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F10e

Prepared October 10, 2022 for October 14, 2022 Hearing

To: Commissioners and Interested Persons

From: Dan Carl, Central Coast District Director
Tristen Thahalbuber, Coastal Planner

Subject: Additional hearing materials for F10e
LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards Update)

This package includes additional materials related to the above-referenced hearing item as follows:

Additional correspondence received in the time since the staff report was distributed

F10e

County of Santa Cruz

DEPARTMENT OF COMMUNITY DEVELOPMENT AND INFRASTRUCTURE

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COASTAL COMMISSION
CENTRAL COAST AREA

October 7, 2022

Donne Brownsey, Chair
California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105

Subject: County of Santa Cruz Local Coastal Program Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards Update)

Dear Chair Brownsey and Commissioners:

The County of Santa Cruz (County) fully supports amending its Local Coastal Program (LCP) to begin addressing sea level rise. To this end, the County Board of Supervisors (Board) adopted the Coastal Hazards Local Coastal Program Amendments (LCP Amendment) in September 2020. The County's LCP Amendment project occurred over a period of several years with an intense two-year period of community meetings and numerous public hearings at the Planning Commission and the Board. County staff has worked diligently over the past four years with Coastal Commission (Commission) staff on development of the policies proposed in the LCP Amendment with discussions on these policy updates going further back a decade. The County understands the key policy disagreements from the perspective of both the public and private interests and therefore attempted to navigate an approach to the LCP Amendment that respected both. Along the way, the County has always recognized the difficulty of this task and leading up to this public hearing the County remains hopeful the Commission's direct participation will help make the path forward clearer, if not less difficult.

A Threat to Coastal Resources

Considering public and private interests. The County agrees that sea level rise, coastal erosion, and loss of beaches are issues that must be addressed in order to protect our coastal resources and is committed to implementing solutions to this important issue. The County agrees with the staff report that coastal hazard issues in the age of sea level rise (and sea level rise uncertainties) are some of the more vexing planning issues and questions of our time, with a wide range of viewpoints on how best to adapt and be more resilient. The County further agrees there is much at stake and no obvious one right answer that will be acceptable to all or even most stakeholders. There is a balance that must be achieved, and this common observation led the County to take a hybrid approach in attempting to bring existing County policies incrementally closer to those suggested in the Sea Level Rise Policy Guidance document while implementing an approach that can be achieved on the ground and is focused on health and safety for our community and improving existing conditions with respect to public access and recreation along the coast. We appreciate and agree with Commission staff that

these policies may be considered forward-looking and can provide a basis for further work with Commission staff as we move forward.

Past and present policy considerations. It is no surprise the key policy disagreements involve the definition of an existing structure and redevelopment. The County has a long history of processing Coastal Development Permits (CDPs) based on the County's existing LCP policies summarized in the attachment. As stated in the staff report to the Commission, the overwhelming majority of ocean/beach fronting development, including houses and shoreline armoring, was either originally developed or redeveloped since 1977. For the most part this development was permitted under CDPs approved by the County and the Commission pursuant to the historic County LCP policy approach. This is the legally established existing development that the proposed LCP policies attempt to leverage to achieve positive outcomes for public access and recreation along the coast. However, in recent years the Coastal Commission has adopted increasingly restrictive and retroactive definitions for existing structures and redevelopment as part of its Sea Level Rise Policy Guidance. The County understands the reasoning behind the policy approach adopted by the Commission and the related coastal resource issues surrounding shoreline protection structures. However, the policy shift represents a significant reduction and in some cases the elimination of buildability of countless coastal properties in the County. The County's "hybrid approach" seeks to mitigate this impact and take an incremental approach to shifting its policies in response to projected sea level rise and looks forward to working with Commission staff to reach as much consensus and compromise as possible on a policy approach that can be approved by the Commission.

Protection of Coastal Resources

Finding a path forward. County staff is committed to pursuing the clearest and quickest route to an LCP Amendment that can be certified by the Commission, which will involve working closely with Commission staff to come to as much consensus and compromise as possible. Based on extensive public processes both locally and in other coastal jurisdictions and at the Commission level, the relevant issues, and positions of the various stakeholders on the provisions of a future LCP Amendment are well established. While the County's attempt to date to navigate a middle ground with a hybrid approach have not been successful, the staff report acknowledges there are aspects of the County's proposal that are forward-thinking and County staff agrees with Commission staff in looking forward to a staff-to-staff collaboration to further these concepts and find overall consensus.

It is imperative this LCP Amendment effort is not abandoned in favor of maintaining the status quo. Withdrawing the LCP Amendment or doing nothing after the Commission acts on the LCP Amendment would have the effect of perpetuating ongoing conflicts between the County, applicants, and the Commission staff regarding how coastal hazards regulations apply to individual projects. The current situation is not an efficient permit process because of the uncertainty created by conflicting agency policy interpretations and the ultimate authority of the Commission to appeal a project approved by the County. Thus, the County is seeking a positive outcome from this process by requesting guidance from the Commission on a series of key policy issues that must be resolved to clear a path forward.

Existing structures in Santa Cruz County. The County has always defined an existing structure as whatever is legally existing on the property when an application is submitted. In the first two drafts of the Sea Level Rise Policy Guidance (10/2013 and 5/2014) there is no definition of an existing structure. However, redevelopment was defined, in part, as cumulative alterations of an existing structure from the date of certification of the LCP. It is not clear if this refers to an existing LCP or an amended LCP. The second draft of the Guidance, includes a legal analysis that states, "In a few instances, however, the Commission has treated structures built after 1976 as existing structures entitled to shoreline protection even if no adjacent pre-

Coastal Act structure also need protection." In Santa Cruz County, under the existing certified LCP, this has been the case in the overwhelming majority of instances. This is why the majority of ocean/beach fronting development in the County, including houses and shoreline armoring, was either originally developed or redeveloped since 1977. Therefore, the County hopes to reach compromise on the definition of an existing structure based on this policy and permit history with as much consensus as possible in the spirit of fairness.

Redevelopment of an existing structure. This concept, of course, is related to the definition of an existing structure. The key issue for Santa Cruz County and probably other jurisdictions is record keeping. To the extent the definition of redevelopment is retroactive requires adequate records to document past structural alterations. This is an acknowledgement the County simply does not have complete records going all the way back to 1977 that would allow this. The County hopes to reach compromise on the definition of redevelopment that would allow a fair and accurate application of the definition. Related to the definition of redevelopment, the County introduced a policy concept loosely described as "one and done". The idea arose as a compromise that would allow property owners one additional redevelopment project before the managed retreat polices of the Commission would become effective. Such a policy is similar to simply defining redevelopment from the effective date of the LCP Amendment date and, again, is based on a fairness argument.

Maintaining and phasing out existing shoreline armoring. The County recognizes a potential looming problem related to deterioration of existing shoreline armoring. In fact, it's an existing problem. In Santa Cruz County there is a wide variety of existing shoreline armoring of various ages, states of repair, and levels of impact on public beaches and shoreline areas. Some has deteriorated to an extent that unsafe conditions exist and at least one physical injury is known to have been caused by a deteriorated shoreline armoring structure. Allowing existing shoreline armoring to deteriorate creates a serious problem for the County's beaches and other shoreline areas. Dealing with this problem was the motivation for the County's proposed LCP policy construct to leverage redevelopment of existing structures to require maintenance and improvement of existing shoreline armoring to improve conditions along the shoreline and collect mitigation fees that would go toward public access improvements along the coast. The County recognizes the Commission may perceive this policy construct as perpetuating shoreline armoring. However, the County believes the concept has the potential to achieve a phase out of shoreline armoring while maintaining adequate levels of public safety. Not an easy task but one the County feels is vitally important to maintaining public safety and the long-term protection of public access and recreation resources along the coast. The County would welcome feedback from the Commission on this concept. The County also needs direction from the Commission on how to address public infrastructure, such as roads, sewer, water, and other utilities. If the goal is to allow natural coastal retreat, then significant time (i.e. – 40 years) is needed to relocate this type of infrastructure, and in the meantime this infrastructure must be protected.

Shoreline Protection Exception Area. This idea is based on continuation of the successful County shoreline armoring projects at Pleasure Point and The Hook. The County recognizes these County projects are located along public coastal bluff areas and the SPEA is comprised nearly entirely of private property. That is why the SPEA concept is based on the condition that any project must include public access improvements both vertically and laterally along the coast. The area is characterized by lack of significant beach formation and contemplated improvements would remove debris from deteriorated shoreline armoring and expand beach area, at least in the short term. The County would welcome feedback from the Commission on the SPEA concept.

Transition

Meeting present and future challenges. The County appreciates the detailed analysis in the staff report and the work that Commission staff has done coordinating with County staff and considering the County's concerns. The County understands the major threat posed by existing and aging shoreline armoring and shares the policy goal to protect sensitive coastal resources. The County believes that fully embracing the Commission's suggested policy approach imposes severe restrictions on coastal property owners, both public and private and hopes to find a balance between reasonable expectations regarding existing and future development and protection of sensitive and invaluable coastal resources. The County strongly believes in a transitional period, where in the short term say for the next 20 years, homeowners can maintain their homes and existing sea wall protections including on footprint upgrades and remodels to ensure health and safety is protected. Furthermore, the County would like to work with Commission staff to develop policy language describing how this proposed transition will then come into full conformity with the Coastal Act policy. The County wants to create an expectation and future vision with ample time for homeowners to adjust to this new reality. The County believes that the Board-adopted Coastal Hazards LCP Amendments attempt to provide the important polices and implementing ordinances to incrementally address protection of sensitive coastal resources and the future challenges associated with sea level rise.

County staff anticipates working with Commission staff to resolve the points of disagreement and resubmitting the Coastal Hazards LCP Amendment for certification in 2023.

Thank you for accepting these comments and the County looks forward to the discussion at the public hearing on the Coastal Hazards LCP Amendment certification application.

