining public ownership of the bluffs and beaches;
- ~~Regulating~~ Prohibiting new development that could require shoreline protection, and ~~prohibit, where possible,~~ new land divisions which create new lots within high hazard areas;
- Requiring that new development on oceanfront bluffs be set back in accordance with all provisions of the LCP;

- Providing that applicants assume the risk of building in hazardous areas without ~~assurance~~ the expectation that future bluff protection devices will be allowed;
- Acknowledging that the shoreline is inherently a changing, unstable area, and development along the shoreline should never be considered permanent.
- Regulating development to avoid the need for mid and upper bluff shoreline protection;
- Developing emergency permit procedures, follow-up actions and monitoring to ensure that the emergency response, whether temporary or permanent, is the least environmentally damaging alternative to the extent feasible;
- Providing for the development of long-term shoreline management policies; Including measures to establish periodic nourishment of the City's beaches which are vulnerable to direct wave attack and erosion to assure long-term maintenance of beach area for public recreational use;
- Monitoring the issue of potential future sea level rise, both in the short term via permitting actions and a long-term response to address future development impacts along the shoreline;
- Siting and designing development to avoid or minimize risk from geologic, flood and fire hazards;
- Implementing a HOZ program for siting and designing development and to minimize grading and vegetation clearance on steep slopes;
- Providing that development utilize adequate drainage and erosion control measures both during construction and as a long-term feature; and,
- Requiring that new development be sited and designed to ~~minimize~~ avoid the impacts of fuel modification and brush clearance on native habitat and neighboring property, particularly parkland

60. On Page 11, the second complete paragraph shall be revised as follows:

It is essential that the implementation of the programs recommended herein, and achievement of the goals set forth herein, be balanced between public and private interests. The City is committed to implementing the goals and strategies of the LCP including, without limitation, replenishment and retention of beach sand. Sand Mitigation Fees may be expended for sand replenishment and retention projects, and Public/Recreation Fees may be expended for ~~sand replenishment and~~ public access and public recreation improvements.

61. On Page 12, the second complete paragraph shall be revised as follows:

In compliance with the Coastal Act, the goal of the LCP is to limit bluff retention devices on the public bluffs and beach area while protecting public and private property rights to the extent required by law and the health, safety, and welfare of residents and the public. The City's shoreline has largely been built out, and many of the existing structures located along the City's blufftops were built in a location that is now considered at risk from shoreline erosion. Thus, some amount of lower bluff protection has been and will

continue to be unavoidable to protect existing structures in danger from erosion pursuant to Section 30235 of the Coastal Act. However, the LCP policies acknowledge that modifications to the building footprint and its foundation further inland on private property will be considered feasible alternatives to avoid additional mid and upper bluff stabilization and alteration of the natural landform on public property to protect private development. Such stabilization measures can have particularly extensive adverse impacts on the natural bluff landform and the scenic quality of the shoreline even beyond those associated with lower bluff protection. In all cases, impacts from these devices on public access, recreation, scenic resources and sand supply must be mitigated.

For all new development, the LCP requires that the development be designed so that it will neither be subject to nor contribute to bluff instability, and is sited to not require construction of protective devices that would alter the natural landforms of the bluffs.

62. Starting at the middle of Page 12, and continuing onto Page 13, the following revisions shall be made to the description of the four types of preferred bluff retention systems:

The following describes ~~each of~~ the ~~four~~ types of preferred bluff retention systems to protect the lower bluff only:

- **Infill/Bluff Stabilization – Lower Seawall (See Appendix B Figure 1)** – This first solution is designed to address sea caves and undercut portions of the lower dense sandstone bluff where the clean sand lens is not yet exposed. If left uncorrected the sea cave/undercut will eventually lead to block failures of the lower sandstone, exposure of the clean sand lens and landward bluff retreat. This failure exposes the clean sand lens of the upper bluff terrace deposits triggering rapid erosion and landward retreat of the upper bluff, which eventually endangers the structures at the top of the bluff. If treated at this stage, the bluff retention system will minimize the need for a future higher seawall and future upper bluff repair. This stabilization method is designed as a structural wall and will be reinforced, have structural tiebacks into the sandstone bedrock and will be required to have a textured face mimicking the existing material.
- **Higher Seawall/Clean Sands Encapsulation (See Appendix B Figure 2)** – If the clean sand lens has been exposed, it may be necessary to build a seawall high enough to cover this segment of the bluff face. This method consists of a structurally engineered seawall (with tiebacks into the sandstone) approximately 35’ high to protect and encapsulate the clean sand lens at the base of the terrace deposits. The wall is required to have a textured face mimicking the existing material. If treated at this stage, the bluff retention system will minimize or prevent the need for future mid or upper bluff stabilization.

The following describes types of the City’s preferred upper bluff retention systems that may be utilized with a lower seawall when collapse of the mid and upper bluff threatens an existing principal structure:

- **Seawall and Upper Bluff Repair (See Appendix B Figure 3)** – This retention system is an all-encompassing bluff ~~repair~~ stabilization measure and shall only be used when bluff failures have caused exposure of the clean sand lens and significant erosion of the mid and upper bluff. Encapsulation of the clean sand lens is needed to protect the bluff top principal structure from potential damage. This repair consists of a structurally engineered seawall (with tiebacks into the sandstone) approximately 35' high to protect and encapsulate the clean sand lens at the base of the terrace deposits. The upper bluff is reconstructed at a stable angle by bringing in additional soil which is then reinforced with a geogrid fabric. The lower seawall is textured to simulate the existing bluff material and the upper soil is similar to the existing soil and is hydro-seeded with native, drought tolerant, non-invasive, and salt tolerant vegetation.

- **Upper Bluff Repair (See Appendix B Figure 4)**– This repair is used where there is a pre-existing lower bluff seawall~~,~~ and/or infill/bluff repair ~~or a natural bluff~~ and shall only be used when there is a need to ~~repair~~stabilize the upper bluff terrace deposits to provide structural protection due to upper bluff failures or extreme erosion. When~~re-ever~~ feasible, the building footprint and foundation should be moved inland and the bluffs ~~should be~~ left in a natural state. The repair is much like the upper bluff ~~repair~~stabilization described in (Preferred Solution #~~2~~3) and ~~including~~ taking into account lateral migration of erosion from adjacent properties would involve benching and placing erodible concrete between the clean sand lens and the bluff face to assure that the clean sand erosion does not undermine the stability of the upper bluff and bluff top principal structure. The slope is then rebuilt and reinforced to create an adequate safety factor to protect the upper bluff structure.

- **Caisson and Tieback Alternative (See Appendix B Figure 5)** – This bluff retention system, ~~although not a primary preferred bluff retention system, may be necessary where the upper bluff structure is in imminent danger of failure and it is not possible to perform the other preferred bluff retention measures due to property boundary/ownership issues or the property owner is constrained from performing the preferred repair for some reason. This repair~~ consists of drilled reinforced concrete caissons (24 inches or greater in diameter). These structurally designed caissons are drilled down to or into the lower sandstone bedrock, shall be below grade, and located as far landward as possible to avoid exposure of the drilled caisson in the future. In many cases, to avoid future exposure, the structure requiring stabilization can also be moved further inland to a location that, in connection with the lower seawall, will assure stability of the structure and avoid alteration of the natural landform of the bluffs. ~~These caissons are also tied back with steel cables drilled at an angle landward. Because there is not lower bluff seawall or upper bluff repair it is understood that further failure and landward erosion will take place. This erosion will eventually expose the drilled caisson.~~ In any event, ~~I~~it is required, as a condition of approval that the homeowner post a bond for a future reinforced concrete face to be constructed if~~when~~ the caissons are exposed. Additional tiebacks may be required at that time.

Prior to approval of any upper bluff retention system, a detailed alternative analysis must be performed, consistent with Policy 4.56. In addition, per Policy 4.56, on sites where there is existing lower bluff protection, no upper bluff retention system shall be approved unless it has been determined that removing and relocating/rebuilding the principal bluff top structure with a caisson foundation system in a location that will avoid future exposure and alteration of the natural landform is infeasible, resulting in a taking of private property for public use without just compensation.

**In addition to the suggested text modifications, this Suggested Modification requires addition of a new Figure 2 to Appendix B, showing the Higher Seawall/Clean Sands Encapsulation option as described.**

63. On Page 13, the first paragraph after the bulleted list shall be revised as follows:

Once the LCP is certified, the City will have jurisdiction to issue CDPs for projects landward of the MHTL, with the CCC retaining appeal jurisdiction only in th~~e~~ose areas described in Section 30603 of the Coastal Act. Both before and after the certification of the LCP, the CCC retains original jurisdiction ~~with respect to projects seaward of the MHTL (i.e.,~~ over development located on tidelands, submerged lands, filled and unfilled public trust lands~~)~~. Accordingly, applications for all bluff retention devices to be sited seaward of the MHTL, ~~as shown on the City's October 2010 MHTL Line Survey,~~ within the Commission's original jurisdiction shall be submitted to the City for a major use permit and then to the Coastal Commission for a CDP.

64. On Page 13, the second paragraph shall be revised as follows:

All permits issued for developments within an area appealable to the CCC must be approved through a public hearing process. Appeal jurisdiction for the CCC is defined in Section 30603 of the Coastal Act and includes such geographic areas as those between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or the MHTL where thereis~~s~~ is no beach, whichever is the greater distance; and any areas located within 300 feet of the top of the seaward face of any coastal bluff, or within 100 feet of any wetland, estuary, or stream; and any major public works project or major energy facility ~~costing more than $100,000~~.

65. On Page 14, the second paragraph shall be revised as followed:

The LCP contains provisions for imposing Sand Mitigation Fees and compliance with the City's ~~CCC's~~ Public Recreation Fees. Bluff property owners who construct ~~coastal structures~~bluff retention devices shall pay the City a Sand Mitigation Fee. The Sand Mitigation Fee formula is based on the CCC formula and is detailed in Appendix A.

66. On Page 14, the fourth paragraph shall be revised as follows:

Based on the October 2010 MHTL survey, the land on which bluff retention devices are proposed to be located may include public lands owned by either the State of California, the City of Solana Beach or both. In addition, the location of the MHTL is constantly changing. The City is collecting a $1,000 per linear foot fee deposit to be applied towards a future Public Recreation/Land Lease Fee. Therefore, until such time as a final Public Recreation / Land Lease Fee is adopted by the City following Coastal Commission approval of such a payment and certification of an ~~the~~ LUP amendment adding the fee program to the City's LCP, the City will continue to impose an interim fee deposit in the amount of $1,000 per linear foot to be applied as a credit toward the Public Recreation / Land Lease Fee. In association with approval of any bluff retention device on public land, the City will also require an encroachment removal agreement to be renewed at least every 20 years. Additional mitigation for impacts to public access and recreation may also be required through site-specific review and approval of the coastal development permit.

67. Starting on fifth complete paragraph on Page 15 and continuing onto Page 16, the following deletions shall be made:

Slope stability is a significant concern in Solana Beach along the entire coastal bluff area. These steep coastal bluffs have experienced loss of soil and rock resulting from a combination of natural forces and human activities. Ocean wave action weakens the base of the bluffs, particularly when high tides combine with high waves associated with Pacific Ocean storms. ~~Five people have been killed by bluff collapses along northern San Diego County beaches since 1995; some of whom were 30 feet seaward of the bluff toe at the time of the collapse.~~

- ~~In 1995, a bluff collapse south of Del Mar killed two people and injured a third.~~
- ~~In 2002, a man was killed in a small seacave collapsed at Carlsbad State Beach.~~
- ~~In 2002, a bluff collapse killed a woman near Moonlight Beach in Encinitas.~~
- ~~In 2008, a man was killed by falling rocks at Torrey Pines State Beach.~~

~~Conversely, facilitating habitation and development within close proximity of a bluff edge, armored or not, may also result in people falling from the bluff as noted below.~~

- ~~In 1989, three construction workers were injured after falling 50 feet down an Encinitas bluff they were trying to stabilize (without a permit);~~
- ~~In 2001, a construction worker fell in a bluff collapse while sinking concrete pillars into a Solana Beach bluff;~~
- ~~In August 2005, a woman died and a man was injured in two separate falls from the bluff edge in Encinitas.~~
- ~~In 2009, a woman fell from the bluff edge in Solana Beach and was seriously injured.~~

68. On Page 17, the fourth paragraph shall be revised as follows:

The LUP contains policies which require that any new development is sited and designed to ~~minimize required~~avoid the need for fuel modification within ~~and adjacent to~~ ESHA. One potential method of reducing fire risk to properties adjacent to the WUI is to install a non-combustible wall thereby reducing the vegetation management zone. ESHA protection policies are contained in Chapter 3. Additionally, the LUP contains policies that require mitigation for impacts resulting from the removal, conversion, or modification of natural vegetation that cannot be avoided through the implementation of project alternatives. The mitigation to be provided includes one of three measures: habitat restoration, habitat conservation, or in-lieu fee for habitat conservation.

69. On Page 18, the following Coastal Act policy shall be inserted after Section 20235:

**Section 30236:**
Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (l) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain 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.

70. Policy 4.1 shall be revised as follows:

**Policy 4.1:** The City of Solana Beach contains areas subject to natural hazards that present risks to life and property. These areas require additional development controls to minimize risks. Potential hazards in the City include, but ~~shall~~ are not be limited to, the following:

- Coastal Bluffs
- Slopes with low stability & and high landslide potential: Hillside areas that have the potential to slide, fail, or collapse.
- Seismic ground shaking: Shaking induced by seismic waves traveling through an area as a result of an earthquake on a regional geologic fault.
- Liquefaction: Areas where water-saturated ~~materials (including soil,~~ artificial fill or sediment~~, and certain types of volcanic deposits)~~ can potentially lose strength and fail during strong ground shaking.
- Flood prone areas most likely to flood during major storms.
- Wave action: The entire shoreline is subject to direct wave attack and damage from wave activity due to a lack of protective beach.
- Tsunami: Low lying shoreline areas subject to inundation by a sea wave generated by local or distant earthquake, submarine landslide, subsidence, or volcanic eruption.

- Fire hazard: Areas subject to major wildfires located in the City's WUI.

71. Policy 4.2 shall be deleted:

**~~Policy 4.2:~~** ~~All development that requires a CDP is subject to written findings by the City's decision-making body that it is consistent with all LUP policies and LIP provisions of the City's certified LCP. If there is a conflict between a provision of the LCP and a provision of the City's General Plan, or any other City-adopted plan, resolution, or ordinance not included in the LCP, and it is not possible for the development to comply with both the LCP and such other plan, resolution or ordinance, the LCP shall take precedence and the development shall not be approved unless it complies with the LCP.~~

72. Policy 4.3 shall be revised as follows:

**Policy 4.3:** Minimize the exposure of new development to geologic, flood and fire hazards. The Hillside/Coastal Bluff Overlay (HOZ) policies ~~(SBMC Section 17.48.020~~) shall apply to all areas designated as within the HOZ on the City of Solana Beach ~~zoning~~ LUP map (Exhibit 5-2) ~~and~~ or where site-specific analysis indicates that the parcel contains slopes exceeding 25 percent grade.

**This Suggested Modification is also a requirement to revise Exhibit 5-2 Special Zoning Overlays to change the "Hillside Overlay" reference on the exhibit to "Hillside/Coastal Bluff Overlay."**

73. Policy 4.6 shall be revised as follows:

**Policy 4.6**: ~~Buildings~~ Development within flood prone areas subject to inundation or erosion shall be prohibited unless no alternative building site exists on the ~~property~~ legal lot and proper mitigation measures are provided to minimize or eliminate risks to life and property from flood hazard. The City shall ensure that permitted development and fill in the 100-year floodplain will not result in an obstruction to flood control and that such development will not adversely affect coastal wetlands, riparian areas, or other sensitive habitat areas within the floodplain. (The Floodplain Overlay applies to areas within the 100-year floodplain as shown in Exhibit 4-6)

74. Policy 4.7 shall be revised as follows:

**Policy 4.7:** ~~Require p~~Permitted infill development in the 100-year floodplain ~~to~~ shall be limited to structures capable of withstanding periodic flooding without requiring the construction of on or off-site flood protective works or channelization, ~~which adversely affect environmentally sensitive habitat or reduce existing riparian habitat within the floodplain~~. Proposed development shall be required to incorporate the best mitigation measures feasible pursuant to Public Resources Code Section 30236~~, as amended~~.

75. Policy 4.8 shall be deleted:

~~**Policy 4.8:** Buildings within flood prone areas subject to inundation or erosion shall be prohibited unless no alternative building site exists on the property and proper mitigation measures are provided to minimize or eliminate risks to life and property from flood hazard.~~

76. Policy 4.10 shall be revised as follows:

**Policy 4.10:** Land divisions, including lot line adjustments, shall be prohibited unless all proposed parcels can be demonstrated ~~or mitigated~~ to be safe from flooding, erosion, fire and geologic hazards and will provide a safe, legal, all-weather access road(s), which can be constructed consistent with all policies of the LCP.

77. Policy 4.14 shall be revised as follows:

**Policy 4.14:** In the event~~The~~ that remediation or stabilization of landslides that affect existing structures or that threaten public health or safety is required,~~shall be encouraged. A~~multiple alternative remediation or stabilization techniques shall be analyzed to determine the least environmentally damaging alternative. Maximum feasible mitigation shall be incorporated into the project in order to minimize adverse impacts to resources and to preclude the need for future mitigation.

78. The following new heading shall be inserted after Policy 4.15, and the following revisions made to Policy 4.16:

**Non-Conforming Structures**

**Policy 4.16:** Existing, lawfully established structures that are located between the sea and the first public road paralleling the sea (or lagoon) built prior to the adopted date of the LUP that do not conform to the provisions of the LCP shall be considered legal non-conforming structures. Such structures may be maintained and repaired, as long as the improvements do not increase the size or degree of non-conformity. Minor ~~A~~additions and improvements to such structures may be permitted provided that such additions or improvements themselves comply with the current policies and standards of the LCP. Demolition and reconstruction or bluff top redevelopment ~~that results in the demolition of more than 50 percent of the exterior walls of a non-conforming structure~~ is not permitted unless the entire structure is brought into conformance with the policies and standards of the LCP.

79. Policy 4.17 shall be revised as follows:

**Policy 4.17:** Implement a City-wide, long-term comprehensive shoreline management strategy which includes, but is not limited to, the following:

- An examination of local and regional long-term erosion rates and trends in order to reflect and plan for shoreline changes.

- An examination of mean sea level elevation trends and future sea level rise projections in order to include these conditions in future erosion rates and to plan for potential shoreline changes.

- Standard plans defining the preferred bluff retention solutions that would be acceptable or preferable, and where appropriate, identification of the types of armoring that should be avoided for certain areas or beaches in order to minimize risks and impacts from armoring to public access and scenic resources along the shoreline and beach recreation areas.

- Standard feasibility analysis of alternatives as a required element of bluff retention device projects to ensure that mid and upper bluff retention devices are avoided to the extent feasible~~only used as a last resort~~. The analysis should require, but not be limited to, the use of technical evaluations of the site (geotechnical reports, engineering geology reports, and wave run up reports etc.), an examination of all other options (partial relocation, removal of seaward portions of the structure, revised building footprint and foundation, sand replenishment, sand retention devices, or no action, etc.), and a conclusion that a bluff retention device would be the only feasible means for protecting the existing principal structure in danger from erosion. The analysis will take into consideration the age and size of the structure, the size of the lot, whether the existing principal structure existed prior to the Coastal Act, and previous permit actions on the site that require consideration of alternatives to shoreline and bluff protective devices.

- Standard conditions and monitoring requirements that ~~should~~ include mechanisms to ensure shoreline protection effectiveness ~~and public safety~~ with provisions for the modification or removal of ineffective, obsolete or hazardous bluff retention devices.
- Conditions requiring removal of shoreline and bluff protective devices if no longer required to protect a principal residential structure.

- Procedures to address emergency conditions, such as: coordination with property owners; field inspections before and after storm seasons; guidance for types of preferred temporary emergency devices and a provision for their removal if a permit for a bluff retention device is not obtained.

80. Policy 4.19 shall be revised as follows:

**Policy 4.19**: ~~Ensure that n~~New ~~building improvements are~~ development shall be set back a safe distance from the bluff edge, with a reasonable margin of safety, to ~~reduce~~ eliminate the need for bluff retention devices to protect the new improvements~~, except when no feasible alternative exists~~. ~~Foundation footings for a~~All new development, including additions to existing structures, on bluff property, shall be landward of the Geologic Setback Line (GSL) as set forth in Policy 4.27. This requirement shall apply to the principal structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems, etc. Accessory structures such as decks, patios, and walkways, which are at-grade and do not require structural foundations may extend into the setback area ~~to a minimum distance of~~ no closer than five feet from the bluff edge. On lots with a legally established bluff retention device, the required geologic analysis shall describe the condition of the existing seawall; identify any impacts it may be having on public access and recreation, scenic views, sand supply and other coastal resources; and evaluate opportunities to modify or replace the existing protective device in a manner that would eliminate or reduce those impacts. ~~No newly constructed improvements on bluff property shall be allowed to be protected by a bluff retention device where one does not already exist. Notwithstanding the foregoing, the bluff property owner retains the right to protect principal structures that existed prior to the remodel. This policy shall apply to maintenance, repairs, additions, improvements and structures destroyed by disasters.~~

81. Policy 4.20 shall be deleted:

~~**Policy 4.20:** The City shall ensure that new construction does not increase the degree of non-conformity of existing bluff homes consistent with all provisions of SBMC Chapter 17.16. Existing legal non-conforming structures on the bluff shall be brought into conformance with new regulations as soon as possible, consistent with laws protecting the rights of private property owners. Notwithstanding the above, bluff property owners shall have the right to repair and maintain a legal non-conforming bluff home, provided it is not determined to be an extensive remodel. This policy as defined in Chapter 8 shall apply to maintenance, repairs, additions, improvements and to structures destroyed by disasters.~~

82. The following new Policy 4.20 shall replace the deleted 4.20:

**Policy 4.20** A legally permitted bluff retention device shall not be factored into setback calculations. Expansion and/or alteration of a legally permitted bluff retention device shall include a reassessment of the need for the shoreline protective device and any modifications warranted to the protective device to eliminate or reduce any adverse impacts it has on coastal resources or public access, including but not limited to, a condition for a reassessment and reauthorization of the modified device in 20 years.

83. The following new Policy 4.20.5 shall be inserted:

**Policy 4.20.5** New shoreline or bluff protective devices that alter natural landforms along the bluffs or shoreline processes shall not be permitted to protect new development. A condition of the permit for all new development and blufftop redevelopment on bluff property shall require the property owner record a deed restriction against the property that expressly waives any future right that may exist pursuant to Section 30235 of the Coastal Act to new or additional bluff retention devices.

84. Policy 4.21 shall be revised as follows:

**Policy 4.21:** Existing, legal non-conforming publicly-owned facilities that are coastal-dependent uses such as public access improvements and lifeguard facilities~~, including principal and accessory structures, utilities, and other developments~~ located within 40 feet of the edge of the bluff edge, ~~shall~~ may be maintained, repaired and/or replaced as determined necessary by the City. Any such repair or replacement of existing public facilities shall be designed and sited to avoid the need for shoreline protection to the extent feasible. ~~No new public improvements shall be constructed within five feet of the bluff edge. This policy shall apply to maintenance, repairs, additions, improvements, and to structures destroyed by disasters.~~

85. Policy 4.22 shall be revised as follows:

**Policy 4.22**: ~~Require that any n~~New accessory structures on bluff properties ~~to~~ shall be constructed in a manner that allows easy relocation landward or removal should they become threatened by coastal erosion or bluff failure. The City shall also condition CDPs authorizing accessory structures with a requirement that the permittee (and all successors in interest) shall apply for a CDP to remove the accessory structure(s) if it is determined by a licensed Geotechnical Engineer that the accessory structure is in danger from erosion ~~or if the bluff edge retreats to within ten feet of the accessory structure as a result of erosion,~~ landslide or other form of bluff collapse.

86. Policy 4.22 shall be deleted:

~~**Policy 4.24**: The GSL shall be the required bluff setback, established on a case by case basis, to ensure bluff stability for new development. The bluff property owner shall select and pay for the licensed Geotechnical Engineer needed to determine the GSL.~~

87. Policy 4.25 shall be revised as follows:

**Policy 4.25**: Where setbacks and other development standards could preclude construction of a ~~minimum~~ home ~~(2000 sq.ft.)~~, the City may consider options including but not limited to reduction of~~e~~ the two car onsite parking space requirement to a one car onsite parking requirement, or construction within five feet of the public right of way

front yard setback for all stories as long as adequate architectural relief (e.g., recessed windows or doorways or building articulation) is maintained as determined by the City. The City may also consider options including a caisson foundation with a minimum 40 foot blufftop setback to meet the stability requirement and avoid alteration of the natural landform along the bluffs. ~~No such newly constructed minimum home shall require protection by a bluff retention device~~. A condition of the permit for any such ~~minimum~~ home shall expressly require waiver of any ~~such~~ rights to new or additional bluff retention devices which may exist and recording of said waiver on the title of the bluff property.

88. Policy 4.26 shall be revised as follows:

**Policy 4.26**: ~~Encourage new bluff homes to be set back as far as reasonably possible from the bluff edge, subject to applicable LIP requirements, and subject to the provisions herein for bluff homes destroyed by disasters.New bluff homes, or additions to existing bluff homes, may be constructed within five feet of the public right of way front yard setback for all stories as long as adequate architectural relief (e.g., recessed windows or doorways) is maintained as determined by the City~~. Where adherence to the LCP policies on geologic setbacks and other development standards would preclude construction of a new primary residence, even with reductions in the front yard setback and parking standards, the development shall be reviewed as a site-specific LCP Amendment to allow the minimum development necessary to avoid a taking of private property for public use without just compensation.