Sincerely,

Matt Machado, PE, LS
Deputy County Administrative Officer
Director of Community Development & Infrastructure

Cc: Carlos Palacios, Santa Cruz County Administrative Officer
Santa Cruz County Board of Supervisors
Dan Carl, Central Coast District Director, California Coastal Commission
Rainey Graeven, Central Coast District Supervisor, California Coastal Commission

SURFRIDER FOUNDATION

October 4, 2022

To: Donne Brownsey, Chair, California Coastal Commission
Cc: Dan Carl, District Director, California Coastal Commission

Delivered via email

Re: Item F10e, **Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards)** - OPPOSE

Dear Honorable Coastal Commissioners and Staff:

On behalf of Surfrider Foundation's Santa Cruz Chapter and our 18 other local chapters in the state and over 350,000 supporters and members nationwide, we submit the following comments recommending denial of the Santa Cruz County Local Coastal Program ("LCP") proposed amendment. The Surfrider Foundation is a grassroots environmental non-profit organization dedicated to the protection and enjoyment of the world's ocean, waves and beaches for all people.

The Surfrider Foundation is gravely concerned with certain provisions of the Land Use Plan and Implementation Plan updates of the LCP relating to Santa Cruz County's coastal hazard response, adaptation and resiliency, especially provisions that allow for increased and/or extended shoreline hardened armoring. The County proposes a Shoreline Protection Exception Area that would allow for increased shoreline armoring on an unlimited basis from Pleasure Point to Capitola city limits, as well as a one-time exception for new development and redevelopment to rely on seawalls in 40% of the County's shoreline, even though to the detriment of coastal resources and the public sandy beach. We submit this letter to enumerate the provisions that contravene established California coastal law and encourage sound policy and precedent in coastal management decisions. Specifically, the Santa Cruz County LCP should not be allowed to contravene the coastal resource protection provisions of the California Coastal Act, including the clear prohibition on shoreline armoring for new structures. We agree with the CCC staff report that states that "the proposed amendment does not adequately protect coastal resources and cannot be found consistent with the Coastal Act for several key reasons," noting that the County is proposing to overemphasize shoreline armoring in response to sea level rise. **We therefore strongly urge Commission to deny the LCP amendment and ask the County to reconsider its coastal hazard policies for addressing sea level rise and climate change related hazards.**

The harms of seawalls and other shoreline protection devices are many. Seawalls destroy the scenic characteristics of the coast and eventually limit or even destroy beach access, as they exacerbate coastal erosion. The addition of hardened armoring in the Pleasure Point to Capitola area of Santa Cruz purportedly would affect only blufftop areas where beaches are already

eroded. However, even if beach width is minimal or non-existent, this area is known for its valuable and popular surfing resources with well-shaped waves. Coastal armoring in addition to sea level rise not only kills the beaches, but it also has a negative impact on waves since there will be refraction off the seawalls and other hard structures that compromises the natural wave shape and direction. The impacts of hardened armoring on access and recreation are too severe to be negated or compromised away, especially as this threatens very dangerous precedent statewide when managing coastal resources in the face of sea level rise.

I. Coastal Act Section 30253 Disallows the Use of Hardened Shoreline Armoring for New Structures

The well-settled Coastal Act prohibition on armoring for new development mandated by Coastal Act section 30253. Cal. Pub. Res. Code § 30253. Coastal Act Section 30253 firmly prohibits new development from in any way requiring or contributing to the construction of protective devices that would manipulate natural landforms along bluffs and cliffs. Section 30253 (b) states that "new development shall…[a]ssure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." (emphasis added).

While Section 30235, which provides some leeway for "existing structures" to be granted protection of "revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other construction that alters natural shoreline processes," there is no exception in the Coastal Act that would allow armoring for new structures. In utilizing the phrase "existing structures" in section 30235, the Coastal Act drafters felt it was necessary to make the distinction that non-existing buildings should not be permitted to construct defensive shoreline protection devices. When read together, Coastal Act sections 30253 and 30235 evince a broad legislative intent to allow some armoring for development that existed when the Coastal Act was passed, but prohibit armoring for new development. Such action as allowing for rampant armoring, regardless of existing structure location, is squarely outside the bounds of the Coastal Act and in contravention to long-established coastal protection law. Coastal Act Section 30253 firmly prohibits coastal armoring for new structures, and is not subject to a feasibility analysis. It is incumbent upon the CCC staff and Commissioners to enforce this important coastal protection provision.

When a party applies for a Coastal Development Permit to construct a seawall, the California Coastal Commission ("CCC") conducts a four-step inquiry to determine whether the project is entitled to approval. The steps are:

1. Is there an existing structure? An "existing structure" is one that (a) was in existence on January 1, 1977 (the effective date of the Coastal Act), and (b) has not been significantly

renovated since 1977. If there is no existing structure, the project is not entitled to approval. If there is an existing structure, proceed to step two.

2. Is the existing structure in danger from erosion? If there is no danger from erosion, the project is not entitled to approval. If there is danger from erosion, proceed to step three.
3. Is the construction required to protect the existing structure from the threat of erosion? If there is an alternative method of protection, the project is not entitled to approval. If the construction is required, proceed to step four.
4. Is the construction designed to eliminate or mitigate the adverse impacts on shoreline sand supply? If the adverse impacts have not been eliminated or mitigated, the project is not entitled to approval. If the construction has been designed to eliminate or mitigate the adverse impacts on shoreline sand supply, the project is entitled to approval under Section 30235. S*ee* California Coastal Comm'n Staff, Staff Report: San Diego Ass'n of Governments Del Mar Bluffs Stabilization Project 5, 24-25 (June 8, 2022), *available at* https://documents.coastal.ca.gov/reports/2022/6/W7b/W7b-6-2022-report.pdf.

Importantly, even if a project is entitled to approval under Section 30235, it must still conform with other Coastal Act policies. *See Ocean Harbor House Homeowners Ass'n v. Cal. Coastal Comm'n*., 163 Cal. App. 4th 215, 242 (Cal. Ct. App. 2008), which concludes that, "the Commission has broad discretion to adopt measures designed to mitigate all significant impacts the construction of a seawall may have."

Additionally, Sections 30253 and 30235 work together to allow the CCC to impose restrictions on new developments. In Lindstrom v. Cal. Coastal Comm'n, 40 Cal. App. 5th 73 (Cal. Ct. App. 2019), the CCC required new developers to waive all future rights to build a seawall in order to secure a permit to build their proposed home. *Id.* at 101. This requirement was deemed valid as a method of "harmoniz[ing]" Sections 30253 and 30235, to prevent developers from building new construction and then arguing that once it was built, it could be considered existing construction: "By requiring [permit-seekers] to agree that no seawall will ever be built to protect the home they propose to construct, [the CCC's restriction] simply enforces the LCP's requirements for a new development." *Id*. at 103.

Most denials of seawall-construction requests in recent years have stemmed from findings that the structures in question were not "existing" structures under the Section 30235 meaning. However, the CCC has also cited a failure to mitigate adverse impacts to shoreline sand supply in denying permit applications. *See* California Coastal Comm'n Staff, Revised Findings: DeSimone, Schrager, & Oene, 44-45 (July 7, 2021), *available at* https://documents.coastal.ca.gov/reports/2021/7/W22b/W22b-7-2021-report.pdf. .

The California Coastal Act and California Coastal Commission have stood firm for decades in defending the Section 30253 prohibition against increased shoreline armoring that will harm

coastal resources and pose a threat to public trust tidelands. The County of Santa Cruz should not be allowed an exception to this clear and time-tested statutory prohibition on coastal armoring.

II. The Shoreline Protection Exception Area Concept Contravenes Public Coastal Protection Requirements of California Law

The Shoreline Protection Exception Area ("SPEA") outlined in Section 16.10.040 of the Santa Cruz Public Safety Element, Hazard Update is defined in subsection (NN) as "coastal bluffs and beaches between Soquel Point and the Capitola city limit and any other area geographic area that may be designated in an adopted Shoreline Management Plan, and describes locations where shoreline and coastal bluff protection structures are acceptable." Section 16.10.070 (H)(3)(n) states that in the SPEA "new shoreline and coastal bluff protection structures shall be allowed on all parcels to protect existing structures, or on vacant parcels…" This stands in stark contrast to state law provision that new development "shall" not in any way require a shoreline protection device. Cal Pub. Res. Code § 30253. This bedrock coastal protection law has been utilized and defended by coastal advocates for decades. As stated above, there is no exception in the Coastal Act that would allow armoring for new structures. In fact, that action, as proposed in the Shoreline Protection Exception Area, is specifically forbidden by Section 30253. The SPEA should be deleted as an invalid concept under state coastal law.

Public Trust Rights

The SPEA illegally impairs basic public trust rights. Coastal armoring impedes the public trust by placing a physical barrier that not only harms coastal ecosystems but also inhibits the public's ability to access the beach. Coastal armoring can also reduce the physical area of public trust land; when the beach erodes to such an extent that the waves crash directly into an armoring structure, the wet sand beach and tidelands disappear. Meg Caldwell & Craig Holt Segall, *No Day at the Beach: Sea Level Rise, Ecosystem Loss, and Public Access Along the California Coast*, 34 Ecology L.Q. 533, 539-541 (2007). The loss of public access and public trust resources to ensure that beachfront homeowners can seek to first and foremost armor coastal lands is hardly sound public policy and is inconsistent with the public trust doctrine and the state Constitution. The public trust must be protected "whenever feasible" and cannot be abandoned to appease private interests. *Nat'l Audubon Soc'y*, 33 Cal. 3d at 446; *City of Berkeley*, 26 Cal. 3d at 521. As such, the County and Commission cannot simply subordinate the public trust protections in current law to pacify individual property owners.

The California Coastal Act

The purposes and objectives of the Coastal Act are, in part, to uphold the integrity of public land and public land rights, while also honoring private property rights. The Coastal Act was enacted as a comprehensive scheme to govern land use planning for the entire coast of

California. *Yost v. Thomas* (1984) 36 Cal.3d 561, 565, 205 Cal.Rptr. 801, 685 P.2d 1152. Its broad goals are protection of coastal resources and maximization of public access. *Landgate, Inc. v. California Coastal Com'n* (1998) 17 Cal.4th 1006, 1011, 73 Cal.Rptr.2d 841, 953 P.2d 1188. The California Coastal Act gives priority to both coastal access and coastal resource protections with its opening mandate to "[p]rotect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources." Cal. Pub. Res. Code § 30001.5(a). Protecting the overall quality of the coastal zone includes preserving both the visual beauty of the coastline and the integrity of marine resources, as well as allowing access and recreational opportunities to enjoy the state's coastal resources. *Id.* §§ 30210, 30251, 30230.

The law's emphasis on public access derives from the California state constitution, Section 4 of Article X requiring maximum access, and takes precedence over the right of private property development. *Id.* § 30210, 30211 (mandating that "[d]evelopment shall not interfere with the public's right of access…including, but not limited to, the use of dry sand and rocky coastal beaches"). The Act's specific goals include to "maximize public recreational opportunities in the coastal zone" (§ 30001.5, subd. (c)), and it contains numerous mandatory provisions toward this end. (See e.g., §§ 30210 [recreational opportunities "shall" be provided]; 30211 [development "shall" not interfere with access to the sea]; 30213 [recreational facilities "shall" be protected, encouraged, and provided]; 30220 [coastal areas suited for recreational activities "shall" be protected].) Finally, Coastal Act provisions must be "liberally construed to accomplish its purposes and objectives." Cal. Pub. Res. Code § 30009. It was with these goals in mind – coastal resource protection, public access, and public recreation – that the County and Commission should carefully craft the LUP policies at issue here.

Coastal Act Section 30235 narrowly permits seawalls and such construction only when necessary for existing structures, to protect public beaches or coastal dependent uses, and when designed to eliminate or mitigate adverse impacts on local sand supply. This means that there is no allowance in the Coastal Act for armoring for *new* structures. Even if there were a debate between 30253 and 30235 for a proposed seawall, the conflict resolution provisions require the Commission to resolve the conflict in a manner which on balance is the most protective of significant coastal resources. This approach should result in the more frequent denial of shoreline armoring, even for existing structures, especially when it is intended to protect residential development or other uses that the Coastal Act does not identify as priority coastal uses. When conflicts may arise involving Sections 30253 and 30235 and sea level rise, section 30007.5 requires that such conflicts be resolved in a manner which on balance is the *most* protective of significant coastal resources. The maintenance of natural shorelines and ecological resources, as well as public trust lands and beach access, therefore supersedes the <u>private</u> desire for coastal armoring, because these ecological and public trust resources are the significant coastal resources. Nor can a private property owner assert a constitutional right to protect their private property when the manner of protection necessarily harms public trust resources. *See United States v. Milner et al.*, 583 F.3d 1174 (9th Cir. 2009).

Additionally, this proposed action likely contravenes the California Environmental Quality Act ("CEQA"). CEQA requires that development be in the least environmentally damaging feasible alternative and that analysis include a "no project" alternative. A fundamental mandate of CEQA is that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of the project" Cal. Pub. Res. Code §§ 21002, 21081. As stated above, hardened shoreline armoring enacts a multitude of negative environmental effects and impacts public beach access.

III. Caselaw Precedent Upholds Strong LCP Policies against Undue Armoring

In the 2018 *Beach & Bluff Conservancy v. City of Solana Beach* case, the Court of Appeal for California's 4th Appellate District found for the California Coastal Commission, Surfrider Foundation, and the City of Solana Beach, upholding the City's Land Use Plan's provisions restricting seawalls and other bluff retention devices. 28 Cal.App.5th 244, 239 Cal. Rptr. 3d 86 (Cal. Ct. App. 2018). This included upholding Policy 4.19, which required new development and blufftop redevelopment to record deed restrictions waiving the right to install shoreline or bluff protective devices. Also upheld was Policy 4.53 that provides that a bluff retention device will expire when an existing blufftop structure is redeveloped, is no longer present, or no longer requires protection. The Court, in defending the City's discretion to protect coastal resources, refused to hold that these LCP provisions were unconstitutional in the face of takings challenges. The three judge panel in 4th Appellate District ruled unanimously in favor of the LUP's provisions governing seawalls and bluff retention devices.

California courts have gone so far as to support a City's directive to remove a seawall when it obstructed public access. In *Scott v. City of Del Mar*, the City required that seawall be taken out when it was deemed to be an encroachment on public land where the improvements completely obstructed public access to the public sidewalk area. When the beachfront homeowners challenged this action in court, the Superior Court of California refused to hold that this action was a "taking". The Court of Appeals held that the seawall and rip rap were a nuisance *per se* and that the city had power to declare them such and remove them, after complying with due process requirements, without compensation. Furthermore, the city's abatement of the encroachments on public land was a reasonable exercise of its police power, which did not give rise to inverse condemnation action. This case demonstrates that the City or County has the power to not only deny a seawall, but also remove a nonconforming seawall that is impeding on the public's beach access rights. *Scott v. City of Del Mar*, 58 Cal.App.4th 1296, 68 Cal. Rptr. 2d 317 (Cal. Ct. App. 1997) ("In the nonemergency situation, the government also has the power to declare what constitutes a nuisance [such as an impediment to public access] and to abate it, after affording the owner reasonable notice and a meaningful opportunity to be heard.")

IV. Existing Structures on an Eroding Shoreline should have a Plan for Removal Rather than Expansion

Santa Cruz Local Coastal Program Amendment would allow for a broad interpretation of existing structure, inconsistent with prior interpretations and case law. The amendment states, "Existing structures, including but not limited to structures that existed prior to implementation of the Coastal Act in 1978." This goes against years of interpretation, that changes in the law are effective from the date of the law going forward. The date of the Coastal Act implementation is largely recognized as January 1, 1977. The County's definition is contrary to established interpretation of the law and intent of the Coastal Act. The County should update the amendment to read, "Existing structures means structures that existed prior to implementation of the Coastal Act on January 1, 1977."

The amendment also allows for not only the replacement of 50% or more of a habitable structure's major structural components but also, remarkably, the addition of square footage by more than 50% over the existing habitable space. Section 16.10.070 (H)(1)(l)(ii) allows "a total increase of up to 50 percent of the original habitable space of a structure." This flies in the face of other coastal policies that restrict expansion of blufftop properties and other coastal structures, normally allowing only 50% redevelopment within the existing footprint. This clear rule allows the owner of the structure to calculate the estimated life of the structure and perform a cost benefit analysis for whether or not to invest for limited returns for a structure with a limited lifespan. Sound coastal resource management policy mandates that the County not allow the undue extension of the life of a structure on a plot of land that is essentially dying.

Allowing a structure the continued benefit of a seawall, even after that structure is essentially replaced with a new structure through redevelopment, would undermine the purpose of the Coastal Act and would render Coastal Act section 30253 meaningless. Section 30253 prohibits seawalls and other armoring devices to protect *new* development. Cal. Pub. Res. Code § 30253 ("New development shall . . . 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.") Without sound policies limiting armoring for redeveloped structures, the structures are allowed to last forever through 'new and improved' redesigned structures in the same place despite the need to adapt to the changing shoreline. Without conditions limiting redevelopment and explicitly tying seawalls to the life of the existing structure that the seawall is intended to protect, private property homeowners could attempt an end run around the Coastal Act's clear restriction on armoring for new structures. Morro Bay's recently updated LCP, for example, states in Policy LU-8.13, "Shoreline protective devices shall only be authorized until the time when the qualifying development that is protected by such a device is no longer present, constitutes redevelopment, and/or no longer requires armoring, at which time the shoreline protective device shall be removed and the site restored." *See* Plan Morro Bay, May 2021, *available at* https://documents.coastal.ca.gov/reports/2021/8/Th16c/th16c-8-2021-exhibits.pdf.

In addition, the County's plan does adequately address the need to ensure that all redevelopment activities are calculated cumulatively to determine whether they meet the 50% threshold. In order to maintain consistency with the Coastal Act provisions, cumulative development must be tracked from the date of implementation of the Coastal Act on January 1, 1977. Morro Bay's LCP update, clearly defines redevelopment:

> "A structure shall be considered redeveloped, whereby the structure is no longer considered an existing structure and instead the entire structure and all development on the site must be made to conform with all applicable LCP policies, when such development consists of:
>
> (1) Alteration (including interior and/or exterior remodeling and renovations, demolition or partial demolition, etc.) of 50% or more of the major structural components (including exterior walls, floor and roof structure, and foundation) of such development.
>
> (2) Additions and alterations to such development that lead to more than a 50% increase in floor area for the development.
>
> Changes to floor area and individual major structural components are measured cumulatively over time from January 1, 1977." *See Id.*

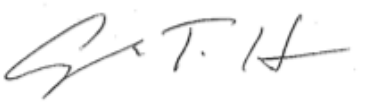
CONCLUSION

The Coastal Act and the Courts thus require protecting and prioritizing the public's interests and public trust rights, over those of private property owners when it comes to shoreline armoring and sea level rise. We encourage you to remove the SPEA and its allowance for increased coastal armoring, act in accordance with the Coastal Act and other environmental protection laws, and truly prepare the California Coast and citizens to adapt in the face of sea level rise rather than stand still.

While Surfrider Foundation is not opposed to phased adaptation for shoreline structures, this approach cannot begin by taking a step backwards and disregarding long-established environmental laws. The phased approach should begin with the basic ban on hardened armoring for new structures and include heavy scrutiny for any additional armoring of the ambulatory coastline. The nearby town of Morro Bay, for instance, has integrated managed retreat policies as applied to areas outside the Harbor/Bay and are analyzing adaptation measures suitable for the Harbor. The County should have an eye toward phased managed retreat rather than fortifying the coastal bluffs to the detriment of the public beach - otherwise, some of Santa Cruz's most treasured iconic beaches and waves, like Pleasure Point, will drown as sea levels

rise. We strongly urge the Commission to deny the proposed LCP amendment and encourage the County to act in a manner more protective of public resources for all to enjoy the beach.