89. Policy 4.27 shall be revised as follows:

**Policy 4.27**: All new bluff property development shall be set back from the bluff edge a sufficient distance to ensure that it will not be in danger from erosion and that it will ensure stability for its projected 75-year economic life. To ~~D~~determine the GSL, applications for bluff property development must include a geotechnical report, from a licensed Geotechnical Engineer ~~and~~ or a certified Engineering Geologist, that establishes the Geologic Setback Line (GSL) for the proposed development. This setback line shall establish the location on the bluff top stability where can be reasonably assured for the economic life of the development. Such assurance will take the form of a quantitative slope analysis demonstrating a minimum factor of safety against sliding of 1.5 (static) or 1.2 (pseudostatic, k-0.15 or determined through analysis by the geotechnical engineer), using shear strength parameters derived from relatively undeformed samples collected at the site. In no case shall the setback be less than 40 feet from the bluff edge, and only if it can be demonstrated that the structure will remain stable, as defined above, at such a location for its 75-year economic life and has been sited safely without reliance on existing or future bluff retention devices, other than a caisson foundation.

Furthermore, all new development including, but not limited to principal structures, additions, and ancillary structures, shall be specifically designed and constructed such that it could be removed in the event of endangerment.

~~The geotechnical report shall examine the entire site with special attention to the area where stability of a bluff home could be compromised within the economic life of the home. The geotechnical report must include a projected long-term average erosion rate calculated using~~ The predicted bluff retreat shall be evaluated considering not only historical bluff retreat data, but also acceleration of bluff retreat made possible by continued and accelerated ~~and taking into account all relevant factors including: without limitation, predicted~~ sea level rise, future increase in storm or ~~the potential effects of past and projected~~ El Niño events ~~on bluff stability~~, the presence of clean sands and their potential effect on the pattern of erosion at the site, an analysis of the ongoing process of retreat of the subject segment of the shoreline, and any known site-specific conditions. ~~This data shall be used to establish the GSL as the estimated location on the bluff property that would demonstrate a minimum factor of safety against sliding of 1.5 (static) or 1.2 (pseudostatic, k=0.15 or determined through analysis by the geotechnical engineer) for the economic life of the home as of the date of the development application as determined by a quantitative slope stability analysis using shear strength parameters derived from relatively undeformed samples collected at the site.~~ To the extent the MEIR or geology reports previously accepted by the City address the issues referenced above and remain current, technical information in the MEIR and previously accepted geology reports may be utilized by an applicant. Any such report must also consider the long-term effects of any sand replenishment and/or retention projects to the extent not addressed in the MEIR or the EIR for the specific application.

90. Policy 4.28 shall be revised as follows:

**Policy 4.28**: With respect to bluff properties only, the City will require the removal or capping of any permanent irrigation system within 100 feet of the bluff edge in connection with issuance of discretionary permits for new development, redevelopment, or shoreline protection, or bluff erosion, unless the bluff property owner demonstrates to the satisfaction of the Public Works Director, or the CCC if the project is appealed, that such irrigation has no material impact on bluff erosion (e.g., watering hanging plants over hardscape which drains to the street).

91. Policy 4.31 shall be revised as follows:

**Policy 4.31**: A bluff home may continue its legal non-conforming status~~,~~; however, ~~an extensive remodel~~ bluff top redevelopment shall constitute new development and cause the pre-existing non-conforming bluff home to be brought into conformity with the LCP. Entirely new bluff homes shall also conform to the LCP.

92. Policy 4.34 shall be revised as follows:

**Policy 4.34:** When bluff retention devices are unavoidable, ~~E~~encourage applicants to pursue preferred bluff retention designs as depicted in Appendix 2 of the LUP when required to protect an existing principal structure in danger from erosion. All future bluff

retention device applications should utilize these designs as the basis of site-specific engineering drawings to ensure consistency with the LUP.

93. Policy 4.39 shall be revised as follows:

**Policy 4.39:** Establish a Shoreline District Account which will serve as the primary account where all funds generated pursuant to the Hazards & Shoreline/Bluff Development Chapter of the LUP will be held. The City should invest the Shoreline District Account funds prudently and expend them for purposes outlined in the LCP including, without limitation:

- Sand replenishment and retention studies and projects;
- Updating the October 2010 MHTL Survey;
- Preparation of other shoreline surveys and monitoring programs;
- Opportunistic beach nourishment programs and development of stockpile locations;
- Repair and maintenance of bluff retention devices subject to reimbursement by the affected non-compliant bluff property owners;
- Public recreation improvements;
- Repair and replacement of beach access infrastructure;
- Insurance premiums; and
- Shoreline related litigation.

Sand Mitigation Fees must be expended for sand replenishment and potentially retention. Recreation Fees must be expended for ~~sand replenishment, retention,~~ public access, and public recreation improvements.

94. Policy 4.40 shall be revised as follows:

**Policy 4.40**: As part of the LCP Local Implementation Plan (LIP), the City of Solana Beach will establish a two-tiered permit application process to distinguish between projects that may be processed administratively by the City and those requiring discretionary actions(s) by the City. Projects that cannot be considered minor and projects located within the "appealable zone" will require a public hearing and will be treated as discretionary actions. ~~Implement a two-tiered system for processing and acting on CDP applications for bluff retention device projects within the City's jurisdiction. The CCC retains permit jurisdiction on tidelands, submerged lands, filled and unfilled public trust lands and any areas of deferred certification. Both tiers will require documentation of need for the project and analysis of alternatives, appropriate for the level of the project and adequate to determine the least environmentally damaging feasible alternative.~~

~~Tier 1 - Administrative Coastal Development Permits.~~

- ~~This tier would include minor projects that are considered routine and non-~~

~~controversial. These projects would be decided by the City Manager or his/her designee, at a public hearing, subject to appeal to the City Council, whose decision shall be final, unless located in an area appealable to the CCC. Tier 1 projects would include, but are not limited to, such things as drainage modifications, removal, relocation, or code compliant minor interior remodeling or landward additions to bluff homes and accessory structures at grade with the bluff home; repair and maintenance of bluff retention devices including installation of a return wall; changes to retail structures that do not trigger the need for additional parking, new infill development involving single-family homes or accessory structures not on the coastal bluff, or other minor development that has no adverse effect on coastal resources as determined by the Community Development Director and similar minor projects in conformance with the LCP.~~

~~Tier 2 - Regular Coastal Development Permits.~~

- ~~This tier would include applications to install new or enlarged bluff retention devices, other than Seacave/Notch Infills/Engineered Dripline Infills. Tier 2 projects would be heard and decided by the City Council. With respect to bluff retention devices landward of the MHTL, the CCC shall have appeal jurisdiction only. Absent an appeal to the CCC, the decision of the City Council shall be final. With respect to bluff retention devices seaward of the MHTL, because the CCC retains original jurisdiction, as required by law, such projects shall be first heard as a Conditional Use Permit and decided by the City Council and, if approved, then by the CCC.~~

95. Policy 4.41 shall be revised as follows:

**Policy 4.41:** Maximize the natural, aesthetic appeal and scenic beauty of the beaches and bluffs by ~~attempting to~~ avoiding ~~or~~and minimize~~e~~ing the size of bluff retention devices, preserving the maximum amount of unaltered or natural bluff face, and minimizing encroachment of the bluff retention device on the beach, to the extent feasible, while ensuring that any such bluff retention device accomplishes its intended purpose of protecting existing ~~bluff homes~~principal structures in danger from erosion. ~~The following attributes of a bluff retention device may also be considered: protecting public beaches or public beach access in danger from erosion; enhancing public safety; and preserving public infrastructure while attempting to preserve the maximum amount of unaltered or natural bluff face and minimizing encroachment of the bluff retention device on the beach to the extent feasible.~~

96. Policy 4.47 shall be revised as follows:

**Policy 4.47:** Allow reasonable use of City property by a bluff property owner during the construction of a bluff retention device. For example, the City could allow use of City parking lots (with the exception of the Fletcher Cove parking lot) or other appropriate

properties for staging areas and reasonable access to City ramps and the beach if reasonable impacts to public access and recreation can be avoided or minimized so as to have little material impact. However, except in emergency situations, no work on the beach shall occur on weekends, holidays or between Memorial Day weekend and Labor Day. In no case shall equipment be stored on the sandy beach overnight. The Fletcher Cove Park access ramp and all public parking spaces within Fletcher Cove shall remain open and available to public use during construction. Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.

97. Policy 4.49 shall be revised as follows:

**Policy 4.49:** The City has adopted preferred bluff retention solutions (see Appendix B) to streamline and expedite the City permit process for bluff retention devices. The preferred bluff retention solutions are designed to meet the following goals and objectives:

1. Locate bluff retention devices as far landward as feasible;
2. Minimize alteration of the bluff face;
3. Minimize visual impacts from public viewing areas; ~~and,~~
4. Minimize impacts to adjacent properties including public bluffs and beach area; and~~.~~
5. Conduct annual visual inspection and maintenance as needed~~;~~.

The bluff property owner's licensed Civil or Geotechnical Engineer must examine the device for use in the specific location and take responsibility for the design as the Engineer of Record.

Applicants who seek permits to install a preferred bluff retention solution can do so on a streamlined basis, relying on previously approved standards and designs, and shall receive expedited processing from the City. As technology develops, the City will consider other preferred bluff retention solutions that meet the goals and policies of the LCP, as an amendment to the LUP or within the LIP.

Applications for coastal development permits for all bluff retention devices where any portion of which will be sited seaward of the MHTL, ~~as shown on the MHTL Survey,~~ shall be submitted first to the City for approval of a major use permit and then to the CCC for the coastal development permit. The CCC~~, which~~ has original jurisdiction for the portion of the bluff retention device that will be sited seaward of the MHTL. Such developments shall be subject to this LCP for the portions within the City's jurisdiction. Chapter 3 of the Coastal Act will be the standard of review for the portion within the CCC's jurisdiction. For beachfront development that will be subject to wave action periodically, unless the State Lands Commission determines that there is no evidence that the proposed development will encroach on tidelands or other public trust interests, ~~. T~~the City shall reject the application on the grounds that it is within the original permit jurisdiction of the CCC and shall direct the applicant to file his or her application with the CCC.

98. Policy 4.52, Subsection A, shall be revised as follows:

**Policy 4.52:** A Seacave/Notch Infill shall be approved only if all the findings set forth below can be made and the stated criteria satisfied. The permit shall be valid for a period of 20 years commencing with the ~~completion of construction~~ date of CDP approval and subject to an encroachment removal agreement approved by the City.

A. Based upon the advice and recommendation of a licensed Geotechnical or Civil Engineer, the City makes the findings set forth below:

1. ~~A slope stability analysis demonstrates a factor of safety of less than 1.5 (static) and, that a bluff failure is imminent that would threaten a bluff home, city facility, city infrastructure, or other principal structure.~~

~~2.~~ The Seacave/Notch Infill is more likely than not to delay the need for a larger coastal structure or upper bluff retention structure, that would, in the foreseeable future, be necessary to protect an existing principal structure, city facility and/or city infrastructure, from danger from erosion. Taking into consideration any applicable conditions of previous permit approval for development at the subject site, a determination must be made based on a detailed alternatives analysis that none of the following alternatives to the coastal structure are currently feasible, including:

- Controls of surface water and site drainage;
- A smaller coastal structure;
- Other non-beach and bluff face stabilizing measures, taking into account impacts on the near and long term integrity and appearance of the natural bluff face, and contiguous bluff properties and;

~~3~~2. The bluff property owner did not create the necessity for the Seacave/Notch Infill by unreasonably failing to implement generally accepted erosion and drainage control measures, such as reasonable management of surface drainage, plantings and irrigation, or by otherwise unreasonably acting or failing to act with respect to the bluff property. In determining whether or not the bluff property owner's actions were "reasonable," the City shall take into account whether or not the bluff property owner acted intentionally, with or without knowledge, and shall consider all other relevant credible scientific evidence as well as relevant facts and circumstances.

~~4~~3. The location, size, design and operational characteristics of the proposed seacave/notch infill will not create a significant adverse effect on adjacent public or private property, natural resources, or public use of, or access to, the beach, beyond the environmental impact typically associated with a similar bluff retention device ~~as identified in the MEIR, or any appropriate CEQA/NEPA document,~~ and the seacave/notch infill is the minimum size necessary to protect the principal structure, has been designed to minimize all environmental impacts, and provides mitigation for all coastal and environmental impacts as provided for in this LCP, ~~for which appropriate and~~

~~reasonable mitigation fees are assessed~~.

99. Policy 4.53 shall be revised as follows:

**Policy 4.53:** Coastal structures shall be approved by the City only if all the following applicable findings can be made and the stated criteria satisfied. The permit shall be valid for a period of 20 years commencing with the ~~completion of construction~~ date of CDP approval and subject to an encroachment removal agreement approved by the City.

A. Based upon the advice and recommendation of a licensed Geotechnical or Civil Engineer, ~~and licensed certified Engineering Geologist selected by the applicant,~~ the City makes the findings set forth below.

1. A ~~slope stability analysis accepted by the City demonstrates a factor of safety less than 1.5 (static) and that a~~ bluff failure is imminent that would threaten a bluff home, city facility, city infrastructure, and/or other principal structure.

2. The coastal structure is more likely than not to preclude the need for a larger coastal structure or upper bluff retention structure. Taking into consideration any applicable conditions of previous permit approval for development at the subject site, ~~Subject to the bluff property owner being entitled to reasonable use of the bluff property and having the right to protect the bluff home, city facility and/or city infrastructure, respectively~~, a determination must be made based on a detailed alternatives analysis that none of the following alternatives to the coastal structure are then currently feasible, including:

- A Seacave/Notch Infill;
- A smaller coastal structure;
- Other remedial measures capable of protecting the bluff home, city facility, non-city-owned utilities, and/or city infrastructure, which might include ~~tie-backs, underpinning (which shall not be exposed in the future), or~~ other non-beach and bluff face stabilizing measures, taking into account impacts on the near and long term integrity and appearance of the natural bluff face, and contiguous bluff properties;
- ~~Removal and relocation of all, or portions, of the affected bluff home, city facilities or city infrastructure.~~

3. The bluff property owner did not create the necessity for the coastal structure by unreasonably failing to implement generally accepted erosion and drainage control measures, such as reasonable management of surface drainage, plantings and irrigation, or by otherwise unreasonably acting or failing to act with respect to the bluff property. In determining whether or not the bluff property owner's actions were reasonable, the City shall take into account whether or not the bluff property owner acted intentionally, with or without

knowledge, and shall consider all other relevant credible scientific evidence, as well as, relevant facts and circumstances.

4 The location, size, design and operational characteristics of the proposed coastal structure will not create a significant adverse effect on adjacent public or private property, natural resources, or public use of, or access to, the beach, beyond the environmental impact typically associated with a similar coastal structure and the coastal structure is the minimum size necessary to protect the principal structure, has been designed to minimize all environmental impacts, and provides mitigation for all coastal and environmental impacts, as provided for in this LCP.

B. The coastal structure shall meet City Design Standards, which shall include the following criteria to ensure the coastal structure will be:

1. Constructed to resemble as closely as possible the natural color, texture and form of the adjacent bluffs;

2. Landscaped, contoured, maintained and repaired to blend in with the existing environment;

3. Designed so that it will serve its primary purpose of protecting the bluff home or other principal structure, provided all other requirements under the implementing ordinances are satisfied, with minimal adverse impacts to the bluff face;

4. Reduced in size and scope, to the extent feasible, without adversely impacting the applicant's bluff property and other properties; and

5. Placed at the most feasible landward location considering the importance of preserving the maximum amount of natural bluff and ensuring adequate bluff stability to protect the bluff home, City facility, or City infrastructure~~, or non-City owned utilities~~.

~~C. Any pre-existing deed and/or permit restrictions applicable to the bluff property or bluff home shall be reviewed and, where legally enforceable and logistically appropriate, enforced by the City to bring any such pre-existing conditions into conformance with the LCP, subject to any requirements of the CCC, and to the vested rights of the bluff property owner.~~

100. Policy 4.54 shall be revised as follows:

**Policy 4.54:** The bluff property owner shall pay for the cost of the coastal structure or Infill and pay a Sand Mitigation Fee and a Public Recreation Fee per Policy 4.42. These mitigation fees are not intended to be duplicative with fees assessed by other agencies ~~and are intended to provide mitigation for all potential impacts to coastal resources from~~

~~shoreline protective devices~~. It is anticipated the fees assessed as required by this LCP will be in conjunction with, and not duplicative with, the mitigation fees typically assessed by the CCC and the CSLC for impacts to coastal resources from shoreline protective devices.

Sand Mitigation Fee - to mitigate for actual loss of beach quality sand which would otherwise have been deposited on the beach. For all development involving the construction of a ~~shoreline protective~~bluff retention device, a Sand Mitigation Fee shall be collected by the City which shall be used for beach sand replenishment and/or retention purposes. The mitigation fee shall be deposited in an interest-bearing account designated by the City Manager of Solana Beach in lieu of providing sand to replace the sand that would be lost due to the impacts of any proposed protective structure. The methodology used to determine the appropriate mitigation fee has been approved by the CCC and is contained in LUP Appendix A. The funds shall solely be used to implement projects which provide sand to the City's beaches, not to fund other public operations, maintenance, or planning studies ~~except as needed to facilitate implementation of an actual mitigation project that would put sand on the beach~~.

Public Recreation Fee – Similar to the methodology established by the CCC for the sand mitigation fee, the City and CCC ~~is~~are jointly developing a methodology for calculating a statewide public recreation fee. To assist in the ~~CCC's~~ efforts, the City has shared the results of their draft study with the CCC to support the~~ir~~ development of a uniform statewide Public Recreation / Land Lease Fee. Until such time as ~~the CCC has~~ an approved methodology for determining this fee has been established, and the methodology and payment program has been incorporated into the LCP through an LCP amendment, the City will collect a $1,000 per linear foot interim fee deposit. In the interim period, the CCC will evaluate each project on a site-specific basis to determine impacts to public access and recreation, and additional mitigation may be required.

101. Policy 4.55 shall be revised as follows:

**Policy 4.55:** The erosion rate, being critical to the fair and accurate calculation of the Sand Mitigation Fee shall be reviewed, after notice and public hearing, at least every ten years, and more often if warranted by physical circumstances, such as major weather events, or large-scale sand replenishment projects and possible changes in coastal dynamics due to, among others, climate change, and future changes in sea level. If warranted, the erosion rate should be adjusted by the City with input from a licensed Civil or Geotechnical Engineer based upon data that accurately reflects a change in the rate of erosion of the bluff. Any such change shall be subject to the public hearing and a vote of the City Council.

102. Policy 4.55 shall be revised as follows:

**Policy 4.56:** An upper bluff system shall be approved only if all the following applicable findings can be made and the stated criteria will be satisfied. The permit shall be valid for a period of 20 years commencing with the date of CDP approval and subject to an encroachment removal agreement approved by the City.

A. Based on the advice and recommendation of a licensed Geotechnical or Civil Engineer ~~and certified Engineering Geologist selected by the applicant~~, the City makes the findings set forth below.

1. A bluff failure is imminent that would threaten a bluff home, city facility, city infrastructure, and/or other principal structure in danger from erosion ~~slope stability analysis accepted by the City demonstrates a factor of safety of less than 1.5 (static)~~and, that~~.~~

2. The bluff home, city facility, city infrastructure, and/or principal structure is more likely than not to be in danger within one year after the date an application is made to the City.

~~Subject to the bluff property owner and City being entitled to reasonable use of their or its bluff property and having the right to protect his, her or its bluff home, city facility, city infrastructure, respectively,~~ Taking into consideration any applicable conditions of previous permit approval for development at the subject site, a determination must be made based on a detailed alternatives analysis that none of the following alternatives to the upper bluff system are then currently feasible, including:

- No upper bluff system;
- Vegetation;
- Controls of surface water and site drainage;
- A revised building footprint and foundation system (e.g., caissons) with a setback that avoids future exposure and alteration of the natural landform;
- A smaller upper bluff system;
- Other remedial measures capable of protecting the bluff home, city facility, non-city-owned utilities, and/or city infrastructure which might include tie-backs~~, underpinning (which shall be treated to minimize visual impacts if exposed in the future)~~ or other feasible non-beach and bluff face stabilizing measures, taking into account impacts on the near and long term integrity and appearance of the natural bluff face, the public beach, and, contiguous bluff properties and;
- Removal and relocation of all, or portions, of the affected bluff home, city facilities or city infrastructure.

4. The bluff property owner did not create the necessity for the upper bluff system by unreasonably failing to implement generally accepted erosion and drainage control measures, such as reasonable management of surface

drainage, plantings and irrigation, or by otherwise unreasonably acting or failing to act with respect to the bluff property. In determining whether or not the bluff property owner's actions were reasonable, the City shall take into account whether or not the bluff property owner acted intentionally, with or without knowledge, and shall consider all other relevant credible scientific evidence as well as relevant facts and circumstances.

5. The location, size, design and operational characteristics of the proposed upper bluff system will not create a significant adverse effect on adjacent public or private property, natural resources, or public use of, or access to, the beach, beyond the environmental impact typically associated with a similar upper bluff system ~~as identified in the environmental review as maybe required, or any applicable CEQA/NEPA document~~ and the upper bluff system is the minimize size necessary to protect the ~~bluff home, City facility, City infrastructure~~ existing principal structure, has been designed to minimize all environmental impacts, and provides mitigation for all coastal and environmental impacts, as provided for in this LCP. […[

103. The following new possible 4.56.5 shall be inserted after Policy 4.56:

**Policy 4.56.5** All permits for bluff retention devices shall expire 20 years after approval of the CDP, and a new CDP must be obtained. The CDP application shall include a re-assessment of need for the device, and the potential for removal. The CDP shall evaluate changed geologic site conditions relative to sea level rise and the age, condition, and economic life of principal structure including whether it was an existing structure on January 1, 1977 (prior to implementation of the Coastal Act). Prior to expiration of the permit, the bluff top property owner shall apply for a coastal development permit to either remove or retain the protective device. No permit shall be issued for retention of a bluff retention device unless the City finds that the bluff retention device is still required to protect an existing principal structure, will avoid further alteration of the natural landform of the bluff, and adequate mitigation for impacts to the public beach has been provided.

104. Policy 4.58 shall be revised as follows:

**Policy 4.58:** To achieve a well maintained, aesthetically pleasing, and safer shoreline, coordination among property owners regarding maintenance, and repair of all bluff retention devices is strongly encouraged. This may also result in cost savings through the realization of economies of scale to achieve these goals by coordination through an assessing entity. All bluff retention devices existing as of the date of certification of the LCP, to the extent they do not conform to the requirements of the LCP, shall be deemed non-conforming. ~~Although a~~ A bluff property owner may elect to conform his/her/its bluff property or bluff retention device to the LCP at any time~~. All bluff properties with non-conforming bluff retention devices shall only be required to comply with the provisions hereunder governing acquisition rights and the repair, maintenance, and~~

~~removal of bluff retention devices as a condition of the issuance of a future discretionary Coastal Development Permit. Additionally, no existing bluff retention device shall require structural modification for the sole purpose of facilitating removal at a later date; however, if~~ If the City finds that an existing bluff retention device, that is required to protect existing principal structures in danger from erosion, is structurally unsound, is unsafe, or is materially jeopardizing contiguous private or public ~~property~~ principal structures for which there is no other adequate and feasible solution, then the City may require reconstruction of the bluff retention device.

105. Policy 4.60 shall be revised as follows:

**Policy 4.60:** Siting and design of new shoreline development and bluff retention devices shall take into account predicted future changes in sea level. In particular, an acceleration of the historic rate of sea level rise shall be considered and based upon up-to-date scientific papers and studies, agency guidance (such as the 2010 Sea Level Guidance from the California Ocean Protection Council), and reports by national and international groups such as the National Research Council and the Intergovernmental Panel on Climate Change. Consistent with all provisions of the LCP, new structures shall be set back a sufficient distance landward to eliminate or minimize, to the maximum extent feasible, hazards associated with anticipated sea level rise over the expected economic life of the structure.

106. Policy 4.61 shall be revised as follows:

**Policy 4.61:** Development on the bluffs, including the construction of a bluff retention device, shall include measures to ensure that:

- No stockpiling of dirt or construction materials shall occur on the beach;
- All grading shall be properly covered and sandbags and/or ditches shall be used to prevent runoff and siltation;
- Measures to control erosion shall be implemented at the end of each day's work;
- No machinery shall be allowed in the intertidal zone at any time to the extent feasible;
- All construction debris shall be properly collected and removed from the beach.
- Shotcrete/concrete shall be contained through the use of tarps or similar barriers that completely enclose the application area and that prevents shotcrete/concrete contact with beach sands and/or coastal waters.

107. Policy 4.62 shall be deleted:

~~**Policy 4.62:** All new bluff property development shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion for the projected economic life and has a minimum geologic stability factor of 1.5. For purposes of this~~

~~Policy, stable is defined as a demonstrated minimum factor of safety against sliding of 1.5 (static) or 1.2 (pseudostatic, k=0.15) as determined by a quantitative slope stability analysis using shear strength parameters derived from relatively undeformed samples collected at the site. In no case shall the setback be less than 40 feet, and only if it can be demonstrated that the structure will remain stable, as defined above, at such a location for its economic life.~~

~~Existing principal bluff top structures may be maintained, repaired or remodeled within 25 feet of the top edge of a coastal bluff, based upon an engineering geology report prepared by a duly licensed engineering professional showing that: (1) the site is stable enough to support the development with the proposed bluff edge setback; and (2) that the development can be designed so that it will neither be subject to nor contribute to significant bluff instability for its economic life. This requirement shall apply to the principal structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios, and walkways that do not require structural foundations may extend into the setback area to a minimum distance of five feet from the bluff edge. All new development including, but not limited to principal structures, additions, and ancillary structures, shall be specifically designed and constructed such that it could be removed in the event of endangerment. Ancillary structures shall be removed or relocated landward when threatened by erosion. Slope stability analyses and erosion rate estimates shall be performed by a licensed Geotechnical Engineer or certified Engineering Geologist.~~

108. Policy 4.63 shall be revised as follows:

**Policy 4.63:** All new swimming pools and in-ground spas on bluff property shall contain double wall construction with drains and leak detection systems. All new swimming pools and in-ground spas shall be located landward of the geologic setback line.

109. Policy 4.67 shall be revised as follows:

**Policy 4.67:** ~~T~~Subject to coastal development permit requirements, the beneficial reuse and placement of sediments removed from erosion control or flood control facilities at appropriate points along the shoreline may be permitted for the purpose of beach nourishment. Any beach nourishment program for sediment deposition shall be designed to minimize adverse impacts to beach, intertidal and offshore resources, shall incorporate appropriate mitigation measures, and shall consider the method, location, and timing of placement. Sediment removed from catchment basins may be disposed of in the littoral system if it is tested and found to be of suitable grain size and type and a coastal development permit for such disposal has been obtained. The program shall identify and designate appropriate beaches or offshore feeder sites in the littoral system for placement of suitable materials from catchment basins.

110. Policy 4.69 shall be revised as follows:

**Policy 4.69**: Pursue a demonstration/temporary pilot project for a sand retention device such as a submerged, or emergent reef, groin field, or short T-head groin or other structure if approved through the coastal development permit and/or Federal consistency review by the CCC. ~~If constructed, such a project will be monitored closely for effects. The structure shall be removed if determined unsuccessful, or allowed to remain if deemed a success.~~ The environmental, recreational, and aesthetic effects of any sand retention structure will be considered in its planning and design in compliance with CEQA and NEPA. The City will also consider any implementation of sand replenishment and retention structures in a regional context and in cooperation with other cities' beach sand retention efforts.

111. Policy 4.74 shall be revised as follows:

**Policy 4.74:** Use the funds in the Shoreline District Account to pay for projects such as beach sand replenishment and retention structures, including feasibility and impact studies, operating expenses, insurance, litigation; and to pay to conduct surveys and monitoring programs. Sand Mitigation Fees may only be expended for sand replenishment and potentially retention projects, and Land Lease/Recreation Fees may be expended for ~~sand replenishment and~~ public access and public recreation improvements.

112. Policy 4.75 shall be revised as follows:

**Policy 4.75**: Inform applicants, for new development in the City and in surrounding areas that do not have permitted SCOUP programs, of the City's SCOUP program and encouraged them to participate. Development on upland sites that will result in ~~10,000~~ 5,000 cubic yards, or more, of export should be required to test the material for suitability for beach deposition. If suitable, the material should be placed on the beach via the SCOUP program.

113. Policy 4.76 shall be revised as follows:

**Policy 4.76:** All new development in the WUI or adjacent to ESHA shall be sited and designed to minimize required fuel modification to the maximum extent feasible in order to ~~minimize~~ avoid environmentally sensitive habitat disturbance or destruction, removal or modification of natural vegetation, while providing for fire safety.

114. Policy 4.77 shall be revised as follows:

**Policy 4.77:** All discretionary permit applications for projects ~~in the WUI~~ shall be ~~subject to~~ reviewed by the City's Fire Marshal to determine if any thinning or clearing of native vegetation is required~~, on a case by case basis, to ensure wildfire risk is minimized~~. The Fire Marshal may reduce the 100' fuel management requirement for existing

development~~, additions to existing structures and new development~~ when equivalent methods of wildfire risk abatement are included in project design.

115. Policy 4.82 shall be revised as follows:

**Policy 4.82:** Fuel Modification Requirements for Existing Development - The City shall encourage property owners to implement fire risk reduction alternatives, including those listed in Policy 4.78, as a priority over fuel modification in ESHA. However, the City Fire Marshal may require fuel modification to occur adjacent to existing development as outlined in the established zones. If fuel modification is required by the Fire Marshal for existing development that would ~~impact~~ encroach into ESHA, the alternative that has the least impact on ESHA shall be implemented where feasible.

116. Policy 4.83 shall be revised as follows:

**Policy 4.83:** Fuel Modification Requirements for Additions to Existing Structures – Where a new addition would encroach closer than 100 feet to an ESHA, the City Fire Marshall shall review the project for fuel modification requirements. If a 100 ft. fuel modification zone would encroach into ESHA, the addition shall not be permitted unless the addition would not encroach any closer to the ESHA than existing principal structures on either side of the development. ~~The City Fire Marshal may require that fuel modification for additions to existing structures be analyzed. If fuel modification is required by the Fire Marshal that would impact ESHA, the alternative that has the least impact on ESHA shall be implemented where feasible.~~

117. Policy 4.84 shall be revised as follows:

**Policy 4.84:** Fuel Modification Requirements for New Development – ~~The City Fire Marshal may require that new~~ New development, including, but not limited to subdivisions and lot line adjustments shall be sited and designed so that no brush management or the 100 ft. fuel modification ~~impacts~~ encroaches into ESHA ~~occur~~. ~~Brush management zones involving removal of vegetation that would impact ESHA must be located on the development site unless otherwise required by the State Fire Code. If fuel modification is required by the Fire Marshal for new development that would impact ESHA, the alternative that has the least impact on ESHA shall be implemented where feasible.~~

118. The following new Policy 4.84.5 shall be added after Policy 4.54:

**Policy 4.84.5** For purposes of this section, "encroachment" shall constitute any activity which involves grading, construction, placement of structures or materials, paving, removal of native vegetation including clear-cutting for brush management purposes, or other operations which would render the area incapable of supporting native vegetation or

being used as wildlife habitat, including thinning as required in Zone 2. Modification from Policy 4.84 may be made upon the finding that strict application of this policy would result in a taking of private property for public purposes without just compensation.

119. Policy 4.88 shall be revised as follows:

**Policy 4.88:** The City Manager or his/her designee may grant an ~~temporary~~ emergency permit, which shall include an expiration date of no more than one year and the necessity for a subsequent regular CDP application, if the City Manager or his/her designee finds that:

1. An emergency exists that requires action more quickly than permitted by the procedures for a CDP and the work can and will be completed within thirty (30) days unless otherwise specified by the terms of the permit.
2. Public comment on the proposed emergency action has been reviewed, if time allows.
3. The work proposed would be consistent with the requirements of the certified LCP.
4. The emergency action is the minimum needed to address the emergency and shall, to the maximum extent feasible, be the least environmentally damaging temporary alternative.

120. Policy 4.89 shall be revised as follows:

**Policy 4.89:** An emergency permit shall be valid for 60 days from the date of issuance unless otherwise specified by the City Manager or his/her designee, but in no case more than one year. Prior to expiration of the ~~temporary~~ emergency permit, if required, the permittee must submit a regular, CDP application for the development even if only to remove the development undertaken pursuant to the emergency permit and restore the site to its previous condition.

121. Policy 4.90 shall be revised as follows:

**Policy 4.90:** All emergency permits ~~should~~shall be conditioned and monitored to insure that all authorized development is approved under a regular coastal development permit in a timely manner, unless no follow up permit is required.

**Chapter 5 – New Development**

122. On the top of Page 9, the following revisions shall be made to the Special Commercial land use category:

Special Commercial (SC): This land use category is intended to implement the special commercial land use designation and to preserve and perpetuate those areas of the community affording unique pedestrian-oriented commercial centers utilized by residents and visitors and characterized by a wide variety of uses including small specialty retail shop, light industrial uses, offices, and residential loft apartments. Please note that the Highway 101 Specific Plan establishes ~~overriding~~ standards that have been incorporated into the LUP. The (SC) classification is intended to preserve and promote mixed uses within the zone and, where appropriate, within individual developments. This special commercial use area consists of three districts. Cedros Avenue north of Lomas Santa Fe Drive shall be the North Cedros Avenue Business District. The special commercial use area south of Lomas Santa Fe Drive shall be the South Cedros Avenue Business District. The Stevens Avenue special commercial area shall be known as the Stevens Avenue Business District. In the North and South Cedros Districts, existing non-visitor serving uses such as light industrial uses, offices, and residential loft apartments may remain, but redevelopment of these sites should be for tourist and visitor-serving uses consistent with the Visitor Serving Commercial Overlay where feasible.

123. On Page 9, the following revisions shall be made to the Visitor Serving Commercial Overlay:

Visitor Serving Commercial Overlays I and II (VSCO): The purpose of the VSCO is to identify areas that are prime locations for tourist and visitor serving commercial uses, which must be redeveloped exclusively with visitor serving commercial uses, (VSCO I) and primarily visitor-serving commercial uses (VSCO II) .

VSCO I: This land use overlay is intended to reserve sufficient land in appropriate locations exclusively for high-priority commercial recreation and visitor serving uses. The designation provides land to meet the demand for goods and services required primarily by the tourist population, as well as local residents who visit and recreate at the coast. Allowable uses include hotels, motels, restaurants, music venues, entertainment attractions, retail, and specialty/artisan retail commercial uses. Mixed use development with office or residential above the ground level is also permitted. Existing uses may remain and any future redevelopment shall be consistent with the VSCO I overlay requirements.

The VSCO I designation applies to the following areas: the lots fronting Plaza Street from Highway 101 to Acacia Avenue; 717 South Highway 101; 621 South Highway 101; and at the triangle-shaped lot on the northern border of the City, located north of Ocean Street, on the east side of Highway 101. This triangle-shaped lot is adjacent to the San Elijo Lagoon Ecological Reserve. In addition to the above-listed uses, this site may also be developed with open space or public park uses compatible with the adjacent resources.

VSCO II: This land use overlay identifies areas that are currently developed with visitor-serving commercial uses that should be encouraged and promoted, but are not specifically restricted to these uses, as in the VSCO I land use designation. The uses

include ~~provide land to meet the demand for goods and services required primarily by the tourist population, as well as local residents who use the beach area. Visitor serving commercial and/or recreational land uses or facilities designed to enhance public opportunities for coastal recreation and includes beach areas, parks,~~ hotels, motels, restaurants, music venues, entertainment attractions, and specialty/artisan retail commercial uses. ~~This category applies in order to reserve sufficient land in appropriate locations expressly for commercial recreation and visitor serving uses.~~ Mixed use development with residential above the ground level is also permitted. Existing non-visitor serving uses such as light industrial uses, offices, and residential loft apartments may remain, but redevelopment of these sites should be for tourist and visitor-serving uses. The VSCO II designation applies to the following areas: The North and South Cedros Avenue Business Districts, ~~the lots fronting Plaza Streets from Highway 101 to Acacia Avenue; 717 South Highway 101; 621 South Highway 101; at the triangle-shaped lot on the northern border of the City, located north of Ocean Street, on the east side of Highway 101~~, the timeshare developments located at 535 South Highway 101 and north of Via de la Valle, west of Interstate 5; and the two commercially-zoned shopping plazas located east and west of Interstate 5 and south of Lomas Santa Fe Drive.

124. The following revisions shall be made to Policy 5.5:

**Policy 5.5:** Encourage visitor serving retail uses in all commercial zones in the City. Existing visitor serving uses shall be protected and new visitor~~s~~ serving facilities are encouraged. Priority shall be given to the development of visitor serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation over private residential, general industrial, or general commercial development. On land designated for visitor serving commercial and/or recreational facilities ~~priority shall be given to such use over private residential or general commercial development~~, only these uses shall be permitted.

125. The following revisions shall be made to Policy 5.8:

**Policy 5.8**: Encourage new hotel/motel development within the City, where feasible, to provide a range of room types, sizes, and room prices in order to serve a variety of income ranges. Where a new hotel or motel development would consist of entirely high cost overnight accommodations, the development shall be required to provide mitigation as a condition of approval for a coastal development permit, which shall include a mitigation payment to provide funding for the establishment of lower cost overnight visitor accommodations within the City of Solana Beach or North San Diego County coastal area. Priority shall be given to the establishment of lower cost overnight visitor accommodations located within the City of Solana Beach. Such payment shall consist of $30,000 per unit for 25% of the total number of proposed high cost units. Suites or family-sized accommodations may be exempt from this policy.

The payment (i.e. $30,000 in 2011) shall be adjusted to account for inflation according to increases in the Consumer Price Index – U.S. City Average. The required monies shall be

deposited into an interest-bearing account, to be established and managed by the City of Solana Beach. The purpose of the account shall be to establish lower cost overnight visitor accommodations within the City of Solana Beach as the first priority or elsewhere in North San Diego County coastal area as a second priority. The monies and accrued interest shall be used for the above-stated purpose, in consultation with the CCC Executive Director. Any development funded by this account will require review and approval by the Executive Director of the Coastal Commission and a coastal development permit.

126. The following revisions shall be made to Policy 5.16:

**Policy 5.16:** Off-street parking shall be provided for all new development in accordance with the ~~ordinances contained in the LCP~~policies of the LUP to assure there is adequate public access to coastal resources. A modification in the required parking standards through the variance process shall not be approved unless the City makes findings that the provision of fewer parking spaces will not result in adverse impacts to public access.

127. The following revisions shall be made to Policy 5.24:

**Policy 5.24:** Where feasible, p~~P~~ublic use of private parking facilities currently underutilized on weekends and holidays (i.e., serving office buildings) shall be permitted in all commercial zones located ~~west of Highway 101/Pacific Coast Highway~~within ¼ mile of the beach. ~~New non-visitor serving office or commercial development shall provide public parking for beach access during weekends and holidays where feasible.~~

128. The following revisions shall be made to Policy 5.29:

**Policy 5.29:** A minimum of one on-site or on-street parking space shall be required for the exclusive use of any second residential unit, unless approved by City Council pursuant to the City's Affordable Housing policies. However, in the area west of Highway 101, and North of Plaza Street, a minimum of one on-site parking space shall be required without exception for such uses.

129. The following revisions shall be made to Policy 5.31:

**Policy 5.24:** A short-term vacation rental is rental of any portion of a building in a residential district for ~~7~~ 1 to 30 consecutive days regardless of building size, including multiple-family buildings, duplexes, and single-family residences. Short-term vacation rentals are permitted in all residential zones consistent with City code enforcement regulations.

130. Policy 5.32 shall be deleted:

~~**Policy 5.32:** To protect the residential character of its neighborhoods, rentals of less than 7 days are prohibited in all residential zones. Short-term vacation rentals of less than 7 days shall be accommodated within the City's existing hotels and motels which are all located within a few minutes walk to the beach.~~

131. The following revisions shall be made to Policy 5.39:

**Policy 5.39:** For issuance of an unconditional certificate of compliance pursuant to Government Code Section 66499.35 for a land division that occurred prior to the effective date of the Coastal Act (or Proposition 20 for parcels within the coastal zone as defined in that proposition), where the parcel(s) was created in compliance with the law in effect at the time of its creation and the parcel(s) has not subsequently been merged, subdivided, subject to a lot line adjustment, lot split or any other division of land or otherwise altered, the City shall not require a CDP. For issuance of a conditional certificate of compliance pursuant to Government Code Section 66499.35 for a land division that occurred prior to the effective date of the Coastal Act, where the parcel(s) was not created in compliance with the law in effect at the time of its creation, the conditional certificate of compliance shall not be issued unless a CDP that authorizes the land division is approved. In such a situation, the City shall only approve a CDP if the land division, as proposed or as conditioned, complies with all policies of the LCP.

132. The following revisions shall be made to Policy 5.40:

**Policy 5.40:** For issuance of either a conditional or an unconditional~~a~~ certificate of compliance pursuant to Government Code Section 66499.35 for a land division that occurred after the effective date of the Coastal Act, the certificate of compliance shall not be issued unless a CDP that authorizes the land division is approved. In such a situation, the City shall only approve a CDP if the land division, as proposed or as conditioned, complies with all policies of the LCP.

133. Policy 5.45 shall be deleted:

~~**Policy 5.45:** The City shall allow additions to non-conforming structures to be approved provided any such addition does not increase the size or degree of the existing non-conformity.~~

134. The following new Policy 5.45 shall be inserted:

**Policy 5.4~~6~~5:** Existing, lawfully established ~~bluff homes~~structures that are not located on ~~bluff~~ property located between the sea and its inland extent and the first public road paralleling the sea (or lagoon) that were ~~and~~ built prior to the adopted date of the LUP

that do not conform to the provisions of the LCP shall be considered non-conforming structures. Such structures may be maintained, and repaired. Additions and improvements to such structures may be permitted provided that such additions or improvements ~~themselves comply with the current policies and standards of the LCP~~ do not increase the size or degree of the non-conformity. Demolition and reconstruction that results in the demolition of more than 50 percent of the exterior walls of a non-conforming structure is not permitted unless the entire structure is brought into conformance with the policies and standards of the LCP. Non-conforming uses or structures may not be increased or expanded into additional locations or structures. (See Policy 4.16 for structures that are located between the sea and its inland extent and the first public road paralleling the sea (or lagoon).

135. The following new Section 8.5 shall be inserted before Policy 5.46 as revised here:

**8.5. Repair and Maintenance**

**Policy 5.46:** Consistent with the Coastal Act (Public Resources Code §30610(d)), repair and maintenance activities ~~of bluff homes~~ that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities do not require a CDP, although the City may require a permit if the City determines such repairs and maintenance involve a substantial adverse environmental impact that cannot be mitigated.

However, for purposes of compliance with the Public Resources Code Section 30610(d), the following extraordinary methods of repair and maintenance ~~located on or adjacent to bluff property~~ shall require a CDP because they involve a potential risk of substantial adverse environmental impact: […]

136. Policy 5.47 shall be deleted:

~~**Policy 5.47:** Existing, lawfully established bluff home structures that do not conform to the provisions of the LCP may be maintained, and repaired. Except as provided below, additions and improvements to such structures may be permitted provided that such additions or improvements themselves comply with the current policies and standards of the LCP. Extensive remodels to non-conforming bluff homes are not permitted unless the entire structure is brought into conformance with the policies and standards of the LCP. Non-conforming uses or structures may not be increased or expanded into additional locations or structures.~~

137. The following new Section 8.6 shall be inserted after Policy 5.46, and the following new Policy 5.47 shall be inserted:

8.6. Replacement of Structures Destroyed by Disaster

**Policy 5.47:** No coastal development permit is required for the replacement of any structure, other than a public works facility, destroyed by a disaster, if the new structure meets the following criteria:

- Conforms to all current zoning requirements
- Is for the same use as the destroyed structure
- Does not exceed the floor area, height, or bulk of the previously existing structure by more than 10 percent
- Is sited in the same location on the affected property as the destroyed structure

**Chapter 6 – Scenic and Visual Resources**

138. The following revisions shall be made to Policy 6.3:

**Policy 6.3:** Public views to the beach, lagoons, and along the shoreline as well as to other scenic resources from major public viewpoints, as identified in Exhibit 6-1 shall be protected. Development that may affect an existing or potential public view shall be designed and sited in a manner so as to preserve~~,~~ or enhance~~, restore, or mitigate~~ designated view opportunities. Street trees and vegetation shall be chosen and sited so as not to block views upon maturity.

139. The following revisions shall be made to Policy 6.4:

**Policy 6.4:** Locations along public roads, railways, trails, parklands, and beaches that offer views of scenic resources are considered public viewing areas. Existing public roads where there are major views of the ocean and other scenic resources are considered Scenic Roads and include:

- Highway 101/Pacific Coast Highway and Railway Corridor
- I-5
- Lomas Santa Fe Drive

Public views to scenic resources from Scenic Roads shall also be protected.

140. The following revisions shall be made to Policy 6.6:

**Policy 6.6:** New development on properties visible from public trails in and around San Elijo Lagoon and the San Dieguito River Valley shall be sited and designed to protect public views of the ridgelines and natural features of the area through measures including, but not limited to, providing setbacks from the slope edge, restricting the building maximum size, reducing maximum height limits, incorporating landscape elements and screening, incorporating ~~earthly~~ earthen colors and exterior materials that are compatible with the surrounding natural landscape (avoiding bright whites and other colors except as minor accents). The use of highly reflective materials shall be prohibited.

141. The following revisions shall be made to Policy 6.9:

**Policy 6.9:** The impacts of proposed development on existing public views of scenic resources shall be assessed by the City prior to approval of proposed development or redevelopment to preserve the existing character of established neighborhoods. ~~Where feasible,~~ Existing public ~~and private residential~~ views of the ocean and scenic resources shall ~~should~~ be protected~~, as well as, aesthetics and other property values in a manner that is compatible with reasonable development of property~~.

142. The following revisions shall be made to Policy 6.18:

**Policy 6.18:** New buildings and structures should not be placed along inland and coastal bluff-top silhouette lines or on the adjacent slopes within view from a lagoon area, but should be clustered along the bases of the inland bluffs and on the bluff tops set back from the bluff edge. Buildings and structures should be sited to provide unobstructed view corridors from the nearest scenic highway or view corridor road. These criteria may be modified when necessary to mitigate other overriding environmental considerations such as protection of habitat or wildlife corridors.

143. The following revisions shall be made to Policy 6.29:

**Policy 6.29:** Placement of signs other than traffic or public safety signs, ~~public way finding signs, City entrance or gateway signs, utilities, or other accessory equipment that~~ which obstruct views to the ocean~~,~~ or beaches~~, parks, or other scenic areas~~ from public viewing areas, and scenic roads shall be prohibited.

**Chapter 8 –Definitions**

144. The following new definition of Bluff Top Redevelopment shall added to the Definitions section:

**Bluff Top Redevelopment** shall apply to structures located between the sea and the inland extent of the sea and the first public road paralleling the sea (or lagoon) that consist of (1) additions; (2) exterior and/or interior renovations; or (3) demolition of an existing bluff top home or other principal structure which result in:

1. Alteration of 50% or more of an existing structure, including but not limited to, alteration of 50% or more of exterior walls, interior load-bearing walls, or a combination of both types of walls, or a 50% increase floor area; or

2. Demolition, renovation or replacement of less than 50% of an existing structure where the proposed remodel would result in cumulative alterations

exceeding 50% or more of the existing structure from the date of certification of the LUP.

145. The following revisions shall be made to the definition of Coastal Bluff Edge:

**Coastal Bluff Edge** The coastal bluff edge is ~~a line across the coastal bluff at the seaward edge of the top of bluff. The line of the coastal bluff edge is formed by measuring the uppermost point of change in gradient at any location on the subject premises~~ the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the bluff is rounded away from the face of the bluff the bluff edge shall be defined as that point nearest the bluff face beyond which a downward gradient is maintained continuously to the base of the bluff. In a case where there is a step like feature at the top of the bluff ~~face~~, the landward ~~or inward~~ edge of the topmost riser shall be considered the bluff edge. The bluff edge may change over time as the result of erosional processes, landslide, or artificial cut. Artificial fill placed near the bluff edge, or extending over the bluff edge does not alter the position of the bluff edge. In those cases where irregularities, ~~erosion intrusions,~~ structures or bluff stabilizing devices exist in a subject property so that a reliable determination of the bluff edge cannot be made by visual or topographic evidence, the Community Development Director, or Commission, on appeal, shall determine the location of the bluff edge after evaluation of a geologic or soils report and physical inspection of the site.

146. The following revisions shall be made to the definition of Coastal Development Permit:

**Coastal Development Permit (CDP)** means a Coastal Development Permit issued pursuant to the Coastal Act by the Coastal Commission or by the City under its certified LCP pursuant to Public Resources Code sections 30519 ~~and 30600.5~~.

147. The following revisions shall be made to the definition of Coastal Structure:

**Coastal Structure** means a structure located at the base of the bluff, such as a seawall, revetment, or rip rap that is located at, or is seaward, of, the bluff dripline. A coastal structure is intended to protect, support and/or stabilize the bluff toe and/or mid or upper bluff area that has experienced, or is likely to experience material erosion or instability and protect a bluff home or other principal structure, or coastal dependent use from the effects of wave action erosion and other natural forces.

148. The definition of Existing shall be deleted

~~**Existing** means in existence at the time of adoption of the LCP by the City.~~

149. The definition of Extensive Remodel shall be deleted:

~~**Extensive Remodel** shall consist of an existing bluff home which results in:~~

1. ~~an addition or series of additions over time, which increases the floor area in the geologic setback area by more than 50% of the floor area of the existing bluff home; or~~
2. ~~Demolition of more than 50% of the perimeter wall of the existing bluff home which is located in the geologic setback area.~~

~~For purposes of the above limitations, 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 geologic setback area.~~

150. The following revisions shall be made to the definition of Mean High Tide Line:

**Mean High Tide Line** means the ambulatory line on the beach (contour line~~s~~) represented by the intersection of the beach face and the elevation represented by the average of all high tides (higher high tides and lower high tides) occurring over a 19-year period. The mean high tide elevation should be represented by the most recent 19-year tidal epoch as established by the National Ocean Service.

151. The definition of Minimum Home shall be deleted:

~~**Minimum Home** means a bluff home of 2,000 square feet of floor area plus a 400 square foot garage, provided it can feasibly be sited with no new foundation footings within the geologic setback area.~~

152. The following revisions shall be made to the definition of Vertical Access:

**Vertical Access** means access to the shoreline from the bluffs behind the beach, by staircase from bluff top to the beach or access to the lagoon from upland streets or properties.

153. A list of minor typographical errors, misspellings, and other grammatical errors located throughout the LUP will be provided to the City for correction when the LUP is adopted and reprinted. A list of these corrections will be retained in the LUP file in the San Diego district office.

## PART IV. FINDINGS FOR DENIAL OF CERTIFICATION OF THE SOLANA BEACH LAND USE PLAN, AS SUBMITTED, AND APPROVAL, AS MODIFIED

The Commission finds and declares as follows:

### 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 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 use of his, her or its property, consistent with Coastal Act requirements, as implemented through the LUP.

The bulk of the policies dealing with shoreline development are contained in Chapter 4 (Hazards & Shoreline/Bluff Development) of the LUP, although some relevant policies are in Chapter 5 (New Development). The LUP policies address preferred types of bluff retention devices, sand mitigation fees and a public recreation payment, brush management and fire hazard, steep hillsides, erosion, floodplain development, non-conforming structures, bluff top development strategies, standards for new bluff top development, policies on additions to existing structures on bluff tops, repair and maintenance of bluff top structures, and policies for demolition and reconstruction of blufftop homes. The LUP provides criteria for when and how various types of shoreline protective devices can be approved.

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 (l) 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.

As background, in Chapter 8 (Definitions), the City defines “Bluff Retention Devices” as including all forms of shoreline protection, from seacave infills, to seawalls, to mid and upper bluff protection. “Coastal Structures” refers only to structures located at the base of the bluff (seawalls or seacave fills), and “Upper Bluff System” is a device to retain the portion of the bluff located above areas subject to marine erosion. This staff report uses the City’s terminology as appropriate, although “shoreline protection” is also used throughout the LUP and this report to generically refer to all forms of shoreline and bluff structures used to protect blufftop structures from erosion.