Sincerely,



Angela T. Howe, Esq.
Senior Legal Director
Surfrider Foundation

green foothills

October 7, 2022

Item F10e14, 2022
Support Staff Recommendation
via email

Donne Brownsey and Members of the
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards)

Dear Chair Brownsey and Commissioners,

On behalf of Green Foothills, I write in support of the Staff Recommendation for **denial of the proposed LCP Land Use Plan (LUP) and Implementation Plan (IP)** provisions regarding coastal hazards along the Santa Cruz County 32 miles of shoreline.

The Santa Cruz County shoreline is highly prized for its scenic beauty and recreational value for residents and visitors alike. Due to projected intensified storm events and rising sea levels, the county's scenic and recreational resources are facing increased threats to both natural habitats and developed areas. The Coastal Act requires that natural landforms, beaches, and associated wetlands and other environmentally sensitive resources be protected as a matter of great public importance. The proposed policies include allowance of armoring, which would adversely impact beaches, tidelands and nearshore habitats as well as compromising the natural shape and extent of waves that provide valuable surfing and other recreational experiences.

As the Staff Report concludes, the proposed Amendment includes significant Coastal Act inconsistencies and structural problems that require that it be denied. We strongly support the staff's ongoing commitment to working with all interested parties in crafting an LCP Update that fully protects public access, recreation, and sensitive habitats while mitigating impacts from sea level rise to the fullest extent possible, in compliance with Coastal Act mandates.

Sincerely,

Lennie Roberts

Lennie Roberts, Legislative Advocate

COASTAL PROPERTY OWNERS' ASSOCIATION OF SANTA CRUZ COUNTY

RECEIVED

OCT -3 2022

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

California Coastal Commission -
Central Coast District
Re: October 14, 2020 CCC Meeting
Item F10 e) Local Coastal Programs
Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards Update)
Comment Letter

Dear Commissioners:

The Coastal Property Owner's Association of Santa Cruz County (CPOA-SC) currently has over 555 members, including ten Homeowner's Associations (HOAs), representing approximately 1,200 Coastal properties. We have been collaborating with the County of Santa Cruz Planning Department and Board of Supervisors in developing the proposed Amendments to the LCP Safety Element 6.4 (Land Use Plan) for Coastal Beaches and Bluffs, and the Geological Hazards sections (Implementation Plan chapter 16.10), which are now before the Coastal Commissions for Certification. The Santa Cruz County Board of Supervisors voted to approve the LCP Amendments on September 15, 2020, and submitted a final application to CCC in December 2020. The County received a CCC Comment letter on 9/9/20 with their concerns about the LCP. However there has been little work done on the LCP during the past two years, due to local CCC staff turnover, and the COVID-19 Pandemic. CCC staff have prepared and posted a Final Report dated 9/30/22 on item F 10 e, for the Coastal Commission Hearing on October 14, 2022, in San Diego, CA. According to the CC Staff Report, the County's Proposed LCP Amendments, were too complex, confusing, with many internal inconsistencies, and were not consistent with the Coastal Act, and therefore CCC staff recommended they be denied.

We are very concerned about the delay and lack of progress on the LCP Amendments over the past two years, and how a denial of the LCP Amendments by the CCC will affect the County's ability to further negotiate changes and to be able to develop a revised plan that is reasonable for the County and will ensure ongoing preservation of coastal beaches and bluffs given sea level rise. Although we could not support the final LCP Amendments adopted by the County Board of Supervisors due to many internal inconsistencies in the documents which could lead to misunderstandings about existing coastal armoring and property rights, we did support most of the concepts in the proposed LCP Amendments including the proposed definition of "Existing Structures", "Shoreline Protection Exception Area", and other requirements shoreline protection. CPOA-SC is committed to continue to work with the County, Coastal Commission, and major stakeholders to come up with a plan that is reasonable, feasible and cost effective to preserve our California Coastline for both public and private use with expected Sea Level Rise. In most situations the County's plans which are articulated in the LCP Amendments will actually improve public access to the beaches while protecting public safety.

At the 9/20/22 meeting the Santa Cruz County Board of Supervisors voted to proceed with the LCP Amendments submitted to the CCC for Certification, and to wait for a written response from the Coastal Commissioners following the October meeting. CPOA hereby submits the following Comments regarding agenda item F 10 e, for the CCC Hearing on October 14, 2022.

CPOA Comments re Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards Update):

Major Differences between CCC's Position vs. County Proposed LCP:

1) **CCC's definition of "existing structures"** being those structures which were present prior to the Coastal Act (January 1, 1977). CCC continues to push this definition, to retroactively apply coastal building restrictions and additional requirements to the majority of coastal properties. In the past the CCC has argued just the opposite position when challenged by the Surfrider's Association. Also there is a court case pending trial of a case; Costa Mira HOA vs the CCC over this very issue, of retroactively imposing new requirements. Also it would be nearly impossible for the County to produce records of construction and redevelopment in coastal hazard zones back to 1977. The CCC established Sea Level Rise Policy Guidance on November 17, 2018, which includes new and detailed requirements for properties within the designated Coastal Hazards Zones, and which must be addressed in the LCP Amendments, per CCC. Since these are new requirements for building and maintaining structures in Coastal Hazard Zones, CPOA believes these requirements can NOT be applied retroactively to the date of the Coastal Act (January 1,1977). There the following definition of "Existing Structures" is proposed as an alternative to CCC and that which is specified in the County's proposed LCP Amendments.

   An Existing Structure is any structure which was in existence at the time the California Coastal Commission issued the Sea Level Rise Policy Guidance (November 17, 2018), which includes old structures in existence prior to the Coastal Act (January 1, 1977), any new structures or redevelopment which had received an approved Coastal Development Permit from the County or the Coastal Commission, and construction was completed by November 17, 2018.

2) **No new armoring for existing structures or redevelopment** in coastal hazard zones. According to CCC, the Coastal Act generally prohibits shoreline armoring except to protect pre-Coastal Act (January 1, 1977) structures or coastal-dependent uses, while ensuring the shoreline protection devices do not impact the natural resources and public access to beaches along the coastline. New structures or proposed re-development shall not be allowed to rely on existing shoreline armoring. The County Proposed LCP Amendments allows property owner's one major redevelopment project which can rely on existing shoreline protection in all of the areas excluding the "Shoreline Protection Exception Area" (SPEA), where there would be no such restriction.

   Coastal properties without existing armoring that are not in eminent danger from coastal erosion would **NOT** be eligible for new shoreline protection, unless structures are relocated inland if feasible, allowing for greater public access to beaches and coastline. Redevelopment proposals should be able to rely on existing shoreline protection, which are stable and adjoining other shoreline protection.

3) **Shoreline Protection Exception Area (SPEA).** The County had proposed a "Shoreline Protection Exception Area, **extending approximately 1.4 miles from Soquel Point (APN # 028-304-72) to the Capitola City border.** The coastal bluff at Pleasure Point and along East Cliff Dr. to 41st Ave., has a uniform sea wall with a public pathway above the ocean level and six sets of public stairs to increase access to the beach and coastline for surfing. The plan was to remove any debris, revetment rocks, or partial sea walls along the section of coastal bluffs from 41st Ave. to the Capitola City border, and install a uniform sea wall along that section of

the coastal bluff, similar to that installed at Pleasure Point. The Opal cliff section of the coastal bluffs is largely inaccessible except at 41st and at “Privates” beach public access. The current shoreline and armoring between 41st and the Capitola City border are non-uniform, hazardous, unattractive and do not allow easy public access to most of this coastal section. Only at low tides, can the public walk over slippery rocks to access this section of the coast. A uniform seawall with a public pathway and access will correct all of these problems. Although the CCC staff were open to this concept, the plans need to be more detailed with a written justification for why such a seawall would be in the public's interest to provide better coastal access, and for public safety. The terms and conditions for additional armoring have not been specified, nor has a hazards assessment been completed including mitigating the impact on coastal access. The Surf Rider’s Association and other environmental groups are opposed to this concept of a “Shoreline Protection Exception Area”, and it is unlikely that the County will be successful in getting this approved by the CCC without a stronger justification and detailed plans. A new uniform seawall along this section of the coastline, with a public pathway and new improved access, will increase safe access to the coast for swimming and surfing.

A more detailed plan for a Uniform Seawall along Opal Cliffs:

A Geologic Hazards Assessment District (GHAD) would be formed between the property owners along Opal Cliffs and the County of Santa Cruz. The GHAD would fund the geologic hazards assessment studies, engineering, design and construction of the uniform seawall, at no expense to the public. All debris, existing revetment rocks, and unstable seawalls would be removed. A Uniform Seawall would be constructed, with a horizontal pathway approximately 10 feet above the median high tide level, and 3 public easements with stairways (including 2 existing stairways at 41st Ave and Privates) down the cliffs to access this new public pathway. This new seawall and path would provide greater safe public access, even during moderate tides, so the public could access this section of the coast safely. In addition, it would protect the sandstone bluffs from further collapsing or causing injury to those who dare venture along the foot of this unstable bluff area. This is a Win:Win for the County, Public and Property owners, at no expense to the public.

4) The **requirement for** all property owners with existing shoreline protection (seawalls or revetment rocks) to file **a "Monitoring, Maintenance, and Repair Plan (MMRP)"** and to routinely inspect, maintain, and repair the shoreline structures and prevent any seaward migration. However, CCC may require this shoreline protection be removed when the public beach head is decreased due to sea level rise. This is a change in the terms and conditions for some of the older Coastal Development Permits (CDPs) for shoreline protection which was installed in the 70's and 80's. Such shoreline armoring may impact the sand supply, and with sea level rise the public beaches will eventually be squeezed out of existence. CCC claims that the majority of East Cliff Drive dwelling were built after the Coastal Act and therefor not entitle to Shoreline Armoring. The Live Oak District appears to be the primary focus of the CCC.