As submitted, the LUP does not have entirely clear objectives and goals for planning in hazardous areas. Specifically, as written, the policies do not clearly lay out a strategy for regulating bluff top development in order to limit the amount, type, and extent of development that is located in a hazardous and/or unstable environment. This should be the main goal of the policies of this Chapter, since such development is itself at risk, and can lead to protective measures, such as bluff retention devices, brush clearance, and flood control devices, that adversely impact public access, public recreation, visual quality, and environmentally sensitive habitat, contrary to the intent of the resource protection policies of the Coastal Act. With this broader strategy in mind, the policies should lay out strict and specific requirements for 1) prohibiting new development in hazardous areas; 2) limiting additions to development located in hazardous areas; and 3) defining and regulating redevelopment that extends the life of such existing structures at risk from hazards.

Shoreline Hazards

In addition, the City's overall strategy for development in hazardous areas did not require consideration of the full range of options that must be analyzed when planning shoreline development. For example, the LUP did not consider or encourage the gradual phase out of existing development at risk from geologic hazards, or require a strict analysis of alternatives to shoreline protection. Without such considerations, the LUP is not consistent with section 30253 of the Coastal Act. Therefore, the LUP, as submitted, cannot be found consistent with sections 30235, 30236, 30250 and 30253 of the Coastal Act.

The bluffs and beaches in the City of Solana Beach are public natural resources and a source of public recreational opportunities, public accessways, natural habitat, and an important part of the City's natural beauty. The Coastal Act policies provide for the protection of public resources and acknowledge the need to protect existing private development. However, the protection and enjoyment of private property must not come at the public expense, when there are feasible alternatives that do not infringe on the public resources.

The suggested modifications lay out a strategy for shoreline development and the protection of public resources in Solana Beach that includes an acknowledgement of the unique geology of the City, and the historic pattern of bluff top development. Solana Beach's shoreline has been almost completely built out; there is only one vacant bluff top lot in the entire City. Most of the existing structures located along the City's blufftops were built in a location that is now considered at risk from shoreline erosion. This is due in part to the distinctive geology of Solana Beach's shoreline.

Seacave/Notch Fills

The bluffs in Solana Beach are mostly approximately 80-foot high, and include a "clean sands" lens located between the Torrey Sandstone and Marine Terrace Deposits (at approximately elevation 25-35 ft.). The clean sand layer has been described as a very loose sandy material with a limited amount of capillary tension and a very minor amount

of cohesion, both of which cause the sandy material to dissipate easily, making this clean sand layer, once exposed, susceptible to wind blown erosion and continued sloughing as the sand dries out and loses the capillary tension that initially held the materials together.

When on-going wave action, often exacerbated by a lack of beach sand, results in bluff retreat and erosion, the presence of the clean sands creates a process where the clean sands rapidly undermine the upper sloping terrace deposits causing the upper bluff to collapse, thereby exposing more clean sands to wind erosion which then results in more upper bluff collapses. Gentle sea breezes and any other perturbations, such as landing birds or low-flying helicopters, can be sufficient triggers of small or large volume bluff collapses, since the loss of the clean sands eliminates the support for the overlying, slightly more cemented, terrace deposits. This cycle can occur so quickly (over months or days, rather than years) that the upper bluff never achieves a stable angle of repose.

The cycle of collapse and retreat can only be halted by constructing protection at least 35 feet high in order to completely cover the clean sand lens. The process of undercutting and notching of the bluffs seen along the Solana Beach shoreline represents the natural process of bluff retreat and erosion in this portion of North San Diego County. The process has clearly accelerated in Solana Beach over the last decade as the amount of sand on the beaches has decreased and the bluffs are subject to more frequent wave action. Because all of the bluff top lots are currently developed with single and multi-family structures, there is very little opportunity for the bluffs to retreat without adversely affecting the safety and stability of existing principal structures. Thus, while the Coastal Act policies require siting new development in order to avoid shoreline protection, some amount of shoreline protection along much of Solana Beach may be unavoidable.

The LUP policies, as modified, are designed to guide development such that impacts from shoreline protection are avoided whenever possible, and that when shoreline protection is unavoidable, it is limited to the greatest extent feasible to lower bluff protection only. Also, the impacts from shoreline protection must always be fully mitigated. Therefore, suggested modifications have been made to Policy 4.52 that would allow seacave/notch fill projects to be approved, even when an existing principal structure is *not* in imminent danger or meeting the standard for construction of a seawall. Such projects would function as preventative measures that, on the whole, will serve to minimize impacts to coastal resources. Seacave/notch fills can delay the type of erosion and bluff retreat described above by preventing the exposure of the clean sands, thereby avoiding, at least for a number of years, the cycle of rapid bluff retreat associated with the clean sands. Notch and seacave fills are a relatively minimal type of protection that can be expected to delay the need for a much larger seawall-type of shoreline protection that is far more visually obtrusive, and requires more alteration of the natural landform. As modified, the LUP clearly requires that all impacts to sand supply, public access and recreation, and visual quality from seacave/notch fills must still be assessed and mitigated. But the impacts, and thus, the mitigation required, are significantly less than those associated with other forms of shoreline protection, such as seawalls and upper bluff structures.

Seawalls

When seacaves and undercut notches in the bluffs are allowed to collapse and the bluff retreats, it is likely to expose the clean sands lens. At this point, slowing or stopping bluff retreat and protecting the existing bluff top structure in its current position typically requires construction of an approximately 35-foot seawall, to cover the clean sands lens. Although seawalls, like all shoreline protective devices, are required to mitigate for visual impacts to the extent feasible, they inevitably significantly alter the natural appearance of the bluff face. Thus, Policy 4.53, as modified, requires that such coastal structures be approved only if it can be found that the coastal structure is more likely than not to preclude the need for a larger coastal structure or upper bluff retention structure. In addition, the analysis for such a project must look at a range of potential alternatives to shoreline protection, and must take into account the history of the bluff top structure, including any applicable conditions of previous permit approval. Over the years, development along the shoreline has been approved by the Coastal Commission including seawalls, improvements to existing structures and new development with conditions of the permits requiring the acknowledgement that alternatives to shoreline protection or bluff altering devices would be considered potentially feasible in the future as a future response to erosion. In these cases, there may be feasible alternatives to the construction of shoreline protective devices, such as removing portions of the principal structure, or demolishing and rebuilding a new, potentially smaller structure in a safe location on the site.

Upper Bluff Protection & Caissons/Underpinning

Section 30235 of the Coastal Act permits the construction of seawalls and other shoreline protective devices when required to protect existing structures. The Commission acknowledges that some amount of shoreline protection will likely be required in many locations in Solana Beach. However, as noted, seawalls do have a substantial adverse impact on scenic quality of the shoreline, as well as on public access and recreation. They are, however, typically quite successful in stopping or delaying upper bluff retreat for a significant period of time. Having granted lower shoreline protection for an existing structure as permitted under Section 30235, it is important that every effort be made to avoid the construction of mid and upper bluff protective devices that substantially alter the natural landform of the bluff, and severely degrade the visual quality of the shoreline. The Coastal Act does not presume that unlimited amounts of shoreline protection must be permitted under all circumstances.

Thus, as modified, LUP policies make it clear that once a lower seawall has been constructed, mid and upper bluff protection devices cannot be approved unless a detailed alternatives analysis determines that there are no feasible alternatives. Specifically, Policy 4.56 requires consideration of a revised building footprint and foundation system (e.g., caissons) with a setback that avoids future exposure and alteration of the natural landform as an alternative to mid and upper bluff protective devices, and a determination that such an alternative is not feasible.

Caissons are foundation systems created by drilling holes and filling them with concrete. The caissons can be drilled to bedrock or deep into the underlying strata, as necessary, depending on the soil type and the required factor of safety for the site. The piers provide stability and support for the above structures, such that even on the small lots that exist along the Solana Beach shoreline, the structures they support could be sited in a location that would be safe from the threat of erosion for the life of the structure. The drawbacks of caissons are that even though initially placed below ground, when they are constructed close to the edge of a bluff, should the bluff continue to erode, the piers can become exposed, revealing a concrete structure representing exactly the type of visual blight and substantial alteration of the natural landforms of the bluff that section 30253 of the Coastal Act prohibits.

Therefore, as modified, the LUP permits the use of caisson foundations as an alternative to mid and upper bluff protection when the caissons are used to resite/rebuild new development set back in a location safe from erosion for 75 years, and far enough inland from the bluff edge such that it can reasonably be expected that the caissons will never be exposed. In other words, once a site is protected by a seawall and thus, no longer threatened by marine erosion, should the existing principal structure be further threatened by the instability of the upper bluff, rather than approve mid or upper bluff protection, the City must determine that moving and/or rebuilding the existing structure on a safer inland location on the lot, is not a feasible alternative.

Policy 4.27, as modified, requires that all new bluff property development be set back from the bluff edge a sufficient distance to ensure it will not be in danger for erosion and that it will ensure stabiilty for its projected 75-year economic life. Typically, as decribed in Policy 4.27, determining this location involves a quantitative slope analysis demonstrating a minimum factor of safety. In no case can the setback be less than 40 feet from the bluff edge, and only if it can be demonstrated that the structure will remain stable, as defined above, at such a location for its 75-year economic life and has been sited safely without reliance on existing or future bluff retention devices. Because the shoreline lots in Solana Beach are narrow, there are many lots for which it would be difficult, if not impossible, to build on and meet this criteria.

However, Policy 4.25, as modified, allows the City to consider as an option for new structures, the use of a caisson foundation with a minimum 40 foot bluff top setback, if caissons would allow the structure to meet the stability requirement and avoid alteration of the natural landform along the bluffs, i.e., exposure of the caissons in the future. The Commission's engineer has reviewed the LUP and the geologic conditions of many lots on the Solana Beach shoreline. He has concluded that in many cases, once the lower bluff and clean sands lens is encapsulated by a seawall, it is likely that the upper bluff will be able to reach a stable angle of repose at approximately 35 degrees (as measured from the top of the seawall). At this point, the bluff may remain relatively stable for years. Therefore, under this scenario, it can reasonably be assumed that a caisson foundation located inland of the 35 degree line, will not become exposed.

To be clear—Policy 4.27, as modified, requires new development to be sited without reliance on existing bluff retention devices; the siting of a new structure cannot depend

on the presence of an existing seawall to determine a safe location. But for a blufftop lot that already has a seawall, this policy may allow construction of a new home, albeit most likely a smaller home, because the caissons would allow the new home to be sited safely, while the presence of the seawall would ensure that the caissons will not be exposed in the future. Currently, the only option for some bluff top property owners is to maintain their existing residence in place, because there is no safe location to relocate on the site if caissons are not used. In any case, as modified, the LUP requires that before any application for mid or upper bluff protection can be approved, the City must determine that relocating/rebuilding the structure a minimum of 40 feet back, with caissons, is not a feasible alternative. Again, the intent of this policy is to encourage, incentivize, and require blufftop property owners to evaluate rebuilding a new safe structure, rather than maintaining an existing structure in a hazardous location that requires alteration of the public bluffs.

Definitions

The definitions section of the LUP mainly covers topics and policies relating to shoreline development. The Commission's geologist has reviewed the submitted definition of "Coastal Bluff Edge" and determined that as submitted, it does not adequately describe certain bluff configurations or the impact of artificial fill. Therefore, suggested modifications add language stating that in cases where the top edge of the bluff is rounded away from the face of the bluff, the bluff edge shall be defined as that point nearest the bluff face beyond which a downward gradient is maintained continuously to the base of the bluff. As revised, the definition notes that the bluff edge may change over time as the result of erosional processes, landslide, or artificial cut. Artificial fill placed near the bluff edge, or extending over the bluff edge, does not alter the position of the bluff edge.

The LUP defines "Existing" as "in existence at the time of adoption of the LCP by the City." However, because there are circumstances where "existing" will refer to structures that are built after adoption of the LCP, or could refer to structures existing at the time the Coastal Act was adopted, such as in the context of existing structures that are entitled to shoreline protection, this definition has been removed to avoid potential confusion.

As submitted, the LUP includes the concept of "Extensive Remodel" which consists of alterations to an existing bluff home which results in:

1. an addition or series of additions over time, which increases the floor area in the geologic setback area by more than 50% of the floor area of the existing bluff home; or
2. Demolition of more than 50% of the perimeter wall of the existing bluff home which is located in the geologic setback area.

For purposes of the above limitations, 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 geologic setback area.

However, this definition is very limited. It does not evaluate the extent of interior remodels, which can essentially replace an entire structure in place. It only applies to bluff homes (when there can be other principal structures on the bluff edge). Perhaps most significantly, it only applies to the portions of an existing bluff home that are located seaward of the geologic setback line. As such, it does not achieve the Coastal Act purpose of identifying and limiting changes to existing structures that constitute such a significant alteration that the proposed development must be considered new development such that it must be (re)constructed consistent with current LCP standards. There are a substantial number of existing structures located on the City's bluff tops that are sited closer to the bluff edge than would be required for new development, and are potentially at risk of geologic hazard. When these non-conforming structures undergo substantial renovations without bringing the entire structure into compliance with the setback requirements, they extend the life of the non-conforming structure, perhaps indefinitely. This is contrary to the goal of gradually phasing out non-conforming structures that will eventually require shoreline protection, and the associated impacts to public access, recreation, sand supply, and other coastal resources.

The suggested modifications therefore delete the Extensive Remodel definition and the references to extensive remodels in the text. Instead, suggested modifications add a definition of "Bluff Top Redevelopment":

**Bluff Top Redevelopment** shall apply to structures located between the sea and the inland extent of the sea and the first public road paralleling the sea (or lagoon) that consist of (1) additions; (2) exterior and/or interior renovations; (3) or demolition of an existing bluff top home or other principal structure which results in:

1. Alteration of 50% or more of an existing structure, including but not limited to, alteration of 50% or more of exterior walls, interior load-bearing walls, or a combination of both types of walls, or a 50% increase floor area; or

2. Demolition, renovation or replacement of less than 50% of an existing structure where the proposed remodel would result in cumulative alterations exceeding 50% or more of the existing structure from the date of certification of the LUP.

This definition is intended to identify and prohibit redevelopment projects that essentially consist of rebuilding existing structures in hazardous, non-conforming locations, unless the entire structure is brought into conformance. The term bluff top redevelopment has been included or replaces "extensive remodel" in all the LUP policies that address revisions to existing bluff top structures, including Policies 4.31 and 4.16. The definition allows a reasonable amount of changes to a existing structure, including up to a 50% increase in the size of the structure, but would not allow the familiar practice of stripping a house to the studs, or gutting the entire interior, or demolishing everything but one wall, and still characterizing the structure as "existing," therefore allowing the unlimited perpetuation of a non-conforming structure.

This definition is particularly relevant to Policy 4.16, which addresses what changes can be made to non-conforming bluff top structures. Policy 4.16 is discussed in detail below, under Non-Conforming Structures.

As submitted, the LUP includes several policies that reference a "Minimum Home." This is defined as a bluff home of 2,000 square feet of floor area plus a 400 square foot garage, provided it can feasibly be sited with no new foundation footings within the geologic setback area. The minimum home concept was intended to define what would be the minimize size structure that must be permitted on a legal bluff top lot in order to be considered the minimum development necessary to avoid a taking of private property for public use without just compensation.

The City surveyed the size of existing bluff top homes and garages to determine this average home size. This information will be valuable in the future in review of alternatives should a situation arise when strict compliance with the LCP policies on geologic setbacks and other development standards would preclude construction of a new primary residence, even with reductions in the front yard setback and parking standards, as described in Policy 4.26, as modified. At that point, the proposed development will have to be reviewed to determine what is the minimum development necessary to avoid a taking. However, this analysis must be done on a case-by-case basis, taking into account the size and configuration of the particular lot, geologic conditions, past permit conditions on the site and the proposed new structure in question. Lot size and geology simply varies too widely along the shoreline to make a blanket determination of what a minimum home size is in advance, and conditions will be subject to change over time.

Furthermore, suggested modifications to Policy 4.26 require this analysis be done as a site-specific LCP Amendment. The LUP policies have been designed to require that new development be limited to only those locations where the Commission can be assured that neither the structure nor coastal resources will be at risk. Any assertion that these standards cannot legally accommodate new development must be reviewed by the Commission to ensure that all potential adverse impacts to shoreline resources resulting from deviations from these standards are avoided, or where unavoidable, are minimized and mitigated.

The definition of "Coastal Structures" has been revised because, as submitted, it does not include revetments or rip rap as a type of shoreline protection. While not a preferred bluff solution, rip rap has been used in the past in Solana Beach, and should be identified in the LUP as a type of protection.

The definition of "Mean High Tide Line" has been revised because, as submitted, it could have been interpreted to mean a particular fixed line. As modified, the definition makes clear that the MHTL is an ambulatory line and explains that the origin of the mean high tide elevation determination is from the most recent 19-year tidal epoch as established by the National Ocean Service.

Suggested modifications expand the definition of "Vertical Access," because, as submitted, the definition would not have included access to San Eljio Lagoon. The

lagoon is an important recreational resource, and the LUP policies regarding the protection and provision of vertical access must encompass access to the lagoon from upland streets and properties.

New Development, Additions to Existing Structures, Repair and Maintenance

In addition to regulating the impacts and requirements for shoreline protection, the policies of the LUP have been designed to promote the long-term goal of reducing the need for shoreline protection in the future.

As submitted, LUP policies addressing repair and maintenance of existing structures, additions, new construction, and reconstruction after a disaster are grouped together in such a way that it is difficult or impossible to draw distinctions between how these various development scenarios should be analyzed. These different development scenarios are treated differently in Chapter 3 of the Coastal Act, however, and in order for the LUP to be consistent with Chapter 3, it must distinguish among these different types of development. Therefore, suggested modifications have been made to Chapters 4 and 5 to clarify the different standards for the construction of new development, including additions (Policy 4.19), repair and maintenance, (Policy 5.46 as revised) and structures destroyed by a disaster (Policies 5.47 as revised).

As modified, Policy 4.19 requires that all new development be set back a safe distance from the bluff edge to eliminate the need for bluff retention devices. Specifically, all new development, which includes additions, must be located landward of the Geologic Setback Lane as set forth in Policy 4.27. This is the basic minimum required to be consistent with Section 30253 of the Coastal Act, which states that development not require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Policy, as modified, does allow accessory structures such as decks, patios, and walkways, which are at-grade and do not require structural foundations to extend into the setback no closer than five feet from the bluff edge. This allowance is made because Policy 4.22, as modified requires that new accessory structures on bluff properties be constructed in a manner that allows easy relocation landward or removal should they become threatened by coastal erosion or bluff failure.

The submitted LUP policies related to repair and maintenance are not consistent with Section 30610(d) of the Coastal Act and its associated regulations and therefore must be denied. Repair and maintenance to existing structures is permitted, as long as the repair and maintenance does not constitute bluff top redevelopment. Suggested modifications to Policy 5.46 (revised) clarifies that the standard for exempt repair and maintenance must be as specifically stated in the Coastal Act and the relevant Code of Regulations, and applies to all structures as specified, not just bluff homes. Policy 5.47 has been deleted, as it applies to non-conforming structures on the bluff face, and suggested modifications have moved all policies that deal exclusively with bluff homes to Chapter 4.

As modified, the policies provide clear direction when, where, and how revisions to existing structures, and new structures must be undertaken consistent with the shoreline protection policies of the Coastal Act.

Non-Conforming Structures

As noted above, as submitted, some policies addressing non-conforming uses and structures are located in both Chapter 4 (Hazards and Shoreline/Bluff Development) and Chapter 5 (New Development). Some general policies for all structures are located in Chapter 4, and some bluff-specific policies area located in Chapter 5.

Because Chapter 4 is the "Hazards & Shoreline/Bluff Development" section, Suggested Modifications have been made to place the policies dealing with structures in potentially hazardous areas in Chapter 4, while structures located outside these areas have been relocated (as revised) to Chapter 5.

Regulations for non-conforming structures are particularly important in Solana Beach, because all of the existing shoreline residences do not meet current standards regarding bluff setbacks, and thus are considered non-conforming uses. Suggested modifications have been made to Chapter 4 (Hazards and Shoreline/Bluff Development) to consolidate and clarify policies on non-conforming structures. Additions to non-conforming structures located between the sea or its inland extent and the first public road paralleling the sea (or lagoon) are most likely to result in adverse impacts to coastal resources, particularly exposure to geologic hazard leading to requests for shoreline protective devices, but also impacts to views and sensitive habitat. Therefore, policies that place strict limits on additions to non-conforming structures located in areas with significant coastal resources have been located in Chapter 4. Policies relating to non-conforming structures in all other locations have been placed in Chapter 5.

Policy 4.16, which regulates changes to non-conforming bluff top structures, makes it clear that legal non-conforming structures may be maintained and repaired, as long as the improvements do not increase the size or degree of non-conformity. Minor additions and improvements to such structures may be permitted provided that such additions or improvements themselves comply with the current policies and standards of the LCP. This includes meeting of the LCP setback requirements. Demolition and reconstruction, or bluff top redevelopment, is not permitted unless the entire structure is brought into conformance with the policies and standards of the LCP.

Policy 5.45 has been revised to set forth policies that apply to additions and improvements to non-conforming structures that are not located between the sea or its inland extent and the first public road paralleling the sea (or lagoon). Strict limits on additions to non-conforming uses in these locations are not necessary. Therefore, this Suggested Modification allows additions and improvements to non-conforming structures provided the additions or improvements do not increase the size or degree of the non-conformity, which is the typical City standard for non-conforming uses. Furthermore, the criteria for what triggers the need to bring the entire structure into conformance with current LCP standards is more lenient in these locations, for the same reason. Rather

than including the same definition of "bluff top redevelopment" for inland redevelopment projects (discussed in greater detail, below, under Definitions), Policy 5.45, as modified, defines demolition and reconstruction that results in the demolition of more than 50 percent of the exterior walls of a non-conforming structure as the trigger for bringing the entire structure into conformance with the policies and standards of the LCP.

Criteria for Approving Bluff Retention Devices

The submitted LUP includes three separate policies listing the criteria, standards, and analysis under which the three broad categories of bluff retention devices can be approved: Seacave/Notch Infills, Seawalls, and Upper Bluff Systems. As proposed, the required alternatives and findings for each of the three types of bluff retention devices (seacaves, seawalls, and bluff protection) are similar, but contain somewhat different wording, options, and formatting, not related to any inherent differences between these structures. Therefore, to avoid confusion, revisions have been made to Policy 4.52 (Seacave/Notch Infill); 4.53 (Coastal Structures) and 4.56 (Upper Bluff Protection) to make the required alternatives and findings generally consistent among all three types of bluff retention devices.

However, as described above under the discussion of different types of bluff retention devices, suggested modifications do make distinctions between the type of alternative analyses which must be made prior to approval of any shoreline protection devices. As modified, lower seacave/notch fills can be approved even if an existing principal structure is not yet in danger from erosion, as long as the structure can be expected to preclude the need for a larger shoreline protective structure. As described above, because the impacts associated with seawalls and, in particular, upper bluff protective devices, are much greater, the required alternatives analysis for these devices is broader, and approval of upper bluff protection must include consideration of: a revised building footprint and foundation system (e.g., caissons) with a setback that avoids future exposure and alteration of the natural landform; and removal or relocation of all, or portions, of the affected bluff home, city facilities or city infrastructure.

The 20-year time period for bluff retention device permits has been revised to begin on the date of coastal development permit approval, as this is a clear, verifiable date, whereas "completion of construction" is subject to interpretation, and could be prolonged for months or even years.

The reference to demonstrating a factor of safety less than 1.5 has been removed from each of these three policies, because, as submitted, it could be interpreted to mean that if it can be demonstrated that the factor of safety on a site is less than 1.5 then the structure is entitled to a bluff retention device. As described in detail in Policy 4.27 (as modified), the 1.5 factor of safety is one factor used in determining a safe location for new development, along with a quantitative slope analysis and calculation of the predicted erosion rate over 75 years. However, the absence of a 1.5 factor of safety on a particular site, is not sufficient evidence that the existing structure requires shoreline protection. In practice, the analysis of need requires a more imminent and significant threat than simply having a factor of safety of less than 1.5.

Suggested modifications remove Subsection C from Policy 4.53 and incorporate it into an earlier portion of the policy, consistent with the formatting for Policies 4.52 and 4.56.

Preferred Bluff Retention Systems

The LUP as proposed contains a list of four types of "preferred bluff retention systems" (see Pages 12-13) which describe four possible types of shoreline protection: a seacave fill; a seawall with upper bluff repair; upper bluff repair; and caisson and tiebacks for a bluff top structure. However, as submitted, the policies do not clearly indicate which options is preferred, or under what circumstances. As noted above, the LUP must contain planning goals and priorities directing development that has the least impact on coastal resources to the extent feasible. In addition, the list of preferred retention solutions omits the option of constructing a seawall that is high enough to cover the loose, sandy "clean sands lens" once it is exposed, without any accompanying mid or upper bluff reconstruction. This option may prevent the need to construct mid or upper-bluff protective devices, which have particularly extensive adverse impacts on the natural bluff landform and the scenic quality of the shoreline, and should be considered only as a last resort.

Therefore, suggested modifications add a "Seawall/Clean Sands Encapsulation" to the list of preferred bluff retention systems, and revise the list of preferred bluff retention devices to distinguish between lower bluff protection, and mid/upper bluff protection. Text is added to the discussion of upper bluff retention systems to reiterate the standards of Policy 4.56 that, for sites where there is existing lower bluff protection, no upper bluff retention system may be approved unless it has been determined that removing and relocating/rebuilding the principal bluff top structure with a caisson foundation system in a location that will avoid future exposure and alteration of the natural landform, is infeasible.

In addition to the suggested text modifications, Suggested Modification #62 requires addition of a new Figure 2 to Appendix B, showing the Very High Seawall option as described.

Twenty-Year Permit for Bluff Retention Devices

The policies of the LUP, as modified, are intended to make it clear that shoreline protection is approved for a particular existing structure when the structure is in danger; it is not intended to allow for additional development in the future in an unsafe location. Thus, as modified, Policy 4.19 prohibits any new development in an unsafe location, and requires that when new development is proposed, any existing authorized shoreline protection on the site be reevaluated to see if there are opportunities at that to time to reduce the impacts of the protective device. The condition does not require that existing shoreline protection be removed at the time new blufftop development is proposed but it does require that the entire site, including any existing shoreline protection, be examined for overall impacts and geologic stability.

Because it is the Commission's hope and expectation that over time, structures will be rebuilt on the bluff top in safer locations, fewer, rather than more, structures should require shoreline protection in the future. Thus, some of the existing shoreline protective devices may become unnecessary over time. As submitted, the LUP includes a 20-year time limit on permits for bluff retention devices, but does not include any policies regarding the process for reauthorizing or removing such devices after expiration of the permit.

Therefore, suggested modifications add a new Policy 4.56.5 requiring that all permits for new bluff retention devices expire 20 years after approval of the CDP. When the permit expires, a new CDP must be obtained. At this point, reauthorization of the permit must include an analysis of geologic site conditions, using the safety criteria contained in the LCP for authorization of a new bluff retention device. In addition, the analysis must also include an evaluation of the structure the bluff retention device was originally constructed to protect. After 20 years, it is possible that the structure on the bluff top has been remodeled or relocated such that the shoreline protection is no longer necessary. Or, the residence may be of an age or condition that construction of a bluff retention device is not reasonable. As modified, all of these factors must be taken into consideration in determining whether the bluff retention device should be reauthorized.

Suggested modifications also add a new Policy 4,20 that requires reassessment of the need for a shoreline protective device in review of any proposal to expand or alter a legally permitted bluff retention, device to eliminate or reduce any adverse impacts the device may have on coastal resources or public access, which should include limited reauthorization for a 20 year period.

Waiver of Rights to Future Shoreline Protection

As submitted, only applicants for new homes where the LUP setbacks and other development standards cannot be met would be required to waive any rights that they might have to a bluff retention device in the future. However, in the past, the Commission has been faced with applications for bluff retention devices for structures that had been approved by the Commission with assurances that the structure would be safe from bluff retreat for the economic life (modified to be specified as 75 years) of the structure. Thus, the Commission now requires that applicants essentially put their own faith and assurance into the technical studies showing that any new development proposed is indeed safe for the economic life of the structure, by waiving any rights that may exist to future shoreline protection for the permitted development. Without this assurance, the Commission cannot be confident that the development is consistent with Section 30253 of the Coastal Act.

Therefore, suggested modifications add a new Policy 4.20.5 similarly requiring that all new development and redevelopment on bluff property waive any rights to a new bluff retention device in the future. By including this policy in the LUP, the Commission can be assured that new development will be consistent with the requirements of Section 30253 of the Coastal Act.

Replacement of Structures Destroyed by Disaster

As submitted, the LUP groups replacement of structures destroyed by disaster with other policies on new development, repairs, and additions to existing structures (see Policy 4.19). As submitted, the required procedures and policies that apply to the replacement of such structures are not clearly consistent with Section 30610 (g) of the Coastal Act, which lists the specific circumstances under which destroyed structures can be replaced without requiring a coastal development permit.

The City has explained the intent of the LUP policies is to permit the replacement of structures destroyed by a natural disaster in the same location, without a permit, even if that location does not conform with the shoreline development and setback policies for new development. Therefore, Policy 5.47, as modified, includes the criteria from the Coastal Act that permits the replacement of a structure destroyed by a natural disaster without a coastal development permit. It is important to note that a "disaster" does not refer to erosion and bluff retreat resulting from the normal, ongoing, natural process of wave action on the bluffs, exposure to the elements, and time. A disaster is inherently a non-routine, sudden or unusual occurrence.

Suggested modifications also relocate the policies dealing with replacement of structures destroyed by disaster to Chapter 5, because these policies apply to structures city-wide, not just in hazard areas..

Bluff Retention Devices Mitigation Programs

The LUP includes a sand mitigation fee, and a public recreation mitigation program. The sand mitigation fee is specifically designed to offset the impacts to sand supply that result from the presence of shoreline protective devices. The public recreation mitigation program is intended to cover other adverse impacts on public access and recreational use.

The sand mitigation fee is a long-established program that is currently being implemented by the Commission for bluff retention devices in the City, and this mitigation fee has been incorporated into the LUP. The City and the Commission have been working over the past several years to determine a similar formula for establishing a fair and adequate mitigation program to offset some of the other adverse impacts shoreline protection has on public access and public recreation. There are a variety of academic studies that have been done over the years on the economic value of beaches, and the City of Solana Beach developed a draft plan to attempt to address the value of its beaches, which would have helped assess the impact to tourism and recreation associated with bluff retention devices. However, this plan has not been finalized. It is the Commission's expectation that the City and the Commission will continue to work on establishing a permanent mitigation program. Future revisions to the public recreation mitigation program can be evaluated and incorporated into the LCP through an amendment.

In the meantime, the LUP requires the City to collect a $1,000 per linear foot of shoreline protection as a deposit to be applied towards a future Public Recreation/Land Lease Payment Program. However, because the final rate has not yet been established,

Suggested Modifications make clear that for projects within the Commission's jurisdiction, the Commission will continue to evaluate the impacts of each bluff retention device on a site-specific, project-by-project basis to determine the required mitigation.

Suggested Modifications clarify that since the LUP is proposed to be certified without a final public recreation payment, any future action to incorporate a final mitigation program must be as an amendment to the certified LCP (see Policy 4.54).

As submitted, the LUP would have allowed the public recreation payment to be expended for sand replenishment (see Page 10 of Chapter 4, Policies 4.39, 4.74.). However, just as the sand mitigation fee is specifically designed to offset the impacts to sand supply that result from the presence of shoreline protective devices, the public recreation program is intended to cover other adverse impacts on public access and recreational use. The public recreation fee is designed to capture impacts to recreation that are not captured by the sand mitigation fee, such as the degradation of the visual experience that can repel visitors. The public recreational fee must be used to promote projects that enhance the recreational experience of the public, such as lifeguard stations, restrooms, etc. Thus, were the fee used for sand replenishment, it would not adequately protect and mitigate the impacts to public recreation caused by bluff retention devices, inconsistent with Chapter 3.

Therefore, suggested modifications require that the fee collected per the sand mitigation fee can only be expended for the replenishment or retention of sand, while the public recreation mitigation program can only be implemented for public access and recreation projects, which could include a variety of projects such as public stairways or public recreational facilities. In addition, suggested modifications clarify that the sand mitigation fees can only be expended for actual sand projects; while there are many worthy studies that can be undertaken to support or facilitate sand mitigation projects, only the actual deposition of sand provides the required offsetting mitigation.

Coastal Development Permit Process

Policy 4.40 of the LUP establishes a two-tiered permit application process, where certain types of routine development would be decided by the City Manager, at a public hearing, while more significant development would be heard and decided by the City Council. However, while it may be appropriate to establish a two-tier system to expedite certain types of permits involving minor changes to existing structures, non-exempt repair and maintenance activities, and similar development, this level of procedural detail would best be contained in the Implementation Plan, where any and all of the various differences between the two tiers (e.g., noticing requirements or hearing procedures, etc.) could be established. In addition, the level of detail required to distinguish between minor and non-minor projects is best located in the IP. For example, "code compliant minor interior remodeling" that constituted redevelopment (pursuant to the Suggested Modification in Chapter 8) would not be minor, and not all landward additions to a bluff home would be consistent with the LUP. These distinctions can be made in the specific and detailed text of the IP.

Therefore, Suggested Modifications to Policy 4.40 delete the proposed two-tier permit policy, and replace it with general language indicating that a two-tiered permit application process will be established in the Implementation Plan. While some permits may be processed administratively and others by the City Council, all coastal development permits are required to be heard or reported at a public hearing, unless they are deemed to be "minor development" pursuant to Section 30624.9 of the Coastal Act.

Shoreline Processes and Public Safety

The submitted LUP contains background information detailing a number of fatalities that have occurred on and around coastal bluffs in San Diego County, as well as policy language stating that bluff retention devices enhancing public safety, and protect public beaches and public beach access in danger from erosion.

The recitation of fatalities associated with coastal bluffs sets an incongruent and misleading tone in a Local Coastal Program which should promote, not discourage, public access and recreation along the shoreline. The beach and ocean is a natural, changing environment with all the inherent risks of any uncontrolled and unpredictable setting, which is also part of the pleasure and beauty of the locale. Public safety should include educational measures such as signage, and as feasible, the presence of lifeguard personnel, but not a list of fatalities in the LUP text. Thus, Suggested Modification #61 removes this language from Chapter 5.

Language regarding the benefits of bluff retention devices has also been removed, as it is factually incorrect and misleading to state that bluff retention devices protect public beaches or public beach access, or enhance public safety (see Policies 4.17, 4.41). Shoreline protection does not and cannot render the inherently risky, changing natural shoreline environment "safe." Upper bluff collapse can continue in the presence of shoreline stabilization measures, and bluff retention devices can fail. 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 upper bluff stabilization are not consistent with the Coastal Act.

Mean High Tide Line (MHTL) Surveys

The submitted LUP contains several references to a MHTL survey done in October 2010, as a standard for determining the City and the Commission's permit jurisdiction (See Policy 4.49; Page 14 of Chapter 4). Suggested Modifications clarify the Commission's appeal jurisdiction, which can be more than just seaward of the MHTL, (for example, historic fill lands). In addition, while periodic MHTL surveys are useful data when assessing the approximate position of the MHTL, the MHTL is an inherently ambulatory line, and cannot be captured by any particular survey. The legal jurisdiction of the City and the CCC cannot rely on a past survey, but must be based on the existing conditions on the ground at the time an application is made. Thus, references to the October 2010

study as a determination of jurisdiction have been removed (see SM #63, and Policy 4.49).

Sand Replenishment, Retention, and Opportunistic Sand Programs

The City has a Sand Compatibility and Opportunistic Use Program (SCOUP), and the LUP contains several policies promoting the periodic sand nourishment of beaches. Suggested Modifications to Policies 4.67, 4.69, and 4.73 clarify that while various beach nourishment and sand retention projects are planned for Solana Beach in the future, these future projects have not yet been approved and are subject to permitting requirements.

In addition, suggested modifications clarify and require that potential sources of beach quality sand from upland development projects that will result in at least 5,000 cubic yards of export should be evaluated for suitability for beach replenishment. Five-thousand cubic yards was chosen as a minimum to capture projects large enough to make beach nourishment meaningful, while avoiding smaller projects such as the excavation of single-family residence basements.

Fire Protection, Floodplains, and Inland Hillsides

Suggested Modifications have also been made addressing brush modification and floodplain policies. As with bluff top structures, there is existing development located in areas of high wildfire risk, and within areas subject to flooding. LUP policies must provide for existing development to be protected and maintained in a manner that avoids impacts to coastal resources to the greatest degree feasible, and to require adequate mitigation to offset the impacts. However, the LUP as submitted does not include policies clearly limiting substantial alterations of rivers and streams as required by Section 30236. Nor does the LUP prohibit all development within floodplains. The LUP includes a Hillside Overlay map, but does not clearly protect steep hillsides that are not contained within the mapped area. Thus, as submitted, flood hazards have not been adequately addressed, and the visual quality and erosive potential associated with steep hillsides are not fully covered by the policies of the LUP.

New development must be designed to avoid impacts to ESHA, coastal wetlands, riparian areas, or other sensitive habitat areas and other sensitive resources. With regard to brush management, as proposed, the LUP policies do not require new development to avoid impacts ESHA, but only to minimize habitat destruction (see Policy 4.76). As proposed, the LUP would allow new structures and additions to existing structures to impact ESHA. However, the resource protection policies of the Coastal Act prohibit such disruption of ESHA for new development. Furthermore, the LUP policies do not clearly define what constitutes impacts, or encroachment into ESHA. Thus, these policies are inconsistent with section 30240 of the Coastal Act and must be rejected as submitted.

In developing suggested modifications, Commission staff have worked closely with City staff on policies addressing brush management and the protection of ESHA, and the City has agreed to revisions to the Fire Hazard Section of the LUP that would have clearly allowed impacts to environmentally sensitive habitat area for new development,

inconsistent with Section 30240 of the Coastal Act, which disallows any significant disruption of ESHA values, and only allows uses dependent on such resources within such areas (see suggested modifications for Policies 4.83 and 4.84). However, as proposed, the LUP would allow new development, including both new structures and additions to existing structures, to encroach within 100 feet of ESHA, with the implementation of "equivalent methods of fire risk abatement are included in project design" (see Policy 4.77).

The intent behind allowing these equivalent methods of fire risk abatement (sometimes referred to as "fire risk reduction alternatives") is to allow additions to, or larger structures, adjacent to ESHA, while still protecting the ESHA, because alternatives to brush clearing would be implemented to protect structures from wildfires. Examples of these alternatives include using ignition-resistant construction materials; retrofitting existing structures by converting from single-paned to double-paned windows; installing noncombustible siding; using ignition-resistant deck materials, nonflammable paints, and noncombustible fencing materials; and building cinderbrick walls. If approved by the Fire Marshal, these alternatives could allow a larger home, or an addition to an existing residence, while actually reducing the amount of necessary brush clearance, say, from the typically required 100 feet, to only 50 feet, thereby protecting and preserving ESHA.

However, the success of these various alternatives to brush clearance has not been well established. Rather, it has been the experience of the Commission over the past several decades that fire protection and brush management requirements are relaxed in the years between conflagrations, only to increase after a large wildfire. One hundred feet is not the maximum amount of clearing typically required—it is the minimum. The City of Malibu and Los Angeles County, for example, both require 200 feet of brush clearance around structures. Once a structure is in place, the Fire Department has the ability, through a nuisance order, to order removal of brush around that structure, regardless of what the LUP states or what the property owner might have agreed to at the time the development was approved. Should time and experience determine that the alternative means of compliance implemented in Solana Beach were ineffective, and that brush clearance was, in fact, required to protect approved development, anywhere that development had been approved closer than 100 feet of ESHA would then result in the need to remove, and significantly disrupt habitat values.

Obviously, there is no guarantee that at some point in the future, the Fire Department will not decide that 200, or 250, or 300 feet of clearance is necessary to protect structures in Solana Beach from the risk of wildfire. However, for now, limiting new development to no closer than 100 feet from ESHA is a prudent, reasonable response to balancing the desires of homeowners and the Coastal Act requirements to protect sensitive habitat.

Therefore, as modified, Policy 4.77 requires that the Fire Marshal determine the fuel modification requirements for all permit applications for development located adjacent to ESHA. Fuel modification requirements for existing development may be reduced if the Fire Marshal determines that alternative compliance to brush management will adequately protect the existing structure, but new development, including, but not limited to, subdivisions and lot line adjustments, must be sited and designed so that no brush

management or the 100 ft. fuel modification zone encroaches into ESHA (See Policy 4.84). The one exception to this standard is that new additions are permitted within 100 feet of ESHA, if the addition would not encroach beyond the stringline of development on either side of the subject site. In such a case, a new addition would not likely result in a requirement for any more brush clearance than already necessary, and thus, suggested modifications to Policy 4.83 allow additions in such cases.

Policy 4.76 requires that development adjacent to environmentally sensitive habitat areas be sited and designed to prevent impacts that would significantly degrade such areas. The Commission's ecologist has determined that brush management within ESHA, including thinning or clearing of vegetation that goes beyond removing dead vegetation, significantly disrupts the habitat value of ESHA. Therefore, suggested modifications add a new Policy 4.84.5 describing what constitutes "encroachment" to ensure all potential impacts that might disrupt the habitat value of ESHA are regulated.

Suggested Modifications also clarify that for purposes of determining existing brush modification requirements, only principal structures should be considered; brush management should not be applied to gazebos or other minor accessory structures in order to allow additions to be constructed closer to ESHA.

With regard to impacts relating to flood risk, Suggested Modifications add Section 30236 of the Coastal Act to the list of relevant Coastal Act sections addressing flood hazard. The City's floodplain map (Exhibit 4-6 of the LUP) indicates that only a small portion of the City, north of Via de la Valle, next to Steven's Creek is within an area subject to flooding. This area is largely built out, and any new development proposed in this area is likely to be infill residential or redevelopment of existing structures. These uses can be permitted in flood prone areas that are historically developed, as long as the structures are located on lots established legally, and the development will not require the construction of new flood protective works, channelization that would adversely impact ESHA, or result in additional flood hazard within the floodplain.

As submitted, Policy 4.6 prohibited only buildings within floodplains; therefore, suggested modifications clarify that no development (not just structures) are permitted in these areas unless no alternative building site exists on the (legally created) lot and proper mitigation measures are provided to minimize or eliminate risks to life and property from flood hazard.

Policy 4.3 of the LUP requires that new development limit exposure to geologic, flood, and fire hazards, and applies the "Hillside/Coastal Bluff Overlay (HOZ)" policies of the Solana Beach Municipal Code (SBMC) to areas designated as within the HOZ on the City of Solana Beach zoning map. However, the SBMC has not been incorporated into the LUP, and the LUP policies are the standard of review for new development in the Coastal Zone.

Therefore, Suggested Modifications clarify that the Hillside Overlay policies in the LUP (referred to in the LUP as the HOZ) are the standard for development, and that these policies apply to any parcel that contains slopes exceeding 25% grade, even if not in the

mapped Overlay. This Suggested Modification is also a requirement to revise Exhibit 5-2 Special Zoning Overlays to change the "Hillside Overlay" reference on the exhibit to "Hillside/Coastal Bluff Overlay," to be consistent with the wording in the text.

As submitted, Policy 4.14 encourages the remediation or stabilization of landslides, which could be interpreted as encouraging substantial landform alteration. Suggested modifications clarify that remediation of landslides is not necessarily encouraged, but when required, only the least environmentally damaging feasible alternative must be approved.

Emergency Actions and Response

The LUP contains several policies (4.88 – 4.90) addressing permitting in response to emergency situations. Suggested modifications have been added making minor corrections removing the City's references to "temporary" emergency permits (all emergency permits are temporary), and adding that the expiration date of the emergency permit must not extend beyond a year, to ensure that all impacts from development are assessed and mitigated as required by the Coastal Act.

Suggested modifications also note that while there may be rare occasions when an emergency permit is issued for work that is inherently temporary (for example, constructing a beach berm), where no follow-up permit is required, in all but those cases, each emergency permit must include requirements to ensure that the development is authorized under a regular permit.

Conclusion

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. This could cause alterations to natural landforms and other 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. Therefore, the LUP must be denied as submitted. As described above, Commission staff is suggesting modifications to the LUP that would address these Coastal Act inconsistencies, thus, if modified as suggested, the LUP can be found to be consistent with the hazard and shoreline protection policies of the Chapter 3.

**2. Public Access/Public 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 accessways 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.

Shoreline Armoring/Public Access and Recreation

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. The suggested modifications described in the above discussion on the Chapter 4 Hazards and Shoreline/Bluff Development policies have been designed to limit the construction of shoreline protective devices in order to address these public access and recreation impacts.

Therefore, this section will address other concerns about the LUP public access and recreation policies. These policies are contained mostly in Chapter 2 (Public Access and Recreation) and Chapter 5 (New Development).

Visitor-Serving Commercial Land Use

The City's existing South and North Cedros Avenue Business Districts are largely composed of high priority tourist-oriented uses such as retail stores, restaurants, and a music venue, in a vibrant, pedestrian-oriented atmosphere, within easy walking distance of the beach and the transit station. The North Cedros Avenue Business District has a greater variety of uses, but also has many visitor-serving uses and is adjacent to the train station. The City also has two major retail commercial districts located on both the east and west sides of Interstate 5, south of Lomas Santa Fe drive, with easy access for I-5 travelers to these visitor and resident serving commercial uses. These are precisely the type of uses that are to be protected and encouraged under the Coastal Act.

However, as proposed, the LUP does not adequately protect visitor-serving commercial land. The LUP does not have a land use category for visitor-serving or tourist-oriented land uses. Visitor serving uses are either included in the City's general Commercial (C) land use designation, which allows a variety of commercial uses, or the Special Commercial (SC) land use designation on the Cedros Business Districts, which allows a wide variety of uses, from retail, light industrial, office and residential. At Commission staff's direction, the City developed a Visitor-Serving Commercial Overlay (VSCO), which has been applied to only five locations—the lots fronting both sides of Plaza Street from Highway 101 to Acacia Avenue; 717 South Highway 101; 621 South Highway 101; and the triangle-shaped lot on the northern border of the City, located north of Ocean Street, on the east side of Highway 101. No protection is given to the City's existing tourist commercial center on Cedros Avenue, or the commercial developments next to the freeway. As proposed, the thriving Cedros Business District could be converted to office uses or other low-priority uses.

In addition, as submitted, the VSCO would allow the designated area to be developed with recreational uses, when the highest priority for these very limited number of parcels is visitor commercial uses, not recreational uses. The City has park and open space designations; the Coastal Act priority in these particular areas is providing accommodations and commercial uses oriented towards visitors. This lack of protection for priority uses is particularly problematic given that there is so little land area in the City where the VSCO would apply. Therefore, as proposed, the amendment cannot be found consistent with the visitor serving, public access and recreation policies of the Coastal Act and must be denied.

In general, the Commission would prefer that high priority uses be protected through a land use designation, rather than an "overlay" which could be read as being a lesser level of protection than an actual land use change. The City of Solana Beach has stated that Proposition T, an initiative measure passed on November 7, 2000, that requires voter approval to "change, alter or increase General Plan Land Use categories, with the exception of changes to land already designated residential that clearly result in a

reduction in intensity or density," prohibits the City from redesignating any land to visitor commercial without a vote of the people. The Commission respectfully disagrees, noting that the initiative, and the City's General Plan, which incorporates the text of the initiative, specifically states "This provision shall not apply to amendments which are necessary to comply with state or federal law or which are necessary to implement or obtain certification of the local coastal program." If the certified LUP were to designate land as visitor commercial, no vote would be required to amend the General Plan to be consistent with and implement the LUP.

Nevertheless, in consideration of the City's wishes, in order to address the lack of land area designated for visitor-commercial in the plan, suggested modifications have been added in the form of a specifically defined, binding overlay that both encourages preservation of the City's existing visitor-serving commercial district, and requires (re)development of a limited number of areas with high priority, visitor-serving commercial uses. As proposed, the same five locations will be given a Visitor Serving Commercial Overlay, which requires that the sites be redeveloped only with high-priority commercial recreation and visitor serving uses. This designation has been modified as "VSCO I." One exception has been made for the triangle-shaped lot on the northern border of the City, located north of Ocean Street, on the east side of Highway 101. This lot, which is adjacent to the San Elijo Lagoon Ecological Reserve, has recently been purchased by the San Elijo Lagoon Conservancy, a non-profit organization dedicated to protecting, preserving and enhancing the San Elijo Lagoon Ecological Reserve. In addition to the above-listed uses, this site may also be developed with open space or public park uses compatible with the adjacent resources.

Suggested Modifications further add a VSCO II land use overlay which identifies areas that are currently developed with visitor-serving commercial uses that should be encouraged and promoted, but are not specifically restricted to these uses, as in the VSCO I land use designation. The uses include hotels, motels, restaurants, music venues, entertainment attractions, and specialty/artisan retail commercial uses. Mixed use development with residential above the ground level is also permitted. Existing non-visitor serving uses such as light industrial uses, offices, and residential loft apartments may remain, but redevelopment of these sites should be for tourist and visitor-serving uses. The VSCO II designation applies to the following areas: The North and South Cedros Business Districts, the timeshare developments located at 535 South Highway 101 and north of Via de la Valle, west of Interstate 5, and the two commercially-zoned shopping plazas located east and west of Interstate 5 and south of Lomas Santa Fe Drive.

As modified, unlike the VSCO I designation, uses in the VSCO II are not strictly limited to visitor-serving uses, but should be maintained and protected as visitor-serving whenever feasible. Timeshares are a lower-priority tourist-serving use, generally providing high-cost visitor accommodations, and no new timeshares are permitted in the City. However, the VSCO II designation in this location recognizes that these existing timeshares provide more visitor opportunities than exclusively residential uses.

Policies 2.32 and 5.5 have been revised to reflect the requirements of Section 30222 that on land planned for visitor serving commercial and/or recreational facilities, priority shall be given to such uses over private residential or general commercial development.

Overnight Accommodations

Section 30213 requires that lower cost visitor and recreational facilities be protected, (i.e., retained). In addition, while lower cost facilities may not always be available, affordable (mid-range) facilities should also be given protection to ensure a wide range of the public are able to access and recreate along the coast. However, the LUP does not have any policies protecting existing lower-cost or mid-range 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.

Pursuant to the public access policies of the Coastal Act, and particularly Section 30213, the relevant portions of which are included in the Solana Beach LUP, the Commission has the responsibility to both protect existing lower-cost facilities, and to ensure that a range of affordable facilities be provided in new development along the coastline of the state. In light of current trends in the marketplace and along the coast, the Commission is increasingly concerned with the challenge of providing lower-cost overnight accommodations consistent with the Coastal Act. Recent research in a Commission workshop concerning hotel-condominiums showed that only 7.9% of the overnight accommodations in nine popular coastal counties were considered lower-cost. Although statewide demand for lower-cost accommodations in the coastal zone is difficult to quantify, there is no question that camping and hostel opportunities are in high demand, and that there is an on-going need to provide more lower-cost and even affordable (mid-range) overnight opportunities along California's coast. For example, the Santa Monica hostel occupancy rate was 96% in 2005, with the hostel being full more than half of the year. State Parks estimates that demand for camping has increased 13% between 2000 and 2005. Nine of the ten most popular campgrounds are along the coast.

There are only two hotels in the City of Solana Beach, with a total of 195 rooms. The City does have two timeshare developments which provide some limited opportunities for overnight accommodations, but as discussed in greater detail below, the City prohibits vacation rentals for less than seven days, limiting opportunities for weekend and other shorter term vacation rentals. According to the City, rates at the two hotels range from a winter low of $90 (considered fairly low cost) to a summer high of $200 (considered high cost).