The section of coastal bluffs between and Santa Cruz Harbor and Soquel point is mostly armored with revetment rocks which are stacked against to bluffs to help prevent further erosion. Most of these rocks were installed in the 1980s at the permission of the County and the Coastal Commission. However, as sea level rise has accelerated, and with increased storm surges, the need to properly maintain and repair these revetment rocks has become more apparent. In most situations, the County and Coastal Commission have required that the property owners file a “Monitoring, Maintenance and Repair Plan” for their revetment rocks. But according to the local CCC office, only about 20% of the property owners have been compliant. A number of sea caves have been discovered behind these rock revetments, and the rocks may become unstable and at risk for public safety. Therefore, it is recommended:

All property owners with any shoreline protection devices such as revetment rocks or seawalls, shall file a “Monitoring, Maintenance and Repair Plan” with the County and CCC, and shall conduct period inspections at least every five years by a licensed engineer to ensure the ongoing stability and safety of the shoreline protection device. When necessary, at the property owner’s expense and notification to the County and Coastal Commission, the property owner will hire appropriate contractors and engineers to retrieve any migrant debris or rocks which have slipped seaward, and repair the shoreline protection. This may require a Grading Permit from the County. The majority of revetment rocks along East Cliff Dr. between the Harbor and Soquel Point are currently stacked on “Private Property” above the Median high tide level. Eventually, with Sea Level Rise, other adaptation strategies may be necessary as part of area specific “Shoreline Management Plans” to ensure continued and improved access to public beaches and recreational areas along the Santa Cruz coastline. The CCC’s comments regarding loss of beach head, ignores the natural migration of sand from the tributary rivers and streams, down the coastline, with sand levels fluctuating as much as 15 vertical feet in some locations. Sand generally recedes in the Winter months and returns in the Spring/Summer.

5) When necessary, **managed retreat to move structures inland** to preserve public access and beaches. This is being challenged at the State level, and is considered to be a "property takings without compensation". The County had proposed to use "managed retreat" only in the rural areas.

   We are opposed to “Managed Retreat” and taking of private property in any of the urbanized areas of Santa Cruz County, without just compensation to property owners.

6) Simplify the County Proposed LCP Amendments, clarify inconsistencies, and ensure the County’s proposed LCP Amendments are reasonably consistent with the Coastal Act.

   We believe the County’s proposed LCP Safety Element 6.4 (Land Use Plan) for Coastal Beaches and Bluffs, and the Geological Hazards sections (Implementation Plan chapter 16.10) need to be revised. We also think it would be a good idea for the County to conduct a countywide hazards assessment to identify and prioritize the areas at greatest risk of flooding and coastal erosion with each foot of sea level rise. This will help the County plan and budget for needed improvements.

Thank you for the opportunity to submit comments regarding item 10 e), Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards Update). We hope we can continue to work with the County, CCC staff and major stake holders to revise the propose LCP Amendments for Coastal Hazards so that they are reasonable for the County and will ensure ongoing preservation of coastal beaches and bluffs given sea level rise, and are certifiable by the Coastal Commission.

Submitted by:

Steve Forer

President, CPOA-SC

PÁJARO DUNES PAJARO DUNES ASSOCIATION

RECEIVED
OCT -7 2022
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

October 7, 2022

California Coastal Commission -
Central Coast District
Re: October 14, 2022 CCC Meeting
Item F10 e) Local Coastal Programs
Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards Update)

Comment Letter from Pajaro Dunes Associations

Dear Commissioners:

As presidents of the two Pajaro Dunes homeowner associations representing more than 600 property owners at the southern end of Santa Cruz County, we are writing to object to the Coastal Commission staff's recommendation that the Commission summarily reject the County's LCP Coastal Hazards Update. We believe the Commission staff has made erroneous findings -- not supported by legal precedent, the Coastal Act or good public policy -- to the detriment not only of our homeowners but also the local economy and the broader public interest in Santa Cruz County.

We have worked with County Supervisors and planning staff for four years as they have developed the plan before you. We have revised much of our early opposition to the plan and now believe the county has struck a reasonable and fair balance of everyone's interest in coastal development in this era of sea-level rise. We believe the County's LCP and Coastal Hazards Update before you will actually improve public access to the beaches while protecting public safety.

We do not question that sea levels around the world are rising, due in part to human activity. Rising seas undoubtedly will have a significant impact on many coastal communities, including sections of the Santa Cruz County coast. Our issues center around the overreach of the Coastal Commission in requiring immediate broad-brush enforcement of remedies for uncertain predictions of what might happen 75 years from now based on unsettled scientific evidence. Among other things, CCC staff mistakenly asserts:

- A number of interpretations of the Coastal Act that are not supported by either case law or the language of the Act itself, particularly in arguing that only developments in place when the Coastal Act went into effect on Jan. 1, 1977, are allowed to be protected from the effects of sea level rise, and structures built or substantially remodeled since are not. That is an unworkable standard, an administrative nightmare, and an overreach in prohibiting reasonable maintenance of homes and shoreline protection.

2661 BEACH ROAD BLDG 1, WATSONVILLE, CA 95076 * 831 761-7744 FAX 831 728-0235
gatehouse.pajarodunes@gmail.com

- That current permitted projects must adhere to development restrictions guided by CCC predictions of sea-level rise by the year 2100 while acknowledging "the most recently released NOAA SLR projections…suggest that extreme SLR scenarios…are unlikely to occur in the near-term but remain a possibility in 2100 and beyond."

- Observations about current and future shoreline conditions at Pajaro Dunes that are not reflected in clear evidence witnessed at the site over the past 70 years. Notably, at Pajaro Dunes, the beach width has expanded over recent decades, even with sea level rise. It is wider now than prior to the development in the 1960s and it is wider now than at the time protective structures were legally permitted and installed in the early 1980s. Pajaro Dunes is not unique in this regard. Sand accretion and depletion is a complex, site-specific phenomenon. There are multiple, documented cases of beaches that are rising/aster than the increase in sea level.

We are concerned that the Coastal Commission, by asserting and assigning a blanket negative expectations regarding shoreline protection in the County's LCP could preclude and discourage future repair of the Pajaro Dunes revetments following a major storm event. Any such prejudice is not warranted in this location and is inconsistent with the dynamics and sand accretion that has occurred with the combination of the revetment and natural forces.

We believe a much more practical, fair and logical approach -- one that Santa Cruz County has embraced and asserted -- is for the County to apply phased review or trigger points for policy changes rather than reliance on abstract models. The County's proposal would require periodic review of current science and actual shoreline conditions beginning in 2040, with both appropriate revision of the County's LCP and adoption of underlying best-science development guidelines based on real-world conditions.

Pajaro Dunes homeowners understand the threat posed to our homes by sea-level rise, we share the CCC's desire to properly plan for those eventual impacts and we are willing to embrace our share of the burden of finding solutions that help protect the coastline for future generations -- seaside homeowners, coastal area residents and visitors alike.

We ask that the Coastal Commission set aside the overreach, the speculative reasoning and the inflexibility of its staff position and consider our request to work with us and Santa Cruz County on a reasonable plan that would:

- Reflect the real-world conditions at Pajaro Dunes in a way that would respect and accommodate the needs of the vast majority of residents and visitors to this unique spot on the California coast -- a condition that has been ongoing and successful for more than 70 years.

- Allow homeowners to continue to maintain their property in a way that does not interfere with both use of their private property and public access and use of the state parks and open beaches of southern Santa Cruz County.

- Permit Pajaro Dunes to continue to maintain its properly constructed and permitted coastal

protection on a regular cycle and repair it in the future following a major storm event.

The Pajaro Dunes community takes great pride in our stewardship. We intend to continue to attempt to work with the County and the Coastal Commission in a collaborative and open-minded way, seeking nuanced rather than heavy-handed solutions -- strategies that inform and respond to the specific dynamics between nature and the built environment of the southern Santa Cruz County coast.

Sincerely,

Bob Scranton
President, Pajaro Dunes Association

Steve Tate
President, Pajaro Dunes North Association

2661 BEACH ROAD BLDG 1, WATSONVILLE, CA 95076 * 831 761-7744 FAX 831 728-0235
gatehouse.pajarodunes@gmail.com

DENY Santa Cruz County's LCPA and Shoreline Protection Exception

Chris Casey <chris@casey.com>

Mon 10/3/2022 12:03 PM

To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>

Dear CA Coastal Commission - Central Coast,

I am writing to express my opposition to Santa Cruz County's Shoreline Protection Exception Area in Pleasure Point as part of the Local Coastal Program Amendment for coastal hazards and rising seas. The County should pursue coastal planning solutions that address the long-term impacts of sea level rise in a manner protective of public resources - our beaches and waves. More effective alternatives consistent with California Coastal Commission recommendations and the Coastal Act include strategic relocation, consideration of living shoreline options and even hiring a Coastal Zone Program Administrator to better manage coastal preservation opportunities.

As a local beachgoer, I support long-term solutions that benefit my right to beach access and preserve the coast from rising seas as required within the California Coastal Act. The County's plan will erode our beaches over time and make access impossible. Constructing new stairways to mitigate for the seawalls will not be beneficial if there is no coast left to access.

Seawalls and the County's proposed Shoreline Protection Exception Area will fundamentally alter our waves and beaches by exacerbating beach erosion and eventually drowning our beaches and waves. Please reject this policy, protect our public resources and preserve our precious coast.

Sincerely,
Chris Casey

427 18th Street
Huntington Beach, CA 92648
United States

Surfrider Foundation will keep Chris and your constituents informed about your position on this issue.

Commission Staff Note: 986 form letters with this identical text were received by the Commission, and this one is reproduced as a representative example. The other 985 identical letters can be reviewed upon request at the Commission's Central Coast District Office in Santa Cruz.

Please Support Santa Cruz County's Proposal

Charles J. Duppen <duppano@comcast.net>

Thu 10/6/2022 6:20 AM

To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>

Dear California Coastal Commission,

Thank you for the opportunity to comment on Santa Cruz County's Local Coastal Program Amendment, scheduled for your certification decision on October 14, item 10e.

It is critical that Santa Cruz County have certified coastal hazard adaptation policies in place to protect shoreline beaches, bluffs, roads, public access, and existing residential development vulnerable to sea level rise, especially as the county has already invested a huge amount of time and money to produce this unanimously adopted Local Coastal Program Amendment.