The City's stock of hotel units is extremely limited, and the prospect that additional hotel rooms will be constructed are limited. As described in detail above, unlike almost all cities within the California Coastal Zone, Solana Beach does not have any land designated for visitor-serving commercial (for uses such as hotels) in their General Plan. As modified herein, the LUP will have a visitor-serving overlay that requires development with visitor-serving commercial, but this overlay would only apply to the two existing hotels, a vacant lot which will likely remain open space, and two small rows

of commercial uses. The City of Solana Beach is largely built out, and there is no other land in the City specifically designated for visitor-serving uses that is likely to provide additional overnight accommodations in the future. Thus, it is particularly important that the City's existing stock of moderate cost hotel units, and any future moderate costs accommodations that should be built in the future are protected and preserved.

Existing businesses do close, and the City does not have the authority or ability to prevent closures of existing hotel or motels, even though such closures remove units from the scarce inventory of overnight accommodations. However, the City does have the authority and obligation under the Coastal Act to require that permitted development involving the demolition of existing lower-cost or affordable accommodations or conversion of such units to high-cost accommodations, provide mitigation by replacing these units with units that are equal to or lower cost than the existing units.

The policies of the LUP, as modified, are intended to provide an incentive for existing and future developers to maintain the existing and any future low or moderate-cost overnight accommodations. As modified, Policy 2.33 requires that the City maintain an accounting of the number of existing motel and hotel rooms and room rates, and work proactively with existing hotel/motel operators and offer incentives to maintain and renovate existing properties. However, if low or moderate costs hotels do go out of business or cease operations, and the proposed redevelopment of the site does not include replacement of the lower or moderate cost units (either on-site or elsewhere in the City), then the new development would be required to pay, as a condition of approval for a coastal development permit, a mitigation payment to provide significant funding for the establishment of lower cost overnight visitor accommodations within Solana Beach or North San Diego County for each of the low or moderate units removed/converted.

Another way that existing low or moderate cost units can be "lost" is through conversion to high end units. When high priced visitor accommodations are located on the shoreline, they occupy area that would otherwise be available for lower cost or mid-range visitor and recreational facilities. Thus, the expectation of the Commission, based upon several precedents, is that developers of sites suitable for overnight accommodations will provide facilities which serve people of all income ranges. If development cannot provide for a range of affordability on-site, the Commission requires off-site mitigation. Thus, should existing low or moderate cost hotel units be converted to high cost units, Policy 2.33 requires mitigation for the loss of the units at a 1:1 ratio.

The City has raised concerns that should one of the two existing hotel properties cease to operate, requiring a mitigation fee to redevelop the site for a use <u>other</u> than a hotel (without providing replacement units elsewhere), could be a disincentive to redevelop the site, resulting in a vacant or blighted property. At this point, this is a theoretical problem; there is no reason to assume Solana Beach will not be able to support the existing stock of 195 hotel units, particularly as the policy requires the City to proactively work with existing hotel/motel operations and offer incentives to maintain and renovate existing properties. It seems truly premature to assume a future hotel not yet proposed will at some point go out of business without a replacement operator. However, in the circumstance that after an extended period of time no hotel developer can be found to

replace existing low or moderate-cost overnight accommodations, the City has the option to request an amendment to the LCP to remove or modify the policy.

The second issue is that even when development does not result in the loss of existing lower cost units, when new overnight accommodations that do not include any lower cost units are proposed, the Commission has typically required mitigation to ensure a range of accommodations are made available to visitors. Suggested modifications add the mitigation payment to Policy 5.8 of the New Development section of the Land Use Plan. This suggested modification requires that where a hotel or motel development would constitute higher cost overnight accommodations, mitigation for the establishment of lower cost overnight accommodations shall be required as a condition of approval for any coastal development permit. The payment must be $30,000 per unit for 25% of the total number of proposed units that are high-cost accommodations.

When referring to overnight accommodations, lower cost shall be defined by a certain percentage of the statewide average room rate as calculated by the Smith Travel Research website (www.visitcalifornia.com) or similar website. A suitable methodology would base the percentage on market conditions in San Diego County for the months of July and August and include the average cost of motels/hotels within 5 miles of the coast that charge less than the statewide average. High cost would be room rates that are 20% higher than the statewide average, and moderate cost room rates would be between high and low cost. The range of affordability of new and/or replacement hotel/motel development shall be determined as part of the coastal development permit process and monitored as part of the City's inventory of visitor overnight accommodations.

The mitigation payment for the conversion or demolition is the same as that which must be paid in association with the construction of new high-end units (that do not involve a conversion or demolition component), except that if the units being removed/converted and not replaced are low or moderate-cost, the mitigation fee shall be applied on a 1:1 ratio for each unit lost.

The $30,000 fee amount was established based on figures provided to the Commission by Hostelling International (HI) in a letter dated October 26, 2007. The figures provided by HI are based on two models for a 100-bed, 15,000 sq. ft. hostel facility in the Coastal Zone. The figures are based on experience with the existing 153-bed, HI-San Diego Downtown Hostel. Both models include construction costs for rehabilitation of an existing structure. The difference in the two models is that one includes the costs of purchase of the land and the other is based on operating a leased facility. Both models include "Hard" and "Soft Costs" and start up costs, but not operating costs. "Hard" costs include, among other things, the costs of purchasing the building and land and construction costs (including a construction cost contingency and performance bond for the contractor). "Soft" costs include, among other things, closing costs, architectural and engineering costs, construction management, permit fees, legal fees, furniture and equipment costs and marketing costs. Based on these figures, the total cost per bed for the two models ranges from $18,300.00 for the leased facility to $44,989.00 for the facility constructed on purchased land.

In looking at the information provided by HI, it should be noted that while two models are provided, the model utilizing a leased building is not sustainable over time and thus, would likely not be implemented by HI. In addition, the purchase building/land model includes $2,500,000.00 for the purchase price. Again, this is not based on an actual project, but on experience from the downtown San Diego hostel. The actual cost of the land/building could vary significantly; as such, it makes sense that the total cost per bed price for this model could be too high. In order to take this into account, the Commission finds that a cost per bed generally midrange between the two figures provided by HI is most supportable and likely conservative.

This payment (i.e. $30,000 in 2007) is to be adjusted annually to account for inflation according to increases in the Consumer Price Index – U.S. City Average. 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, with priority given to developments within the City of Solana Beach.

It is the Commission's expectation that the Implementation Plan will provide more detail on how the monies and accrued interest will be authorized and dispersed. For example, all development funded by such an account should receive review and approval by the Executive Director of the Coastal Commission, and requires a coastal development permit if in the coastal zone. In addition, a plan for alternative dispersion of the monies should be developed in the event that no lower cost overnight visitor accommodation projects can be funded within 10 years of collection of the mitigation payment. For example, any portion of the monies that remain after ten years could 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 City and Executive Director.

Vacation Rentals

The subject of short-term, or "vacation" rentals in the City of Solana Beach has a long, and often controversial history. Prior to incorporation, Solana Beach was part of the County of San Diego. The County had an LCP approved by the Commission, but it was never effectively certified and the County never took permit issuing authority in part because shortly after approval of the LCP, the Cities of Solana Beach and Encinitas incorporated, removing the bulk of Coastal Zone land from the County. The County's LCP is silent on the subject of short-term rentals, and the Commission has typically taken the position that in the absence of a specific prohibition on short-term rentals, they should be considered permissible. At some point after incorporation, the City of Solana Beach adopted an ordinance that defined and regulated short-term vacation rentals, and prohibited rentals of less than 15 consecutive days. This occurred without benefit of a coastal development permit, although such a prohibition is considered a change in intensity of use of land and is therefore "development" under the Coastal Act.

In 2003, after numerous public hearings over the course of year, the City of Solana Beach introduced an ordinance amending the municipal code to allow vacation rentals for a

minimum 7-day period and adopting a strict permit process for vacation rentals. There was considerable public interest in the action, with many residents concerned that vacation rentals, even at a weekly minimum, would bring overcrowding, excessive noise and disorderly conduct to residential areas. Other commenters took the position that the definition of transient occupancy should be less than seven days, since a longer minimum stay hurts owners who want to use their properties for rental income.

Ultimately, the City approved an ordinance prohibiting rentals for less than 7 consecutive calendar days in all residential zones. Short-term rental permits are available for stays between 7 and 30 days, with penalties for owners whose guests create unreasonable noise or disturbances of any kind. The City did not obtain a coastal development permit for the change in short-term rental policy. The subject LUP similarly prohibits short-term rentals less than 7 days in length.

The Commission is well aware that short-term rentals can, when not adequately regulated and enforced, result in impacts to the quality of life for permanent residents. Vacationers do not always have the same goals and incentives to be good neighbors as do long-term residents. However, the strict prohibition on short-term rentals (7 days minimum) is prohibitive for many vacationers who cannot afford the time and expense of a weekly rental, and cannot really be called “short-term,” and the City’s policy eliminates a significant potential source of overnight visitor-serving accommodations in a City that already has a very limited supply of overnight accommodations.

Section 30221 of the Coastal Act requires that oceanfront land be used for recreational-related uses whenever feasible. The City has reported some anecdotal evidence about problems with short-term rentals; it has not established that short-term rentals significantly degrade the residential character of residential beachfront areas. Short-term rentals occur all along the California coastline. Problems with noise and parking issues associated with short-term vacation rentals can be addressed through strict regulations and enforcement. In the City of San Diego, the beachfront communities of Mission Beach, Pacific Beach, and Ocean Beach have very limited hotel/motel accommodations, but residential short-term rentals make up for this limitation.

Short-term rentals are a particularly attractive option for families with children because they include kitchen facilities, and multiple rooms. While there is little expectation that a weekend rental of an oceanfront residential unit in the City of Solana would be considered “low-cost” (currently, a weekly rate for a two-bedroom condominium is in the vicinity of $1,500 a week), it can be a lower-cost alternative to a beachfront hotel when shared among a group. Clearly, a weekend rental would be more affordable than a 7-day rate. In any case, allowing vacation rentals significantly increases the potential pool of overnight accommodations in an area that is currently lacking in such opportunities. As noted above, there are only two hotels/motels in the City, both of which front on Highway 101. There are no commercial recreational facilities of any kind on the shoreline in Solana Beach; the entire shoreline, with the notable exception of Fletcher Cove beach, is occupied by private residential development. There are no options for oceanfront overnight accommodations in Solana Beach, except through private residences. In addition, as discussed above, other than the two existing hotels in the City,

there are not many options for other land areas in the City likely to provide additional overnight accommodations in the future. The City's residential stock is really the only potential the City has to increase the availability of visitor accommodations in the foreseeable future.

Visitors to Solana Beach are not required to stay within the City limits, of course. There are approximately twenty other hotels available within convenient driving distance of Fletcher Cove, including a range of low, moderate, and high end accommodations in the Cities of Encinitas to the north, and Del Mar, to the south. However, it is likely that visitors staying in these locations will visit the adjacent beaches in the cities of Encinitas and Del Mar, not Solana Beach. Cities should ensure that visitors are able to spread out along San Diego County's beach communities, with convenient accommodations and access to each of the region's beaches and tourist amenities. When local land use policies discourage visitors, it results in tourists concentrating in the communities that do provide visitor-accommodations and potentially overtaxing local natural resources, while leaving other beaches as mainly resident amenities. Alternatively, it results in more vehicles on the roadway, as visitors are forced to stay in one community while driving to other beaches.

The Commission is aware that vacation rentals can be a highly contentious issue, and that significant public input at the local level led to the City's decision to prohibit rentals for less than seven days. However, the Commission's perspective must be to consider the statewide demand for overnight accommodations on California's shoreline. Visitors looking for weekend accommodations on Solana Beach's scenic shoreline are not represented at the City's local hearings on vacation rentals. There is abundant evidence that short-term rentals can be compatible with stable, well-maintained residential neighborhoods, and the small beach oriented town character of a city, particularly in high density zoned areas along the shoreline. Other California cities, including Imperial Beach and Encinitas that have placed some restrictions on short-term vacation rentals, typically allow them to occur somewhere in the City, rather than putting a blanket prohibition on them.

In Solana Beach, prohibiting short-term residential rentals throughout the City excludes 100% of the City's residential beachfront housing from merely having the potential to be available to visitors. This would place a significant restriction on the availability of a potential source of lower-cost, overnight visitor-serving accommodations. By prohibiting vacation rentals throughout the City, the proposed LUP would not allow oceanfront land to be used for recreational-related uses whenever feasible, as required by Section 30221 of the Coastal Act.

If the City had proposed a narrowly crafted policy that prohibited residential rentals in low-density areas that are removed from the beach, or perhaps placed an upper limit on the number or percentage of vacation rentals in residential areas, the impact to low-cost visitor-serving accommodations would be limited and perhaps could be found consistent with the Coastal Act. However, as proposed, the prohibition on short-term rentals would have a significant adverse impact on visitors and would set an adverse precedent for

balancing the needs of residents and visitors inconsistent with the public access and recreation policies of the Coastal Act.

Therefore, suggested modifications revise Policy 5.31, which defines short-term vacation rentals as rentals between 7 and 30 days, to define short-term vacation rentals as rentals between 1 and 30 days. Policy 5.32, which prohibits short-term vacation rentals for less than 7 days, has been deleted. Only as modified can the LUP be found consistent with the public access and recreation policies of the Coastal Act.

Parking

The City has incorporated parking standards from their Municipal Code (SBMC) into the LUP, but there are still several references to SBMC policies in the LUP, which is not the standard of review for coastal development permits. Suggested modifications have been made to the parking matrix on Pages 20-23 of Chapter 2, Policy 2.39, and Policy 5.16 to remove references to the SBMC. Policy 2.36.5 has been added to include the shared parking provisions of the SBMC, and the fractional space policy of the SBMC has also been added, both of which are referenced in the submitted LUP.

As submitted, the City included policies allowing the public use of private parking facilities underutilized on weekends, but only west of Highway 101. However, the railroad bridge crossings from Cedros Avenue to the east side of Highway 101 present opportunities for providing parking reservoirs for coastal visitors, and these should be made available when feasible. Therefore, Policy 5.24 has been modified to allow such public use of underutilized parking where feasible within ¼ mile of the beach. In addition, suggested modifications revise Policy 2.30 to make development of a program to utilize existing parking facilities for office and commercial development located near beaches for public access parking a requirement for the City, not a suggestion, as proposed in the LUP.

As submitted, the LUP requires that a minimum of one on-site or on-street parking space be provided for any second residential unit, unless approved by the City Council pursuant to the City's Affordable Housing policies. However, the single family residential neighborhood located west of Highway 101 and North of Plaza street is within walking distance of the public beach accessways at Fletcher Cove and Tide Beach Park, and street parking in this area provides an important public parking reservoir that could be significantly impacted if second dwelling units were allowed to use on-street parking. Thus, as submitted, this portion of the LUP is inconsistent with Coastal Act access and recreation policies and must be denied. Suggested modifications require that in this limited area, on-site parking is required, ensuring that this policy can be certified, as modified, as consistent with Chapter 3.

As submitted, Policy 2.27 of the LUP allows restrictions on public parking, which would impede or restrict public access to beaches, trails or parklands, where "the restrictions have the effect of improving access to parking for coastal visitors." Suggested modifications delete this exemption, as there should not be any circumstance where restricting public parking would improve access to parking.

Suggested modification also correct or revise Policy 2.28, which, as submitted, would allow restrictions on access where there is substantial evidence that prescriptive rights exist.

Private Stairways

As proposed, the LUP does not allow new public or private walking paths on the bluff face (Policy 2.85). However, this could be interpreted as disallowing new public stairways over the bluff, so suggested modifications revise the policy to clarify that new public stairways are not prohibited.

Policy 2.60 prohibits the construction of new private beach stairways, but allows existing permitted private stairways constructed prior to the Coastal Act to be maintained, as long as they are not expanded or replaced. However, because private stairways are non-conforming uses, suggested modifications have been added stating that, as feasible, private stairways, should be gradually phased out or converted to public accessways.

New Development

As with the policies addressing new development in hazardous areas, as submitted, the LUP allows new development to "minimize" impacts to public access and recreation, when Coastal Act public access and recreation policies require that new development must be designed avoid these impacts along the shoreline and trails. In addition, the policies do not clearly protect prescriptive rights, existing trails, and public access easements. As proposed, the LUP would permit the indefinite closure of existing publically owned accessways without a permit if concerns about public safety were raised.

Therefore, suggested modifications have been made to Policies 2.4 and 2.7, to replace the word "minimize" with "avoid." As submitted, Policy 2.5 states that prescriptive rights must be protected where they "legally" exist, which could be interpreted as referring to only those prescriptive rights that have been formally adjudicated. As modified, the policy makes clear that wherever prescriptive rights exist, access must be protected. In addition, Policy 2.14 has been revised to clarify that open space easements and dedications should facilitate public access wherever and whenever warranted, not just when previously required.

Policy 2.37 has been modified to clarify that public accessways may be temporarily closed without a coastal development permit, in the face of immediate public safety needs. As stated by Section 30611 of the Coastal Act, when immediate action by a person or public agency performing a public service is required to protect life and public property from imminent danger, or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by natural disaster, serious accident, or in other cases of emergency, the requirements of obtaining any permit may be waived. The executive director must be notified of the type and location of the work within three days of the disaster or discovery of the danger, whichever occurs first. However, no permanent

erection of structures valued at more than $25,000 can occur under this emergency exemption.

Policy 2.57 has been revised to clarify that an easement holder that fails to open an accessway within five years of acceptance will be required to transfer it to another acceptable entity; as submitted, the policy would have allowed the original easement holder to continue to fail to open the accessway indefinitely, inconsistent with the public access and recreation policies of the Coastal Act.

Therefore, as modified, the Land Use Plan can be found consistent with the public access and recreation policies of the Coastal Act.

**3. Environmentally Sensitive Habitat Areas**

a. Plan Summary. This section contains policies which are designed to protect and preserve the City's natural resources. Most of the ESHA policies are contained in Chapter 3 – Marine and Land Resources in the LUP, although as covered above, brush modification policies that impact ESHA are in the Chapter 4 Hazard section. 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 ESHA maps and descriptions. 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:

(l) 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 policies that call for the protection of sensitive habitat. However, the policies do not 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 maps identifying Environmentally Sensitive Habitat Areas (ESHA), but the LUP as submitted would allow mapped ESHA areas to be redefined as non-ESHA without amending the LUP. The LUP map does not designate any areas that are not clearly ESHA at this time, and there is no reason to assume they will not be ESHA in the future. The Coastal Act policies prohibiting the disruption of ESHA are very strict and reflect a statewide concern for protecting limited habitat areas. Thus, the LUP, as submitted, could allow ESHA to be re-defined as non-ESHA without a full analysis. This policy must therefore be denied as submitted.

In addition, the LUP omits some protections for ESHA buffers and as discussed in detail above under Fire Protection, does not clearly prohibit new development from impacting ESHA. As submitted, the LUP allows vegetation buffers around wetland and non-wetland ESHA to be reduced in certain cases (Policies 3.23 & 3.67); however, there is no minimum buffer specified. The Commission's ecologist has determined that a minimum of 50 feet is necessary to provide an adequate buffer between development and ESHA and wetlands. Thus, significant impacts to wetlands and ESHA could occur. As submitted, Policy 3.33 requires that if new development is located in or adjacent to, ESHA, an inventory of the plant and animal species on the project site must be done, and if the initial inventory indicates the presence or potential for sensitive species or habitat on the project site, a detailed biological study is required. However, the LUP does not include a definition of sensitive species, and as such, does not clearly protect all ESHA. Rodenticides provide an opportunity for the deadly poison to enter the food chain and harm other species. Thus, use of these substances must be strictly limited adjacent to

ESHA. However, the LUP is silent on the use of rodenticides. These provisions are therefore not consistent with section 30240 and must be denied.

With regard to the protection of ocean species, on Page 26, the submitted LUP provides for some protection of grunion, but does not specifically restrict beach grooming activities when grunion eggs are present. This is the time period when protection is most necessary. California grunion spawn on sandy beaches in the San Diego region between March and August and have the potential to be affected by beach maintenance. Grunion could be impacted if the eggs were crushed or moved, thus preventing the eggs from hatching, inconsistent with the biological resource protection policies of Chapter 3.

In order to be consistent with the ESHA protection policies of the Coastal Act, suggested modifications have been added to the bottom of Page 3 of Chapter 3 clarifying that even if an area is not designated on the ESHA Map as ESHA, it will be treated as ESHA if a site-specific study at the time of proposed development shows that it is ESHA. In addition, Policies 3.1 and 3.7 have been revised to indicate that the areas that are designated ESHA on the City maps must be treated as ESHA until they are demonstrated to be otherwise AND the LCP is amended to remove the ESHA designation. These modifications ensure that ESHA is not redesignated as non-ESHA without appropriate review from the Commission, which can take into account broader statewide concerns regarding habitat protection.

Policy 3.10 has been revised to clarify that both ESHA and ESHA buffers are protected, and encroachment is only allowed if limiting the use to resource dependent uses is not a feasible alternative and would constitute a taking of private property for public use without just compensation. In those cases, mitigation must be provided for all unavoidable impacts. As a result of integrating these requirements into Policy 3.10, Policy 3.11 has become redundant and has been deleted.

Policy 3.12 is revised to clarify that only development permitted in the limited circumstances listed in Policy 3.10 is permitted to impact ESHA. The policy has also been revised to add in a required mitigation ratio for impacts to ESHA of 3:1. The Commission’s ecologist has reviewed the LUP and determined that the mitigation ratio necessary to fully replace the biological productivity of ESHA is 3:1. This ratio is consistent with the standards the Commission has applied elsewhere in San Diego County.

Suggested modification to Policies 3.15 and 3.17 add a prohibition on the use of rodenticides within and adjacent to ESHAs. Policy 3.22 has been modified to require that for projects that include the potential for bird strikes, as feasible, material selection and structural design must be made in consultation with a qualified biologist, CDFG, or USFWS, and that all materials must be maintained throughout the life of the development to ensure continued effectiveness.

In order to protect wetlands and non-wetland ESHA through the use of buffers, suggested modifications to Policy 3.23 allow reductions in the width of buffers to occur, but require that in no case can the buffer be less than 50 feet.

Suggested modifications to Policy 3.33 specify that "sensitive species" are those listed in any of three categories: federally listed, state listed, and California Native Plant Society (CNPS) categories 1B and 2.

Suggested modifications have been made to Policy 3.65 to include the Commission's ecologist's most recent determination of the appropriate mitigation ratios for impacts to wetland and riparian areas. Specifically, the suggested modification requires mitigation at a ratio of 4:1 for all types of wetlands, and 3:1 for non-wetland riparian areas.

The City of Solana Beach does beach maintenance as-needed, not on a regular basis. Suggested modifications to the text on Page 26 of the LUP limit beach grooming activities to above the semi-lunar high tide mark during the months when it is likely to disturb grunion. In the absence of focused surveys, suggested modifications require grunion eggs to be presumed present from March 1 through August 31. The policy is not intended to prohibit emergency vehicles or the construction of permitted shoreline protective devices.

The submitted water quality policies are very extensive and cover most of the Coastal Act requirements for the protection of water quality and sensitive resources. However, as proposed, Policy 3.113 would set the standard for water quality with the Stormwater Permit 2007-0001 approved by the RWQCB. These permits are not always updated in a timely manner, and may not meet all of the Coastal Act standards for water quality protection. Thus, as proposed, the water quality protection policies cannot be found consistent with the Coastal Act.

Suggested modifications have been made to Policy 3.113 and 3.114 clarifying that the standard of review for coastal permits are the policies of the LCP, not just the City's stormwater permit, and while the City's water quality protection measures are primarily based on the requirements of Stormwater Permit 2007-0001 approved by the RWQCB, all permits issued by the City, or the Commission on appeal, must meet all requirements of the LCP, even if those requirements are more protective than those required by Stormwater Permit 2007-0001 or its successor permits.

Therefore, as modified, the Land Use Plan can be found consistent with the environmental resource protection 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. Many of the policies in this section have been addressed in previous sections of this staff report, including parking standards, short-term vacation rentals, visitor-serving commercial uses, and overnight accommodations. This section also contains policies addressing non-conforming uses, promoting mass transit and a pedestrian orientation for new development, policies governing communication facilities, and archeological policies.

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.

Most of the significant inconsistencies with the Coastal Act associated with new development have been previously covered under public access. The LUP includes a wide range of policies addressing land divisions, which for the most part are consistent with the resource and new development policies of the Coastal Act. Policies 5.39 and 5.40 address coastal development permit requirements for development that has been issued a certificate of compliance (COC). However, as submitted, the policies do not cover all of the circumstances where coastal development permits are required. A CDP is required in the following three circumstances:

a) A land division that occurred prior to Coastal Act/Prop 20 that complied with all applicable laws on the books at the time (warranting issuance of an

unconditional COC) but where there has been a subsequent land division on the property after the effective date of the Coastal Act/Prop 20.

b) A land division that occurred prior to Coastal Act/Prop 20 that did not comply with existing law (requiring issuance of a conditional COC).

c) A land division that occurred after Coastal Act/Prop 20.

As written, Policies 5.39 and 5.40 do not cover the second category of cases—conditional COC's. The LUP therefore does not ensure that CDPs would be required in every circumstance in which the Coastal Act requires that they be issued.

Therefore, suggested modifications require that for issuance of a conditional certificate of compliance pursuant to Government Code Section 66499.35 for a land division that occurred prior to the effective date of the Coastal Act, where the parcel(s) was not created in compliance with the law in effect at the time of its creation, the conditional certificate of compliance must not be issued unless a CDP that authorizes the land division is approved. In such a situation, the City can only approve a CDP if the land division, as proposed or as conditioned, complies with all policies of the LCP.

Non-Conforming Uses and Structures

As noted above, some policies addressing non-conforming uses and structures are located in both Chapter 4 (Hazards and Shoreline/Bluff Development) and Chapter 5 (New Development). Some general policies for all structures are located in Chapter 4, and some bluff-specific policies area located in Chapter 5.

Because Chapter 4 is the "Hazards & Shoreline/Bluff Development" section, Suggested Modifications have been made to place the policies dealing with structures in potentially hazardous areas in Chapter 4, while structures located outside these areas have been relocated (as revised) to Chapter 5.

Therefore, suggested modifications have been made to Chapter 4 (Hazards and Shoreline/Bluff Development) to consolidate and clarify policies on non-conforming structures. Additions to non conforming structures located between the sea or its inland extent and the first public road paralleling the sea (or lagoon) are most likely to result in adverse impacts to coastal resources, particularly exposure to geologic hazard leading to requests for shoreline protective devices, but also impacts to views and sensitive habitat. Therefore, policies that place strict limits on additions to non-conforming structures located in areas with significant coastal resources have been located in Chapter 4. Policies relating to structures in all other locations have been placed in Chapter 5.

Policy 5.45 has been revised to set forth policies that apply to additions and improvements to non-conforming structures that are not located between the sea or its inland extent and the first public road paralleling the sea (or lagoon). Strict limits on additions to non-conforming uses in these locations are not necessary. Therefore, this Suggested Modification allows additions and improvements to non-conforming structures

provided the additions or improvements do not increase the size or degree of the non-conformity, which is the typical City standard for non-conforming uses. Furthermore, the criteria for what triggers the need to bring the entire structure into conformance with current LCP standards is more lenient in these locations, for the same reason. Rather than including the definition of "Redevelopment" for these structures, demolition and reconstruction that results in the demolition of more than 50 percent of the exterior walls of a non-conforming structure is the trigger for bringing the entire structure into conformance with the policies and standards of the LCP.

Repair and Maintenance

The submitted LUP policies related to repair and maintenance are not consistent with the Coastal Act and regulations and therefore must be denied. Suggested modifications to Policy 5.46 (revised) clarifies that the standard for exempt repair and maintenance must be as specifically stated in the Coastal Act and Code of Regulations, and applies to all structures as specified, not just bluff homes. Policy 5.47 has been deleted, as it applies to non-conforming structures on the bluff face, and suggested modifications have moved all policies that deal exclusively with bluff homes to Chapter 4.

Replacement of Structures Destroyed by Disaster

As discussed in the shoreline development section of this report, suggested modifications have consolidated the policies dealing with replacement of structures destroyed by disaster to Chapter 5, because these policies apply to structures city-wide, not just in hazard areas. However, because the implications for new development are most significant in hazard areas, the detailed findings for these policies are located in the Hazards section of this report.

Therefore, as modified, the Land Use Plan can be found consistent with the 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. 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, and the implication of these impacts on standard for shoreline development in hazardous areas are discussed above.

The LUP as submitted contains many policies protecting the scenic and visual qualities of Solana Beach. Identified inconsistencies include the option to "restore or mitigate" impacts to views rather than preserve them (Policy 6.3), lack of specific protection for public views from identified Scenic Roads (Policy 6.4), inclusion of protection for private views, which are not protected under the visual resource protection policies of the Coastal Act, and allowing public signage to block views of scenic areas (Policy 6.29).

Suggested modifications remove the option to "restore" or "mitigate" for blocking an existing or potential public view, as new development should always be sited and designed to protect public views, rather than offset the loss elsewhere. As modified, public views to scenic resources from Scenic Roads are explicitly protected, and no signs may obstruct views to the ocean, beaches, parks, or other scenic areas from public viewing areas, and scenic roads.

Therefore, as modified, the Land Use Plan can be found consistent with the visual protection policies of the Coastal Act.

**6. Conclusion**

In summary, the LUP, as proposed, now has policies addressing all of the relevant policy groups in Chapter 3 of the Coastal Act and it addresses all of the public access and coastal resources present in the City's jurisdiction. Deficiencies, though, have been identified in several critical policy areas that affect priority uses, including public access and lower cost visitor support amenities, and the protection of sensitive resources, such as environmentally sensitive habitat areas. In addition, and most notably, the absence of a comprehensive, long-term shoreline management strategy for this community is problematic. Several specific concerns were identified including, but not limited to, the lack of a rigorous analysis for alternatives to armoring the coast; a low threshold for the

abatement of non-conforming structures; the absence of a public recreation mitigation program; a lack of direction to promote planned retreat; unspecified provisions for the reassessment of protective devices at the end of 20 years and the need to integrate sea level rise evaluation into environmental analyses and siting alternatives. Although extensive, the proposed modifications were necessary to address and resolve the identified policy conflicts, omissions and procedural inconsistencies. Therefore, as modified, the Commission finds the plan does conform with the Chapter 3 policies of the Coastal Act and the land use plan may be approved.

## 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. The proposed City of Solana Beach LUP is not consistent with the hazard, visual protection, natural resource protection, and new development policies of the Coastal Act. Suggested modifications have been added as described and listed above. If modified as suggested, no impacts to coastal resources are expected to result from the amendment.

Any specific impacts associated with individual development projects would be assessed through the environmental review process, and, an individual project’s compliance with CEQA would be assured. Therefore, the Commission finds that no significant immitigable environmental impacts under the meaning of CEQA will result from the approval of the proposed LCP amendment as modified.

**RESOLUTION 2011-093**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, ADOPTING THE JUNE 2011 DRAFT LOCAL COASTAL PROGRAM LAND USE PLAN AND SUBMITTAL OF THE APRIL 13, 2011 DRAFT LOCAL COASTAL PROGRAM LAND USE PLAN TO THE CALIFORNIA COASTAL COMMISSION, FOR PROPOSED CERTIFICATION PRIOR TO NOVEMBER 10, 2011.**

**WHEREAS,** the City Council of the City of Solana Beach has developed a Draft Local Coastal Program (LCP) Land Use Plan (LUP) that reflects the long-term policy goals of the City Council; and

**WHEREAS,** the City has been actively engaged in the preparation of a Local Coastal Program (LCP) Land Use Plan (LUP) since 2000. The City's LCP will consist of (1) a Land Use Plan (LUP) and (2) Local Implementation Plan (LIP) (i.e., the implementing zoning ordinances and maps) which together meet the Coastal Act requirements and implement its provisions and policies within the City; and,

**WHEREAS,** the LCP/LUP adoption process is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15265 of the State CEQA Guidelines, the LCP process is exempt from CEQA because the criteria under the Coastal Act are the functional equivalent of the EIR process

**WHEREAS,** the City has prepared and submitted five draft LCP/LUP's to the CCC in 2001, 2006, 2007, 2008 and 2009; and

**WHEREAS,** the 2001 and 2006 submittals were not accepted by CCC staff as complete applications, a hearing was not scheduled, and no CCC action was taken; and

**WHEREAS,** subsequent versions of the draft LCP/LUP in 2007 and 2008 were modified by the City to incorporate the comments of the CCC staff and the input of a stakeholder group; and

**WHEREAS,** in 2007 CCC staff requested that the City staff withdraw and resubmit the application, to allow for additional time for their review. At that time CCC staff indicated it would recommend denial of the draft LCP/LUP without further CCC review and City revision and the City chose to withdraw the application and resubmit it; and,

**WHEREAS,** in 2008 the resubmitted document was significantly modified to respond to the comments of the CCC staff and the input of the stakeholder group. The draft LCP/LUP was presented to the CCC at a hearing in November 2008. The CCC

staff report recommended denial of the draft LCP/LUP, and also included CCC suggested modifications to the draft LCP/LUP that neither City staff nor the members of the citizens' group were in agreement with. At that hearing, the CCC directed its staff to work with the City to develop a certifiable LCP/LUP and return to the Commission for its consideration; and

**WHEREAS,** the City again withdrew its application and prepared a new Draft LCP/LUP that was submitted to the CCC for review in September 2009. After completing revisions to the 2009 Draft LCP/LUP, the stakeholder group subsequently disbanded and the City has continued to work directly with CCC staff; and

**WHEREAS,** CCC staff deemed the September 2009 Draft LCP/LUP submittal complete on August 10, 2010 and provided comments to the City over a 10-month period beginning in March 2010 and ending in January 2011; and

**WHEREAS,** all of the CCC staff suggested LCP/LUP modifications were forwarded to the City Council and to the public on January 26, 2011 and again on April 13, 2011.

**WHEREAS,** the City Council at its meeting on April 13, 2011 directed Staff to transmit the revised Draft LCP/LUP to the City Council, CCC and the public for a public review and comment period beginning April 20, 2011 and ending on June 8, 2011 including the issuance of a Notice of Availability on April 20, 2011 and a published "clean" and a redline/strikeout" version of the revised Draft LCP/LUP showing all of the proposed changes to the Draft LCP/LUP; and

**WHEREAS,** during the six week public comment period which ended June 8, 2011, the City received a total of five comment letters on the April 13, 2011 Draft LCP/LUP; and

**WHEREAS,** additional public comments were received prior to a public hearing and which was provided to the Council during the city public hearing on the matter which was held on June 29, 2011 at a special meeting of the City Council,

**WHEREAS,** the April 13, 2011 Draft LCP/LUP was incorporated by reference by Staff without any recommended further changes in the June 29, 2011 Staff Report for the Council's consideration; and

**WHEREAS,** the City Council, after considering all of the written public comments it received and the public testimony at a public hearing at a special meeting of the City Council on June 29, 2011; including the Staff report, the April 13, 2011 Draft LCP/LUP and all attachments; and

**WHEREAS,** the City Council of the City of Solana Beach acknowledges that the Draft LCP/LUP is intended to be carried out in a manner fully consistent with the Coastal Act; and

**WHEREAS,** the City Council desires to apply the basic policies and provisions contained in the Draft LCP/LUP to current and future projects in the City; and

**WHEREAS,** the City has reviewed and considered all input provided by the public in response to the six week public review and comment period and the Public Hearing on the Draft LCP/LUP at the June 29, 2011 public hearing ; and

**WHEREAS,** the City has determined no further revisions shall be made to the April 13, 2011 Draft LCP/LUP ; and

**WHEREAS,** the City Council is committed to conduct future subsequent public hearings on the Draft LCP/LUP once the Coastal Commission input has been received and reviewed; and

**WHEREAS,** this decision is based upon the comments provided by the Coastal Commission and its staff, evidence presented at the Coastal Commission, oral communications and information presented during the City Council public hearings on this matter.

**NOW THEREFORE,** the City Council of the City of Solana Beach, California does resolve as follows:

1. That the foregoing recitations are true and correct.

2. The City finds the LCP/LUP project exempt from the California Environmental Quality Act pursuant to Section 15265 of the State CEQA Guidelines

3. The City adopts this Resolution in accordance with the provisions of the Coastal Act Public Resources Code (PRC) §30510(a).

4. The City Council hereby adopts the April 13, 2011 Draft LCP/LUP and directs Staff to transmit the April 13, 2011 Draft LCP/LUP to the California Coastal Commission for formal review and consideration at a CCC public hearing prior to November 10, 2011 and continue to coordinate with CCC staff to finalize the LCP/LUP for proposed certification.

5. The City Council hereby makes the following Findings:
   a. The LCP/LUP is exempt from the California Environmental Quality Act pursuant to Section 15265 of the State CEQA Guidelines.
   b. The City's LCP will consist of (1) a Land Use Plan (LUP) and (2) Local Implementation Plan (LIP) (i.e. zoning ordinances and maps) which together meet the Coastal Act requirements and implement its provisions and policies within the City.
   c. The City's LCP/LUP will be implemented in a manner fully consistent with the Coastal Act.

d. The Draft LCP/LUP has been made available to relevant local and state agencies at no cost and to other interested persons and agencies on request.
e. The April 13, 2011 public meeting and subsequent Notice of Availability and the June 29, 2011 public hearing and public notifications of the hearing and availability of the Draft LCP/LUP since April 13, 2011 satisfy the requirements of PRC §13515 establishing procedures providing maximum opportunities for the participation of the public and all affected governmental agencies in the preparation of the Draft LCP/LUP.
f. As a Program, the LCP/LUP will require formal City adoption after Coastal Commission approval.
g. The City will provide additional future opportunities for public review and comment on the LCP/LUP as implementation of the LCP will require approval of the LIP.
h. The LIP will consist of specific sections within the Solana Beach Municipal Code (SBMC 17.68.050-Reserved) and maps that describe actions, which carry out provisions of the LCP/LUP and Coastal Act policies.
i. In order for the City's LCP/LUP to take full force and effect, a public hearing on the LIP will be required.
j. Additional future public hearing(s) will be required; therefore, the City's LCP LUP will not automatically take effect upon approval of the LCP/LUP by the Coastal Commission.

**PASSED AND ADOPTED** this 29th day of June 2011, at a special meeting of the City Council of the City of Solana Beach, California by the following vote:

| | |
|---|---|
| AYES: | Councilmembers – Heebner, Kellejian, Roberts, Nichols, Campbell |
| NOES: | Councilmembers – None |
| ABSENT: | Councilmembers – None |
| ABSTAIN: | Councilmembers – None |

LESA HEEBNER, Mayor

APPROVED AS TO FORM:

JOHANNA CANLAS, City Attorney

ATTEST:

ANGELA IVEY, City Clerk

# CERTIFICATION

*STATE OF CALIFORNIA)*
*COUNTY OF SAN DIEGO)* *SS.*
*CITY OF SOLANA BEACH)*

I, ANGELA IVEY, City Clerk of the City of Solana Beach, California, DO HEREBY CERTIFY that the foregoing is a full, true and correct copy of **Resolution 2011-093** *adopting the June 2011 Draft Local Coastal Program Land use Plan and submittal of the April 13, 2011 Draft Local Coastal Program Land Use Plan to the California Coastal Commission for proposed certification prior to November 10, 2011* as duly passed and adopted at a Special Solana Beach City Council meeting held on the 29th day of June, 2011, and the original is on file in the City Clerk's Office.

ANGELA IVEY, CITY CLERK

Date of this Certification: 7-1-2011

## City Council directed changes to the LUP

Insert the following paragraph in LUP Chapter 1, page 2 at the end of paragraph 3:

"Any public property on which a seawall/bluff retention device is permitted and constructed will remain public property. The title to and/or ownership of the public land would not change because a permit was issued by the City to allow the seawall/bluff protection device to be constructed on public property. Appropriate mitigation for use of the public land would be required and would be paid to the City in the form of a public recreation and/or land lease fee as described further in Chapter 4 of the LUP.

Other Changes to the LUP include those shown below in redline/strikeout.

**Policy 4.42:** Provide for reasonable and feasible mitigation for the impacts of all bluff retention devices which consists of the payment of Sand Mitigation Fees ~~to the City~~ and Public Recreation Fees to the City or other assessing agency~~CCC~~.

**Policy 4.54:** The bluff property owner shall pay for the cost of the coastal structure or Infill and pay ~~to the City~~ a Sand Mitigation Fee and a Public Recreation Fee per Policy 4.42. ~~if assessed by the CCC.~~ These mitigation fees are not intended to be duplicative with fees assessed by other agencies and are intended to provide mitigation for all potential impacts to coastal resources from shoreline protective devices. ~~It is anticipated that fees assessed as required by this LCP will be in conjunction with, and not duplicative with, the mitigation fees typically assessed by the CCC and the CSLC for impacts to coastal resources from shoreline protective devices.~~

Sand Mitigation Fee - to mitigate for actual loss of beach quality sand which would otherwise have been deposited on the beach. For all development involving the construction of a shoreline protective device, a Sand Mitigation Fee shall be collected by the City which shall be used for beach sand replenishment and/or retention purposes. The mitigation fee shall be deposited in an interest-bearing account designated by the City Manager of Solana Beach in lieu of providing sand to replace the sand that would be lost due to the impacts of any proposed protective structure. The methodology used to determine the appropriate mitigation fee has been approved by the CCC and is contained in LUP Appendix A. The funds shall solely be used to implement projects which provide sand to the City's beaches, not to fund operations, maintenance, or planning studies except as needed to facilitate implementation of an actual mitigation project that would put sand on the beach.

Public Recreation Fee – Similar to the methodology established by the CCC for the sand mitigation fee, the CCC is developing a methodology for calculating a statewide public recreation fee. To assist the CCC's efforts, the City has shared the results of their draft study with the CCC to support their development of a uniform statewide Public Recreation / Land Lease Fee. Until such time as the CCC has an approved methodology for determining this fee, the City will collect a $1,000 per linear foot interim fee deposit.

EXHIBIT #2

City Council Adopted Changes

Solana Beach LUP

California Coastal Commission

**Policy 4.74:** Use the funds in the Shoreline District Account to pay for projects such as beach sand replenishment and retention structures, including feasibility and impact studies, operating expenses, insurance, litigation; and to pay to conduct surveys and monitoring programs. Sand Mitigation Fees may only be expended for sand replenishment and potentially retention projects, and ~~CCC imposed~~ Land Lease/Recreation Fees may be expended for sand replenishment and public access and public recreation improvements.

SURFRIDER
FOUNDATION

February 22, 2012

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RE: City of Solana Beach Draft LCP LUP

Dear Chairwoman, Commissioners and Staff,

The Surfrider Foundation is a non-profit, environmental organization dedicated to the protection and enjoyment of the world's oceans, waves and beaches through a powerful activist network. The Surfrider Foundation has over 50,000 members and 80+ local chapters in the U.S., with affiliates in Australia, Japan, France, and Brazil. Please accept these comments on behalf of the San Diego Chapter of the Surfrider Foundation on the proposed Local Coastal Program for Solana Beach.

Our review of the LUP is based on a thorough understanding of the Coastal Act, the circumstances of the LCP development process and more importantly a balance of the local issues and beach use patterns within Solana Beach. We would hope the Commission will take our comments and incorporate our suggested revisions in whole as well as incorporating those from other interested members of the public who have demonstrated a proper grasp of the Coastal Act and the specific conditions within Solana Beach. We have continually participated in the public process in development of the LUP and have also taken the time to meet with staff in stating our positions prior to the development of the final staff report and recommendations.

Unless otherwise noted below, we are in strong agreement with the recommended changes by Commission Staff in their October 2011 review.


We understand there may be further changes in the pending staff report and will provide further comment and corrections if needed. We appreciate Staff's effort in reviewing this complex document and our complex input.

Before Surfrider addresses the specific provisions in the LCP, there are certain broad issues that the Surfrider Foundation feels should be addressed in a comprehensive manner. These include

1. The Right of Public Access.

a. We object to the use of land zoned for Public Parks being used for seawalls

2. Proper Description of the Geologic and Marine conditions in Solana Beach and suggest modifications to correct this description.

The LCP inadequately describes the prevailing and historic conditions.

a. The LCP fails to describe the "wave cut platform" as an important geologic feature of the shoreline.

b. The LCP fails to describe historical cliff erosion predating sand deficits.

c. The LCP fails to properly characterize sand deficits and misleads the public on the contribution of sand in maintaining the shoreline in a static position.

3. Land Lease and Recreation Fees

a. Land Lease and Recreation Fees should be used to fund beach access projects in Solana Beach to offset the adverse impacts as identified in the MEIR on Public Access as well as for the taking of Public Property for a Private use. Staff recommendations for changes 54, 84 and 102 are consistent with this request and we fully support these. These pertain to Ch. 4 and its Policies 4.54 and 4.74

b. The City should impose rent and comparable mitigation for the private use and taking of public property. The City must not wait for the State to enter into negotiations for the leasing of City owned or controlled land. According to the LCP policies and suggested change 91, mitigation will be undetermined on projects that received interim

approval. Per policy 4.54 and proposed change 91, "Until such time as an approved methodology for determining this fee has been established, and the methodology and payment program has been incorporated into the LCP through an LCP amendment, the City will collect a $1,000 per linear foot interim fee deposit. In the interim period, CCC will evaluate each project on a site-specific basis to determine impacts to public access and recreation, and additional mitigation may be required." This leaves uncertainty on the 100's of tf of seawalls approved under interim conditions.

**The commission must:**

**Deny certification of LCP, or approve with Staff's amendments plus:**

- **Add the Land Lease and Recreation fee as a requirement for approval using the existing study as a basis along with Surfrider's suggested improvements.**
- **Specify mitigation for seawalls permitted in the "interim permit process" where the results of the fee study were promised to the Commission. These interim approvals started in 2007 for certain and possibly as early as 2004.**
- **We need a condition of certification to have the fee study complete within 6 months so it can be part of the final LUP.**
- **Additionally the findings on page 64 of the Staff report must be modified in support of this.**

The following sections of the Coastal Act are relevant to such a motion, 30235 (Right to build seawalls under certain conditions), 30210, 30211, 30212 all of which are designed to protect access to the shoreline, 30253 which is designed to minimize development impacts in hazardous zone, 30604 which is meant to prevent prejudice in creation of LCP's and 30220 designed to provide protection of water oriented activities.

4. The LCP needs to be revised to incorporate policies from previous LCP Drafts to acquire Blufftop Property.

a. Seawalls must not be permanently placed on public property. Seawalls placed on public beach must be removed as part of the Local Coastal Plan.


We believe that Staff has addressed this concern for the most part in suggested change 94 and **request that you further strengthen policy 4.65 to only allow permit renewal after 20 years if access and recreation impacts and mitigation are maintained along with continued need for the device to protect a principal conforming structure.**

5. There is no policy to bring non-conforming Seawalls into compliance with the LUP and to charge associated mitigation fees promised for impacts to Public Recreation and the use of Public Lands.

## 1. The Right of the Public Access

The Coastal Act makes clear that, in accordance with Article X Section 4 of the California Constitution, development shall not interfere with the public's right of access to the sea (Coastal Act §§ 30210, 30211.) As currently drafted, the LCP does not sufficiently recognize the public's right to access and enjoy the shoreline. In addition, the LCP as currently drafted does not sufficiently ensure the protection of oceanfront land suitable for recreational use for present and future demand as required by the Coastal Act (Coastal Act §30220 and 30221.) The LCP gives undue preference to bluff property owners while shortchanging the rights of the public. The City has no legal obligation to allow Bluff Retention Devices (BRDs) on its property considering that they obstruct the public's right to access and enjoy the shoreline. As a matter of public policy, the general rule is that a private individual cannot gain prescriptive rights against the public (See Civ. Code §1007; See *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 272.)

Private property rights, reserved to the individual by constitutional provision, are subordinate to the rights of society. It is a fundamental axiom in the law that one's use of private property is subject to restraint to avoid societal detriment. (See *People v. Byers* (1979) 90 Cal.App.3d 140, 147-148.) The LCP fails to adequately consider the impacts of sea level rise on an armored shoreline, and the ensuing harm to public access and enjoyment. The shoreline is a constitutionally and statutorily designated area owned by the State in trust for all the people of the State. The right of privacy does not extend to exclusion of the public from access to public trust lands. Courts have liberally construed the purposes of public trusts "to

the end of benefiting all the people of the state." (*Colberg, Inc. v. State of California Ex Rel. Dept. Pub. Wks.* (1967) 67 Cal.2d 408, 417; see also *Miramar Co. v. City of Santa Barbara,* 23 Cal.2d 170.) Therefore, the LCP must comprehensively address the issue of planned retreat in the context of insuring present and future rights of the public to access and enjoy the shoreline.

It is suggested to make revisions in Sections 1.0, 2.0 and 4.0 to address public access and ownership. Suggested language follows:

> "The shoreline of Solana beach includes 1.7 miles of narrow beach, backed with 75+ foot high seacliffs that are nearly completely built out with houses and condominiums. The vast majority of the bluff face is either owned by the City or burdened with public easements and is zoned for Open Spaced Recreation. There is no requirement for the City to permit BRD's on its property. Nothing in the Coastal Act explicitly requires granting permits for BRD's on publicly owned land. In order to grant such use, the City or other controlling public entity must grant permission to an applicant.
>
> For many years, the City of Solana Beach has recognized the problematic issue of managing a continually eroding shoreline. Seacliff erosion is a natural process occurring throughout San Diego County generally and in Solana Beach specifically; which in the last several decades may be accelerating due to a combination of factors including rising sea level, lack of sand replenishment due to upland residential and commercial developments, harbor and jetty projects, seawalls, rip-rap, revetments and other shoreline armoring devices; and the damming of, and mining in, coastal rivers and streams that formerly carried to the ocean much greater amounts of sediment than are currently being delivered. However according to numerous studies, nourishment projects have compensated for the loss of sand due to damming and seawalls In addition, sea level rise is predicted to accelerate at an increased rate due to the impacts of climate change. When BRD's are constructed on an eroding shoreline, they fix the

beach and will lead to beach narrowing in an environment of rising sea level and absence of compensating sand accretion. These factors indicate the need to develop a comprehensive approach to plan for future changes to the shoreline.

"Coastal Act policies that provide maximum public access will be implemented in this LCP."

It is absolutely critical to recognize the public ownership of the bluffs to the North of Fletcher Cove and the easements burdening the bluff faces to South of Fletcher Cove. Failing to include such important information in the introductory section of the LCP appears to be a major oversight in the description of Solana Beach. Public ownership of the bluff faces should be mentioned in one of the first paragraphs of the LCP. In addition, the LCP should specifically state that the City is not required to permit BRDs on its property. (*Schooler v. Cal.* (2000) 85 Cal. App. 4th 1004.)

California State Parks has as a matter of policy denied use of public bluffs on the north end of Solana Beach for BRD's.

Additionally typical requirements of CDPs granted by the Coastal Commission include provisions that require permission from other entities to establish ownership and a clear preservation of public rights. The following excerpt is from the Staff Report for the Las Brisas Seawall Application

## 2. Proper Description of the Geologic and Marine conditions in Solana Beach

### 2.1. Wave Cut Platform Descriptions

It is suggested to add language to properly describe the geologic setting consistent with the MEIR in Sections 1.0 Introduction and 2.0 Public Access and Recreation. Suggested language follows:

"A series of wave-cut platforms exist off the coast of Solana Beach. A wave-cut platform is formed by the process of cliff erosion via sea level rise acting on the cliff. The beach area is on the modern wave-cut platform. The wave-cut platform has been forming for centuries during the present trend of sea level rise and sea cliff erosion."