Managed retreat is not feasible in certain densely developed areas of the county, so it is necessary that the LCPA provide for shoreline protection that satisfies Coastal Act requirements. In 2007, the Coastal Commission approved one such project (Appeal A-3-SCO-07-015 & CDP Application 3-07-019) to construct soil-nail bluff walls to protect East Cliff Drive between 32nd and 36th Avenues and at the end of 41st Avenue at The Hook. The Coastal Commission staff report recommended approval with conditions to mitigate unavoidable coastal resource impacts, emphasizing the project's significant public access benefits (Staff Report Th13a/Th14a, prepared 11/30/07). These well-designed, low impact bluff walls have enhanced public access to the beach, stabilized the bluffs and East Cliff Drive, and protected the adjacent properties.

Santa Cruz County has proposed a Shoreline Protection Exception Area (SPEA) for the purpose of permitting and funding more of these types of projects; namely, protective structures designed to have a low beach footprint, enhance public access, minimize impacts to coastal resources, and that are absolutely critical to preserve the county's iconic shoreline and protect existing development in the face of anticipated sea level rise. I support the proposed SPEA policy as it is a vital adaptation solution for our community.

I also support the LCPA's definition of existing structures, as opposed to excluding legally permitted development from the past 45 years from eligibility for shoreline protection. An inclusive definition of existing structures is necessary to achieve a smart, fair, and coordinated sea level rise adaptation response.

Finally, I express my strong support for the Santa Cruz County LCPA, as adopted by the Board of Supervisors on September 15, 2020. The county cannot reasonably afford to spend the time and money already invested into this LCPA all over again. Additionally, Santa Cruz County faces a whole slate of climate-adaptation issues and other important planning priorities. It would be an unproductive use of limited staff resources, and would force a damaging triage of highly important county priorities, if the coastal hazards LCPA process were set back and the policies proposed by Santa Cruz County blanketly denied. Santa Barbara County faced these similar issues in September of last year and ultimately withdrew its LCPA prior to the certification hearing. In response, then-Chair Padilla urged, "We really need to be listening to each other and trying to find a pathway to getting these things certified and getting some real resiliency planning and incentivization going" (CCC Meeting Minutes, September 8,

2021). Now is the opportunity for the Coastal Commission to support Santa Cruz County's adopted sea level rise adaptation approach.

Thank you for this opportunity to comment and for your consideration on how to reasonably certify a balanced and feasible sea level rise response for Santa Cruz County.

Sincerely,

Charles J. Duppen
421 Frederick St
Santa Cruz, CA 95062
duppano@comcast.net

Commission Staff Note: 27 form letters with this identical text were received by the Commission, and this one is reproduced as a representative example. The other 26 identical letters can be reviewed upon request at the Commission's Central Coast District Office in Santa Cruz.

NOSSAMAN LLP

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skaufmann@nossaman.com

Refer To File # - 504026-0001

F10E

October 7, 2022

Donne Browsey, Chair
Honorable Coastal Commissioners
California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94104

Re: Santa Cruz County LCPA No. LCP-3-SCO-20-0066-2 (Coastal Hazards Update)
Hearing Date: Friday, October 14, 2022, Agenda Item F10

Dear Chair Brownsey and Commissioners:

This firm is counsel to Pajaro Dunes Association and Pajaro Dunes North Association (collectively "Pajaro Dunes"), two homeowners associations representing more than 600 property owners, at the southern end of Santa Cruz County, just north of the Pajaro River. (For location, see the attached excerpt from Exhibit 1 to the Staff Report.)

By letter dated October 6, 2022, the presidents of the two HOAs have jointly written the Commission with support for the County's LCP Coastal Hazards Update, along with compelling objections to the current staff recommendation that the LCPA be denied. We commend the Pajaro Dunes letter to you. The letter outlines three fundamental errors in the Staff Report. The HOAs have asked us to separately address those issues as well.

I. WHAT DID THE LEGISLATURE INTEND BY "EXISTING" IN COASTAL ACT SECTION 30235?

This is an issue that the Commission needs to come to grips with and the error in interpreting the legislative intent underlying Coastal Act Section 30235 is repeated several times in the Staff Report.

Section 30325 provides that a revetment or seawall "shall be permitted when required to . . . protect *existing* structures." In 2004-2005, along with this Commission, this firm was directly involved in the lawsuit that addressed what the Legislature intended by "existing" in this Section. The HOAs have asked that I explain why the term "existing" in Section 30235 means "existing at the time the Commission acts on an application for permit," not "existing as of January 1, 1977,"

A copy of this letter has been provided to the Commission's District Staff

as repeatedly stated in error in the staff recommendation. In our view, the Staff's position on this issue is a fundamental and irreconcilable impediment to resolving this LCP amendment.

This should not be a reoccurring issue. From 1977 to 2015 – 38 years, the Commission well understood and explained that "existing," as used in the Section, means "existing at the time the Commission acts on an application." The issue came to a head in 2003, when the Commission approved a seawall to protect two oceanfront homes in Pismo Beach from a failing bluff. One home was constructed prior to January 1, 1977; the other was built after January 1, 1977. At the hearing, the Commission's then Chief Counsel, Ralph Faust, explained to the Commission and the public the Commission's consistent administrative interpretation of Section 30235 since the inception of the Coastal Act in 1977:

> ". . . the Commission interpreted existing structure to mean whatever structure was there legally at the time that it was making its decision, and so structures that had been approved by the Commission, subsequent to the Coastal Act, were deemed to be existing structures for purposes of Section 30235, and the Commission found that under Section 30235, those structures need to be protected where it was required, and that shoreline protective devices were approvable."

The Surfrider Foundation sued challenging approval of the seawalls, arguing that "existing" means "existing as of January 1, 1977." The Commission and the two property owners (Grossman and Cavanagh), who we represented, disagreed. Under separate cover, we have provided you and Staff with the Commission's briefs in that case, the oral argument before the Court (including the argument on Commission's behalf by then Deputy Attorney General, now California PUC President, Alice Busching Reynolds), and the trial court's ruling. In a detailed, 17-page ruling, the Court agreed with the Commission, concluding:

> "[T]he reasonable interpretation of Section 30235 of the Coastal Act permits the Commission to authorize seawall protection for structures that are 'existing' at the time the Commission makes its decision on an application for permit, not structures that were existing when the Act was passed almost 30 years ago." (Ruling, p. 2.)

In determining what "existing" in Section 30235 means, the question is not what the Commission or Staff would like it to mean or how the Section might be rewritten, but what the Legislature actually intended by its use of the term in 1977. As discussed below, "existing" necessarily means "existing at the time the Commission acts on an application for permit," not "existing as of January 1, 1977."

1. Legislative Intent – The Plain Meaning of "Existing" in the First Sentence of Section 30235

There are two sentences in Section 30235. The Section states, in relevant part:

> "Revetments, . . . seawalls . . that alter natural shoreline processes shall be permitted when required to . . . protect ***existing*** structures . . . and designed to eliminate or mitigate adverse impacts on local shoreline sand supply. ***Existing*** marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible." (Emphasis added.)

The language of Section 30235 is couched in mandatory terms – revetments and seawalls "shall be permitted" – and it is clear and unqualified. It does not state "existing as of January 1, 1977," although it could have if that truly was the Legislature's intent. In enacting the Coastal Act, the Legislature did not intend for existing structures to fall into the ocean at any time, which also was the Commission's interpretation of the provision until the 2015 Sea Level Rise Guidance prepared by Staff reversed course and offered a novel reinterpretation, ignoring the legislative intent underlying the Section. (Staff Report, p. 44, fn. 64.)

2. Legislative Intent – The Consistent Meaning of "Existing" in the Second Sentence of Section 30235

Equally telling as to the Legislature's intent is the very next sentence in the same Section, which also uses the term "existing": "***Existing*** marine structures causing water stagnation contributing to pollution problem and fishkills should be phased out or upgraded where feasible." (Emphasis added.) Clearly, Commissioners, the Legislature did not intend to discourage only those "existing marine structures" constructed as of the effective date of the Coastal Act, but not those constructed thereafter. The coastal resource evil sought to be remedied – when such structures cause water stagnation that contributes to pollution problems and fishkills – pertains equally to more recently approved and constructed "marine structures." It would make no sense for the term "existing" in the case of revetments and seawalls to have a different meaning from the identical word used elsewhere in the Section, or to apply the policy only to "existing marine structures" as of January 1, 1977, but not to "existing marine structures" approved and constructed between January 1, 1977 and 2021.

3. Legislative Intent – The Legislature's Rejection Twice to Redefine "Existing" as "Existing as of January 1, 1977

As noted, the Legislature could have written the Section to qualify "existing" as "existing as of January 1, 1977," but it did not do so. In fact, it has done just the opposite. The Legislature has twice been presented with the opportunity to rewrite the Section to define "existing" in that

manner – Assembly Bills in 2002 and 2017 – but instead it rebuffed both bills. (AB 2943 [2002 Wiggins – "existing structure" means "a structure that has obtained a vested right as of January 1, 1977], AB 1129 [2017 Stone – "existing structure" means "structure that is legally authorized and in existence as of January 1, 1977"].) I have also separately provided those bills and the legislative record to you and Staff.

4. <u>Legislative Intent – Consistent Coastal Policies Using "Existing" to Mean "Existing at the Time the Commission Acts on the Permit Application</u>

Still further, the Legislature's use of the word "existing" in the remainder of Chapter 3 of the Coastal Act (§§ 30200-30265.5), which contains all of the resource policies of the Coastal Act, provides further consistent confirmation that "existing" refers to conditions as they exist "on the date the Commission acts on a permit application," not at the time of the Coastal Act's passage. These include:

- Providing additional berthing space in "existing harbors" (§ 30224);
- Maintaining "existing depths in "existing" navigational channels (§ 30233(a)(2));
- Allowing maintenance of "existing" intake lines (§ 30233(a)(5));
- Limiting diking, filling and dredging of "existing" estuaries and wetlands (§30233(c));
- Restricting reduction of "existing" boating harbor space (§ 30234);
- Limiting conversion of agricultural lands where viability of "existing agricultural use is severely limited (§§ 30241, 30241.5);
- Restricting land divisions outside "existing" developed areas (§ 30250(a));
- Siting new hazardous industrial development away from "existing" development (§ 30250(b));
- Locating visitor-serving development in "existing" developed areas (§ 30250(c));
- Favoring certain types of uses where "existing" public facilities are located (§ 30254); and
- Encouraging multicompany use of "existing" tanker facilities (§ 30261).