From Page 3-7 of the MEIR:

"Four erosional terraces are recognized in the site vicinity area. The three younger terraces are correlated with the late Pleistocene (120,000 years old) Bay Point Formation, and the oldest terrace is correlated with the late to early Pleistocene (1,180,000 to 120,000 years old) Lindavista Formation (Tan and Kennedy, 1996; Kennedy, 1975). In general, three principal elements are recognized in erosional coastal terraces: a wave-cut platform, an inner edge (shoreline angle), and a seacliff (Figure 3.1-4). A wave-cut platform has a shallow seaward dip of 0.01 to 0.02 feet per foot (Ritter and others, 1995; Group Delta, 1998). The modern wave-cut platform formed as the seacliff retreats stands slightly below water level at the high tide. An inner edge marks the highest sea level maintained during any glacial/interglacial time. The older uplifted platforms are overlain by marine and non-marine terrace deposits. The number and spacing of terraces are determined by the rate of tectonic uplift and the nature of the coastal processes. The marine terrace deposits in the study area are generally correlated with the Bay Point Formation"

Additionally, this area would be useful to add information on future projections of sea level rise.

## 2.2. Historical Evidence of Erosion in Solana Beach

Photographs showing seacaves and notches in Solana Beach in the 1920's are shown in

Figure 1.[1] Figure 2 shows notches and ocean front bluff faces devoid of vegetation as compared to adjacent areas where vegetation is evident. Lack of vegetation indicates active erosion. Also evident is wave run-up directly to the base of the bluffs and lack of a wide sandy beach.

**Figure 1 Picture of SeaCaves from Solana Beach Civic and Historical Society website Circa 1924**

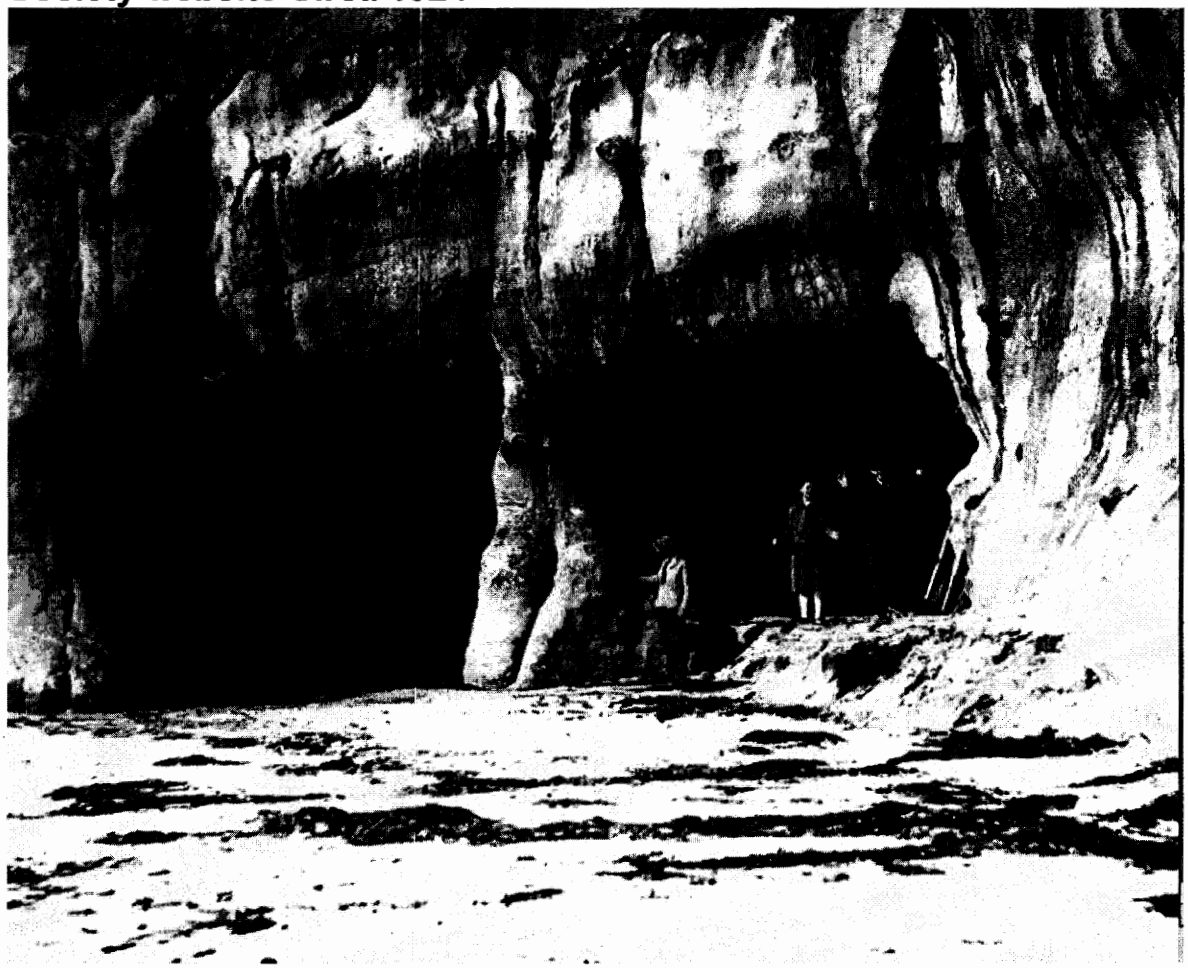
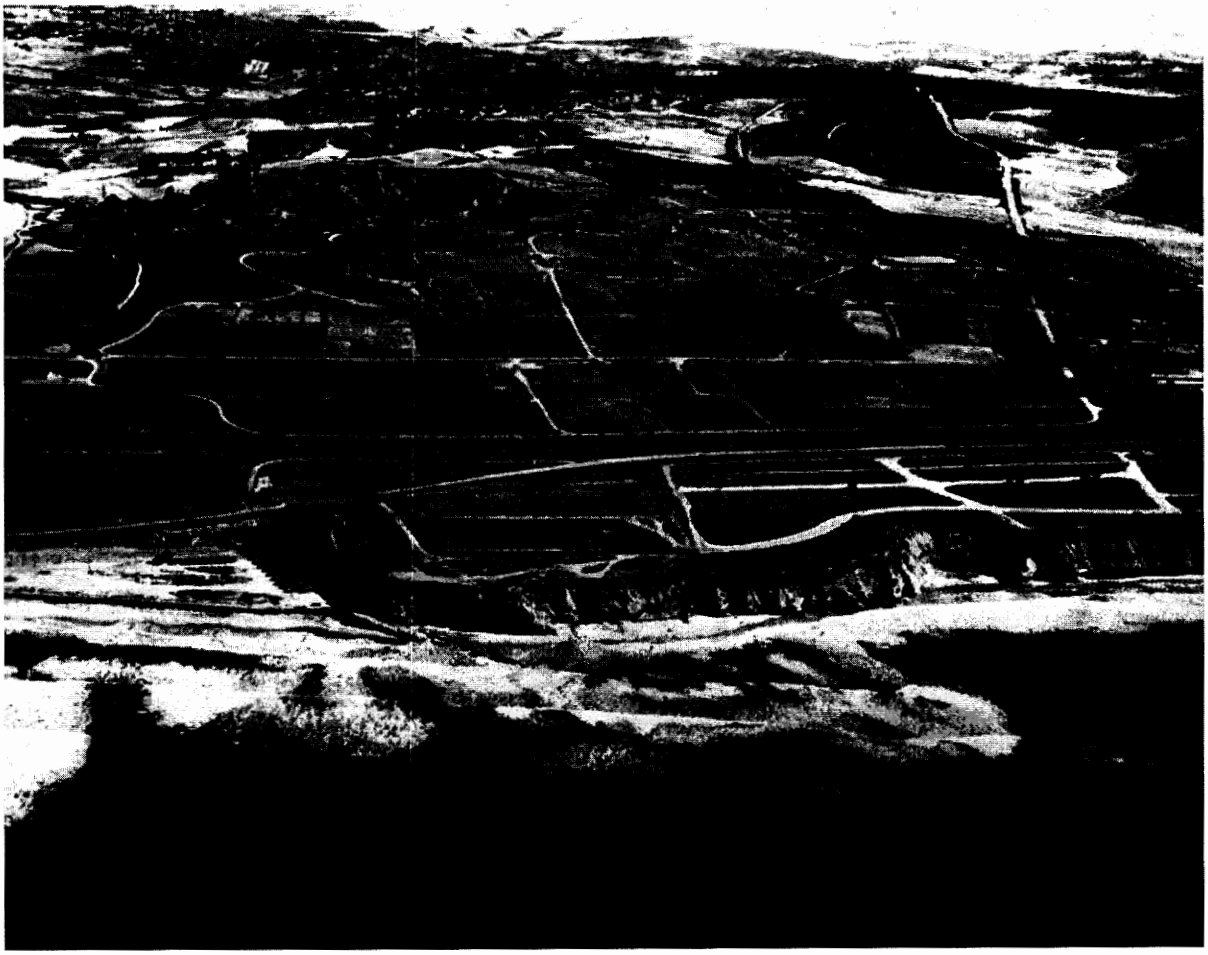


**Figure 2 Aerial View of Solana Beach in 1920's showing lack of vegetation on bluff face and undercutting. Lack of vegetation indicates active erosion as compared to bluffs around the lagoon of same geologic constitution as those fronting the ocean. Also evident**

[1] In addition, see www.californiacoastline.org for aerial photographs of Solana Beach which demonstrate that numerous seacaves and notches existed in 1972.

[2] Kuhn, Gerald G., and Francis P. Shepard *Sea Cliffs, Beaches, and Coastal Valleys of San*

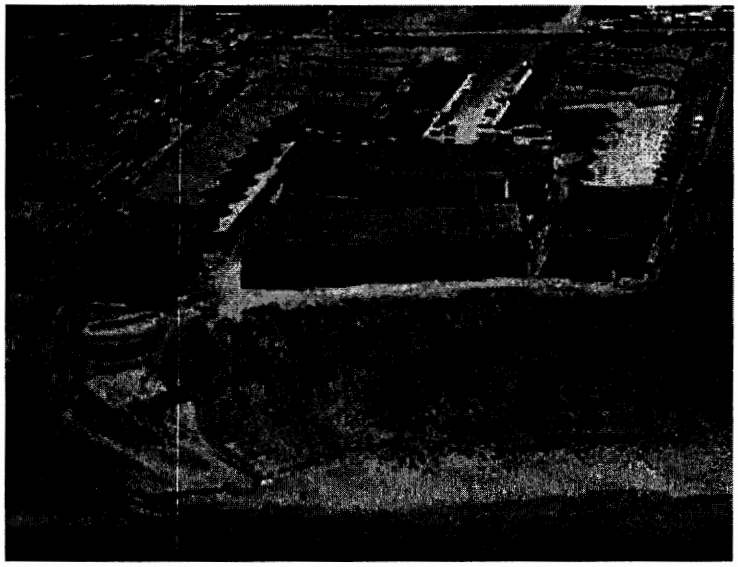
**is waverunup directly to the base of the bluffs and lack of a wide sandy beach. Photo from Solana Beach Civic and Historical Society website.**



In addition, certain condominium projects south of Fletcher Cove constructed seawalls in the early 1970's to guard against bluff erosion while the construction of the condominiums themselves occurred as shown in[2] Figure 3.

[2] Kuhn, Gerald G., and Francis P. Shepard *Sea Cliffs, Beaches, and Coastal Valleys of San Diego County: Some Amazing Histories and Some Horrifying Implications.* Berkeley: University of California Press, c1984 1984. http://ark.cdlib.org/ark:/13030/ft0h4nb01z/

**Figure 3 From Kuhn and Shepherd Bluff Erosion during construction in 1974**



[Full Size]
Figure 33*b*
View of the same site as that in 33 *a* following development of the bluff top, 1974. Note that the bluff face began eroding during the construction. *Photo:* B and A Engineering.

The City's own General Plan (Section 2.3.1) acknowledges large storm events caused erosion damage in Solana Beach in 1939 and 1940. The erosion characteristics of Solana Beach have been well known and well-understood and consist of an historical erosion process and not a fixed shoreline maintained by sandy beaches.

## 2.3. Sand Deficit in the Baseline Conditions of the LCP is Overstated and Inaccurate

The Introduction of Chapter 2 states,

> "The shoreline in Solana Beach, as well as the rest of the San Diego County coastline is actively eroding due to a deficit in the sediment

budget. Well-documented sediment budgets have been prepared by SANDAG and the California Coastal Sediment Management Master Plan that show that beaches throughout San Diego County are eroding. Sandy coastal sediment is not delivered to the shoreline in the amounts historically yielded from watersheds due to flood control activities and urbanization. As such, the volume of sand within the active zone of sand movement and deposition, termed the "littoral cell," is progressively decreasing and beaches are narrowing."

The LCP fails to properly characterize sand deficits and misleads the public on the contribution of sand in maintaining the shoreline in a static position. Recent studies have indicated that the sand input into the Oceanside Littoral Cell has exceeded the natural input when nourishment projects are considered. **Figure 4** shows data from Grandy and Griggs indicating that nourishment projects have kept the sand volume above the natural condition when considering projects from 1950-2002.

| Source | Average Natural Inputs ($m^3/yr$) | Actual Inputs 1950-1979 ($m^3/yr$) | Actual Inputs 1980-2002 ($m^3/yr$) |
|---|---|---|---|
| Rivers/Streams | 220,000 | 100,000 | 100,000 |
| Cliff Erosion | 103,000 | 86,000 | 86,000 |
| Gullying | 20,000 | 20,000 | 20,000 |
| Beach Nourishment | 0 | 438,000 | 260,000 |
| **Total:** | **343,000** | **644,000** | **466,000** |

*Table 2. Long-term changes to the sediment budget include reduced sediment from rivers and seacliffs and the addition of sediment from beach nourishment. Beach nourishment was a larger source of sediment during the 1950s-1970s.*

**Figure 4 Data from Proceedings of Coastal Zone 07, Portland, Oregon, July 22 to 26, 2007, "VARIABILITY OF SEDIMENT SUPPLY TO THE OCEANSIDE LITTORAL CELL", Carla Chenault Grandy, Gary B. Griggs, University of California, Santa Cruz, Earth and Planetary Science Department and Institute of Marine Sciences. This data shows that natural sand volume to the Oceanside Littoral Cell has been exceeded by nourishment projects.**

The LCP should include this information as it is the most recent and relevant information on the subject. The observed beach narrowing is likely caused by the long term sea level rise and natural condition of erosion and sea cliff retreat. Before the cliff collapses episodically, the beach will narrow until the cliff retreats. Long term cliff retreat rates are a function of sea level rise and the density of bluff material among other factors.

Finally, beach nourishment is not the only way to prevent construction of seawalls and other BRD's. In fact, beach nourishment may prove an inappropriate response to sea level rise and other future changes to the shoreline. The purpose of this LCP is to eventually remove the BRDs and return the bluffs to their natural state, allowing the beach to once again reach equilibrium via a combination of cliff retreat and sand delivery either natural or made to match the natural input.

In addition, once the City owns Bluff Homes, there is no requirement to protect such structure with a BRD. Removal and retreat is the most cost effective option.

## 3. Land Lease/Recreation Fees

### 3.1. Uses of Land Lease/Recreation Fees

Land Lease/Recreation Fees are designed to mitigate the loss of the public's enjoyment of the beach. Such fees are imposed to mitigate the impacts to these public rights, as outlined in policies other than Coastal Act section 30235, such as section 30210, 30211 and 30212 as well as 30220 and 30221. (See *Ocean Harbor House Homeowners Assn. v. California Coastal Com.* (2008) 163 Cal. App. 4th 215, 241-42.) Such fee should not be used for sand replenishment, but instead should be reserved for purchasing Bluff Properties and perhaps opening and improving public access to the beach.

### 3.2. Public Land use and Land Lease/Recreation Fees

The Land Lease/Recreation Fee is further distinguished from the typical in lieu fees levied by the Coastal Commission by the fact that nearly all BRD's in Solana Beach are built on either City owned bluffs or on City controlled public access easements. It appears all BRD's are built on land zoned for Open Space Recreation.

The City should have clear policies to ultimately remove BRD's from its Land in order to restore the beach for public use.

The distinction in uses of the Sand Mitigation Fee and the Land Lease/Recreation Fee must be made clear throughout the LCP. If the Land Lease/Recreation Fee is used for sand replenishment, it will be unlikely that such fee will be of a sufficient amount to purchase Bluff Properties or to create sustainable Beach Access enhancements.

The City had previously agreed to identify funding sources that could lead to the removal of Bluff Retention Devices and the acquisition of Bluff Properties that are protected on City owned land or City land zoned for Open Space Recreation and to provide opportunities to remove and to identify sources of funding, other than the Land Lease/Recreation Fee for acquisition of Bluff Properties and other public access improvements. Thus, without clearly segregating the purposes for which the Sand Mitigation Fee and the Land/Lease Fee may be used, the primary mechanisms for implementing the LCP will be destroyed. The LCP LUP will have ineffective financing to eliminate BRD's and hazardous development and will severely impact the public right to enjoy the beach consistent with Article X Section 4 of the Constitution and other access policies of the Coastal Act and Public Resources Code.

Thus, wherever the Land Lease/Recreation Fees are identified it should specify that such fees may only be used for acquisition of Bluff Properties or other similar public access improvements. It should also be specified that the Shoreline District Account described in Policies 4.39 and 4.74 these fees should be used for this purpose and only this purpose.


## 3.3. The City must not wait for the State to enter into negotiations for the leasing of City owned or controlled land.

The Introduction of Section 4 states,

> In April 2010, the City completed a draft fee study and conducted a public hearing on the fee study to determine the amount of fees that maybe appropriately assessed as mitigation for the potential adverse effects on public recreation and public lands resulting from placing a bluff retention device on a public beach. The City received a substantial number of comments on the fee study from local stakeholders including property owners, surfers and CCC staff and the fee study remains a draft. Because this is a statewide issue, the City will provide this draft study and the data developed by the City to the CCC. The City will coordinate with the CCC and other state regulatory entities in developing a uniform statewide Public Recreation / Land Lease Fee.

Comments received after a professional peer review from Surfrider Foundation uncovered glaring errors and omissions in the Fee Study. We attempted in good faith to correct these and put the Fee Study on to a timely completion. We also have continuously pointed out in our comments that the Coastal Act and LCP do not offer any guidance over the City's use of its land for seawalls protecting private property. This is a unique aspect local to Solana Beach.

Further, there is no requirement to let private property owners use City Land. In fact precedent to NOT use public land for private seawalls clearly exists. There is no law which requires a private or public property owner to act to prevent a natural process from harming adjacent properties. (*Schooler v. Cal.,* 85 Cal. App. 4th 1004 (2000).) BRD's are located on publicly owned or controlled land in Solana Beach. As a condition of approval of a BRD, it should be noted that the City waived no rights in public interest in the land. Therefore, the City maintains the ability to remove such uses. In fact, Del Mar removed seawalls located on their

property and charged all associated expenses with such removal to the property owner. (*Scott v. City of Del Mar*, 58 Cal. App. 4th 1296 (1997).)

Therefore, further delay only continues to deprive the public of potential mitigation including income and the potential for seawall removal. Do not wait for the state. The state will not be required to act in the City's interest.

## 4. The LCP needs to be revised to incorporate policies from previous LCP Drafts to acquire Blufftop Property

The following relevant sections were stricken in the new draft from previous drafts. Maintaining these provisions does not adversely affect the proposed LCP and allows for the earlier removal of BRD's as well as providing funding mechanisms to acquire more property or to implement Public Access improvements.

> "Policy 4.68: To acquire Bluff Properties as the City deems appropriate utilizing its First Rights to Offer, First Rights of Refusal, and Option Rights, and other legally available methods to acquire additional sites to expand and enhance the City park and recreation system, as an alternative to allowing Bluff Retention Devices and to maintain and, when feasible, provide new or improved beach access. Notice shall be provided to the Bluff Property Owner in advance of the public hearing. Any discretionary permit issued by the City to a Bluff Property Owner shall be recorded against the subject Bluff Property and shall include the following conditions:
>
> > A. If a Bluff Property Owner desires to sell a Bluff Property, the Bluff Property Owner shall notify the City of his, her or its intent to sell. From the date of said notice, the City shall have a sixty Day First Right to Offer, which expires automatically after the 60th Day, to purchase and enter into an agreement to purchase the Bluff Property for the List Price. The City is obligated to inform the Bluff Property Owner, as soon as possible within said 60 day period, regarding the City's intent to acquire or not acquire the Bluff Property. Unless the Bluff Property Owner and City agree to other terms, the purchase agreement shall provide for a cash-closing within ninety days after receipt by the

City of the notice to sell, subject only to the City's review of title, a current survey and an inspection of the Bluff Home and Bluff Property. If the City elects not to purchase for the original List Price and the List Price is subsequently reduced by the Bluff Property Owner, the City shall be granted a renewed First Right to Offer on the same terms as stated above, for a period of ten Days after notification by the Bluff Property Owner to the City of the reduced List Price. First Right to Offer

B. If the Bluff Property is under contract with a Buyer for less than 95% of the List Price, the Bluff Property Owner shall notify the City of its ten Day First Right of Refusal to buy the Bluff Property. To exercise the First Right of Refusal, the City shall notify the Bluff Property Owner in writing within said ten day period of the City's decision to buy the Bluff Property, and such Notice, once issued, shall be irrevocable and binding on the City. If no such notice of decision is received by the Bluff Property Owner within said ten Day period, the First Right of Refusal shall automatically terminate without further notice from the Bluff Property Owner to the City required. If the City does timely exercise its First Right of Refusal, The City's purchase shall be on the same terms to which the Buyer and Bluff Property Owner have agreed or, provided there is no economic harm to the Bluff First Right of Refusal Property Owner, the City may purchase the Bluff Property for all cash at the Buyer's contract price with a closing upon the earlier of the date escrow would have closed with the Buyer or sixty Days after the City notifies the Bluff Property Owner of its intent to purchase.

C. Option Right to Purchase

The City shall have the option to enter into a contract to purchase a Bluff Property by July 1, 2081 and at every twenty-year anniversary after that date for the Agreed Value ("Option Right to Purchase"). The acquisition terms shall be all-cash, to close by September 1, 2081 (or each twenty-year anniversary thereafter) if the Option Right to Purchase is exercised. To the extent allowed by law, and at the Bluff Property Owner's option,

any such purchase shall be deemed to be under threat of condemnation. To exercise its Option Right to Purchase, the City shall Notice the Bluff Property Owner of its intent to purchase at least one year in advance of exercising the Option Right to Purchase to provide sufficient time to determine the Agreed Value, and then sign the contract by July 1, 2081, or upon each twenty-year anniversary after that date. If the City fails to timely issue the Notice of intent or sign the purchase contract, the Option Right shall terminate automatically.

D. Once the City acquires a Bluff Property, it may 1. rent the Bluff Home or Bluff Property to generate revenue for the Shoreline District Account; or

2. Remove the Bluff Retention Device and/or the Bluff Home provided the City meets all the requirements and procedures set forth in Policy 4.86 and elsewhere in the LCP."

"Agreed Value is the value of the Bluff Property agreed upon by a Bluff Property Owner and the City or, if the Bluff Property Owner and City cannot agree upon a value or a joint appraiser to make the determination of fair market value, then each party shall immediately appoint a Member of the Appraisal Institute ("MAI") to appraise the Bluff Property. The two appraiser's shall then appoint a third MAI who shall select one of the first two appraisers' values as the Agreed Value."

Additionally Policy 4.39 should include these aspects,

"acquisition of Bluff Properties, when authorized in accordance with the LCP;removal of Bluff Retention Devices, when authorized, in accordance with the LCP;"

Previous drafts of the LCP include additional supporting clauses to support acquisition. These should be incorporated into the present LCP.

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## 5. There is no policy to bring both non-conforming existing seawalls into compliance with mitigation requirements of the present LUP.

Policy 4.58 previously addressed non-conforming Bluff Retention Devices. From the Draft Revision as of October 2011, it is unclear how repairs or maintenance of Bluff Retention devices or additions that would extend the impact of a Bluff Retention Device would subject that permit to mitigation requirements in Policies 4.54 and 4.74. By example, a seawall repair or upper bluff wall that extends the life of a lower bluff wall must subject the lower wall to the mitigation requirements. However absent a policy with specific guidance it is unclear how such mitigation will occur and non-conforming uses will be brought into compliance. Policy 4.58 is repeated below.

> "Policy 4.58: To achieve a well maintained, aesthetically pleasing, and safer shoreline, coordination among property owners regarding maintenance, and repair of all bluff retention devices is strongly encouraged. This may also result in cost savings through the Solana Beach LUP realization of economies of scale to achieve these goals by coordination through an assessing entity. ~~All bluff retention devices existing as of the date of certification of the LCP, to the extent they do not conform to the requirements of the LCP, shall be deemed non-conforming. A bluff property owner may elect to conform his/her/its bluff property or bluff retention device to the LCP at any time. All bluff properties with non-conforming bluff retention devices shall only be required to comply with the provisions here under governing acquisition rights and the repair, maintenance, and removal of bluff retention devices as a condition of the issuance of a future discretionary Coastal Development Permit. Additionally, no existing bluff retention device shall require structural modification for the sole purpose of facilitating removal at a later date; however, if~~ If the City finds that an existing bluff retention device, that is required to protect existing principal structures in danger from erosion, is structurally unsound, is unsafe, or is materially jeopardizing contiguous private or public ~~property~~ principal structures for which there is no other adequate and feasible solution, then the City may require reconstruction of the bluff retention device.

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## CONCLUSION

In conclusion, we reiterate the importance of submitting an LCP that is in conformance with the Coastal Act this time and one that deals with specific issues within Solana Beach especially ownership of the Bluffs.

Without a certified LCP, all development within the City of Solana Beach must either apply directly to the Coastal Commission for a permit or be subject to appeal to the Coastal Commission. Even relatively minor development, well away from the beach, is delayed by an additional administrative process that would ordinarily be delegated to the City. Failure to submit a legally adequate LCP impacts the entire City, the beach attending public, not just Bluff Property Owners.

We would hope this will streamline the review process and keep cost of gaining LUP certification under control.

Sincerely,

James D Jaffee

Jim Jaffee
San Diego Chapter of the Surfrider Foundation