These Chapter 3 policies all logically refer to conditions that exist on the date the Commission considers and acts on a permit application. Substitute the words "existing as of January 1, 1977" in the foregoing policies and ask yourself whether that makes any sense. It does not. As with Section 30235, it would make no sense to evaluate permit applications under conditions as they existed over 46 years ago, ignoring the considerable changes that have taken place along California's dynamic coastline since the Coastal Act took effect.

5. Legislative Intent – Other Coastal Act Provisions Treating "Existing" As Currently Existing

Outside of Chapter 3, several other Coastal Act provisions also consistently treat "existing" as currently existing. (*See* § 30705(b) ["existing water depths"]; § 30711(a)(3) ["existing water quality"]; § 30610(g)(1) ["existing zoning requirements"]; § 30812(g) ["existing administrative methods for resolving a violation"].)

6. Legislative Intent – Other Coastal Act Provisions Specifically Qualifying "Existing" When the Legislature Intended to Do So

But, the Legislature twice used specific dates when it intended "existing" to mean something other than currently existing. Section 30610.6 limits the section's application to any "legal lot existing . . . on the effective date of this section." Similarly, Section 30614 refers to "permit conditions existing as of January 1, 2002."

Thus, in enacting the Coastal Act, when the Legislature intended to limit the term "existing" to be at certain point in time, it did so specifically. This includes when the Legislature intended to limit the term to the effective date of the Coastal Act. (§ 30608 [no person who has obtained a vested right for development "prior to the effective date of" the Coastal Act is required to obtain approval of the development under the Act].)

7. Legislative Intent – Harmonizing Coastal Act Sections 30235 and 30253

The Staff argument for reading "January 1, 1977" into Section 30235 ignores all of the foregoing, and instead asserts that Section 30235 conflicts with Section 30253. Basic rules of statutory construction dictate that you do not read out one adopted provision at the expense of another. You harmonize them. The plain language of both sections demonstrates that there is no conflict and they are easily harmonized. Section 30253 is directed at "new" development and instructs the Commission to take all reasonable measures to ensure that such development will not require a shoreline protective device. But, as this Commission and trial court explained in the *Surfrider* lawsuit:

> "Nevertheless, the coast is a dynamic environment, and in spite of best efforts, the Coastal Act also recognizes that seawalls may sometimes be necessary and permitted. To this end, Section 30235 specifically authorizes the approval of new seawalls and similar protective devices, but only where these devices are necessary to ensure the safety of "existing structures" (meaning, structures existing at the time the application for seawall is considered by the Commission) and only when such structures are "in danger of erosion" and certain other criteria are met. In sum, the two provisions are harmonious because Section 30253 governs the design and siting of new development so that, based on bluff

retreat rate predictions, it will not require a seawall, while the other provision, Section 30235, recognizes that even the best of intentions can go awry, and it mandates the Commission to approve seawalls to protect "existing structures in danger from erosion."

It is for that reason that in approving new development, the Commission has long-imposed a condition requiring the "waiver of future shoreline protection." As the Attorney General explained to the court in the *Surfrider* lawsuit, "so the Commission is not saying, well house isn't existing once it's built, they are just saying that we are asking that person to waive their right to come in and ask for a seawall." (Transcript of oral argument, p. 71.)

8. Concluding Thoughts on What the Legislature Intended in Section 30235

For 38 years after the effective date of the Coastal Act the Commission consistently made clear that the term "existing" means "existing as of the time the Commission acts on an application." Putting aside the obvious legislative intent discussed above, it is fundamentally unfair for the Commission to peremptorily reinterpret the Section and then backdate it to January 1, 1977. That is why local governments and private parties have consistently objected to that reinterpretation.

The Staff Report plainly errs when it insists that Section 30235 only applies to pre-Coastal structures. Courts "do not lightly imply terms or requirements that have not been expressly included in a statute (*Bay Guardian Co. v. New Times Media LLC* (2010) 187 Cal.App.4th 438, 454), and it is very clear that when it comes to shoreline protection needed to protect existing structures, Section 30235 does not state that "existing" means only structures that existed 46 years ago. Nothing in the Coastal Act or certainly its legislative history remotely suggests that the Legislature intended the mandatory terms in Section 30235 expressly authorizing seawalls to mean in the same breath that structures after 1977 cannot protected and must be left to fall into the ocean.

II. THE COUNTY'S MEASURED APPROACH TO ADDRESSING SEA LEVEL RISE PROJECTIONS IS PRACTICAL, FAIR, AND LOGICAL AND IS SUPPORTED BY THE RECENT MARCH 2022 NOAA SLR TECHNICAL REPORT

The HOAs certainly do not question that sea levels around the world are rising the impact of which must be addressed in coastal Santa Cruz County. The objection is that the Commission continues to insist on development restrictions that are guided by extreme and uncertain predictions of sea level rise by the year 2100. This is reflected in the staff recommendation.

The County has proposed a practical, sensible, measured approach in its LCPA to address sea level rise, setting forth shoreline and coastal bluff policies in its Safety Element, to be in effect until 2040. At that time, based on actual, real world measurements, adjustments can be made in

shoreline management plans or an updated set of policies in an amendment to the Safety Element. (Policy 6.4.37.) The Staff Report notes the 2040 planning horizon was the focus of County-Commission staff discussions early on.

The Staff Report asserts that the "best available science on SLR projections in California is provided in the State of California Sea-Level Rise Guidance (OPC 2018) (as reflected in the Coastal Commission Sea Level Rise Policy Guidance (CCC 2018)." (Staff Report p. 37.) But that is not accurate. In the same breath, but relegated to a footnote, is the Staff acknowledgment:

> "SLR projections continue to evolve and that the March 2022 NOAA SLR technical report states that SLR scenarios (on which the H++ project are based) are unlikely to occur in the near-term but remain a possibility in 2100 and beyond." (*Id*.)

The NOAA technical report is actually the current best available science, even if coupled with the earlier reports. It states:

> ". . . *[A]s a result of improved understanding of the timing of possible large future contributions from ice-sheet loss, the "Extreme" scenario from the 2017 [NOAA technical report] (2.5m GMSL rise by 2100) is now viewed as less plausible and has been removed from consideration.* Nevertheless, the increased acceleration in the late 21st century and beyond means that the other high-end scenarios provide pathways that potentially reach this threshold in the decades immediately following 2100 (and continue rising)." (NOAA, 2022, p. 61; italics added.)

There is no doubt that sea level rise projections continue to evolve and, in light of the updated NOAA technical report, a wooden, inflexible reliance on now dated and uncertain projections is unsupported. The updated NOAA report fully supports the County's phased approach to review and update those projections based on actual measurements and appropriate adaptation measures.

III. THE RESPONSE TO SEA-LEVEL RISE CANNOT BE "ONE-SIZE-FITS-ALL"

The current Staff approach to shoreline protection and sea level rise is to develop inflexible, broad brush rules intended to apply across-the-board to coastal development. But that is not reality. No can deny the extraordinary variability of features along the California coast, and that variability will necessarily affect the impact of sea level rise on every coastal community differently.

The Coastal Acts provides that "[p]recise content of each local coastal program shall be determined by the local government . . . in full consultation with the commission and with full public participation." (Pub. Res. Code, § 30500(c).) Sea level rise must be treated in the same

manner, recognizing that every community's coastline is different. There is no better example of this than the Santa Cruz County coastline, the several segments of which are separately addressed in the Staff Report. The County's LCPA appropriately proposes a regional or neighborhood-scale approach to development and protection of shoreline resources, as opposed to a parcel-by-parcel approach or, as the HOAs have put it, "immediate broad-brush enforcement of remedies for uncertain predictions of what might happen 75 years from now based on unsettled science." The Staff Report appears to reject that approach.

This strikes at home for Pajaro Dunes. The fact that not every beach is the same or that revetments and seawalls may impact different beaches differently was emphasized in *Surfside Colony v. California Coastal Commission* (1991) 226 Cal.App.3d 1260. There, Surfside Colony, a community of 250 homes in Seal Beach, proposed an 800-foot long revetment to protect its oceanfront homes. The Commission imposed a lateral public access condition, finding that revetments and seawalls *generally* cause impacts to public access. The Court of Appeal, however, noted that "revetments and seawalls may have different effects at different beaches" and that the *site-specific evidence* before the Commission was that the revetment at issue would not exacerbate erosion impacting public access. Accordingly, the Court struck the lateral access requirement. (*Id*. at 1268-1272.)

With respect to sea level rise, the site-specific evidence at Pajaro Dunes is that the beach width has actually expanded over recent decades, even with sea level rise. In fact, the beach is wider today than prior to the development of the pre-Coastal residences which comprise the two HOAs, and wider than at the time the revetments fronting the residences were legally permitted and installed in the early 1980s. Pursuant to conditions imposed on the approval of the revetments, that shoreline protection has been maintained as approved and the sandy beach has been dedicated to the public.

In terms of shoreline protection and sea level rise, the County's LCPA recognizes that Pajaro Dunes should be treated separately based on its demonstrably unique circumstances. The Staff's approach could jeopardize that, despite the site's shoreline dynamics and its sand accretion. The County's LCPA appropriately addresses the shoreline protection issues on a regional or neighborhood-scale approach. The HOAs oppose the blanket negative expectations that the Staff Report would assign to shoreline protection which could serve to preclude and discourage future repair of the approved Pajaro Dunes revetments after major storm events.

IV. CONCLUSION

Unfortunately, at this point, there appears to be fundamental impediments to arriving at a consensus plan, especially with respect to the Commission's apparent reinterpretation of Coastal Act Section 30235. The Staff Report notes that the Commission and County staffs did previously agree that the LCPA should be withdrawn to allow for further collaboration. We agree. The

Commission's adoption of the current staff recommendation will not serve to facilitate a resolution of this Coastal Hazards Update. We believe the best course at this time is for the County to withdraw its LCPA and to continue working with Commission Staff and interested parties.

Sincerely,

Steven H. Kaufmann
Nossaman LLP

cc: Dan Carl, Central Coast District Director, CCC
Rainey Graeven, Central Coast District Supervisor, CCC
Tristen Thalhuber, Coastal Planner, CCC
Hon. Manu Koenig, Chair, BOS
Hon. Zach Friend, BOS
Hon. Ryan Connerty, BOS
Hon. Greg Caput, BOS
Hon. Bruce McPherson, BOS
Jason M. Heath, County Counsel, SCC
Stephanie Hanson, Principal Planner, SCC
David Carlson, Resource Planner, SCC
Bob Scranton, President, Pajaro Dunes Association
Steve Tate, President, Pajaro Dunes North Association

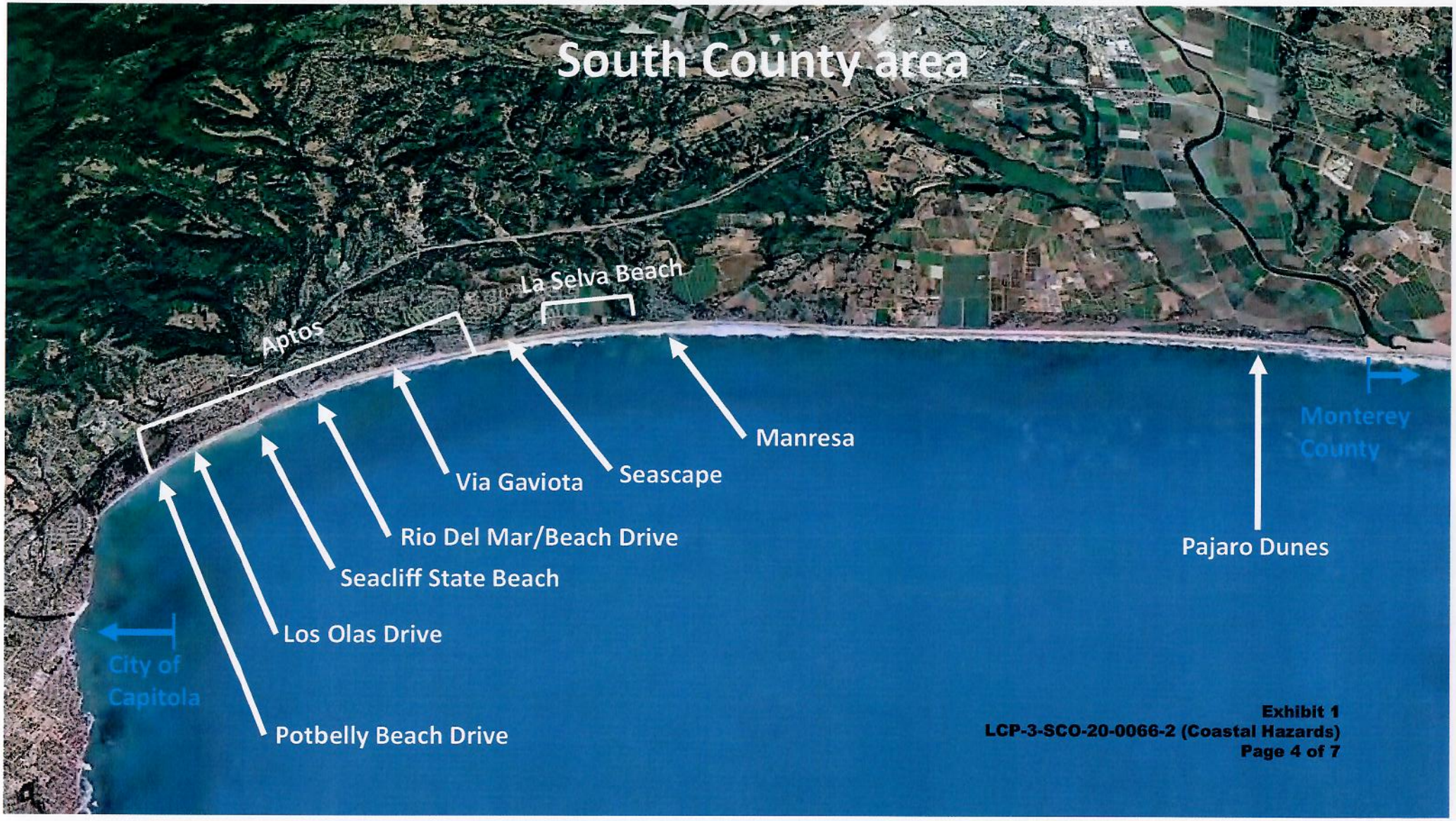

Exhibit 1
LCP-3-SCO-20-0066-2 (Coastal Hazards)
Page 4 of 7

Fw: Public Hearing Notice for LCP-3-SCO-20-066-2

CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Tue 10/4/2022 9:55 AM
To: Thalhuber, Tristen@Coastal <tristen.thalhuber@coastal.ca.gov>

Central Coast District Office
725 Front St., Ste 300
Santa Cruz, CA 95060
(831) 427-4863

CALIFORNIA COASTAL COMMISSION

From: charles paulden <yogacharles@yahoo.com>
Sent: Monday, October 3, 2022 5:28 PM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>; Carl, Dan@Coastal <Dan.Carl@coastal.ca.gov>
Subject: Re: Public Hearing Notice for LCP-3-SCO-20-066-2

While Coastal Armoring is the larger issue, the loss of Coastal Access at Blacks Point to Geoffroy off 16th Ave in Santa Cruz is an important issue as well.
Please support the Peoples access to the Coast not the Right of Wealth to own it.

Thank you
Charles Paulden
People for the Protection ot Pleasure Point and Reopen Geoffroy Lane

People want if back

Petition · Regain Public Access to Twin Lakes Beach at Geoffrey Dr · Change.org

Sign the Petition
Regain Public Access to Twin Lakes Beach at Geoffrey Dr

On Monday, October 3, 2022 at 12:30:17 PM PDT, CentralCoast@Coastal <centralcoast@coastal.ca.gov> wrote:

Fw: Certify the Santa Cruz County LCPA

CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Tue 10/4/2022 9:59 AM
To: Thalhuber, Tristen@Coastal <tristen.thalhuber@coastal.ca.gov>

Central Coast District Office
725 Front St., Ste 300
Santa Cruz, CA 95060
(831) 427-4863

From: Joe Mitchner <jsmhome@comcast.net>
Sent: Tuesday, October 4, 2022 12:03 AM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Certify the Santa Cruz County LCPA

Honorable Chair and Commissioners,

Please accept this message of strong support for certification of Santa Cruz County's Local Coastal Program Amendment (LCPA).

The Santa Cruz County LCPA has been developed and supported through consensus garnered at numerous public hearings. It's a plan that provides for proactive protective strategies for existing private property and public access. It will permit the County to implement sea level rise adaptation policies for beaches, bluffs, public areas, and neighborhoods. The time to implement these strategies is NOW.

Further, I implore the CCC to reject a "strategy" of managed retreat where it is infeasible along the developed portions of the coastline. Protect developed communities that have nowhere to retreat. These communities are part of the fabric of the County, highly value the California coastline, and have been good stewards of that coastline.

Please also broaden the interpretation for properties defined as "existing structures". The current interpretation is subjective and excludes many structures worthy of protection.

Thank you for your time,
Joseph Mitchner
Property Owner, Pajaro Dunes, Watsonville.

Fw: Public Comment on October 2022 Agenda Item Friday 10e - Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards Update).

CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Tue 10/4/2022 12:06 PM
To: Thalhuber, Tristen@Coastal <tristen.thalhuber@coastal.ca.gov>

Central Coast District Office
725 Front St., Ste 300
Santa Cruz, CA 95060
(831) 427-4863

CALIFORNIA COASTAL COMMISSION

From: Keith Adams <keitheadams@hotmail.com>
Sent: Tuesday, October 4, 2022 11:39 AM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on October 2022 Agenda Item Friday 10e - Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards Update).

Sent from Mail for Windows

Approval of the subject LCP is recommended.

The County of Santa Cruz has invested substantial time and resources over the past three years, holding numerous public meetings with interested parties to develop the subject LCP. It is time to approve this LCP without further continuing delays.

The LCP is consistent with the Coastal Act in promoting public access to the coast.

The LCP is consistent with the Coastal Act requiring that the CCC shall permit shoreline protection to protect existing structures.

The "Shoreline Protection Exemption Area" from Soquel Point to the Capitola City boarder meets both Coastal Act's mandates. It serves to resolve ongoing concerns of the CCC by cleaning up the shoreline, improving public access and protecting existing structures.

We are grateful for the input received by the local coastal staff who has worked with the County in developing this LCP and hope we can now move forward in meeting the objectives of the Coastal Act.

Sincerely,

Keith Adams
Santa Cruz, CA

Fw: Comment Letter CCC 10/14/22 Agenda item F 10e} LCP Amendment number LCP-3-SCO-20-0066-2n {Coastal Hazards}

CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Tue 10/4/2022 12:07 PM
To: Thalhuber, Tristen@Coastal <tristen.thalhuber@coastal.ca.gov>

Central Coast District Office
725 Front St., Ste 300
Santa Cruz, CA 95060
(831) 427-4863

From: rpberg3@aol.com <rpberg3@aol.com>
Sent: Tuesday, October 4, 2022 11:52 AM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Comment Letter CCC 10/14/22 Agenda item F 10e} LCP Amendment number LCP-3-SCO-20-0066-2n {Coastal Hazards}

Dear Coastal Commissioners:

I am writing about the proposed Shoreline Protection Exception area (SPEA} along Opal Cliff Dr. from 41st Ave. to the Capitola border. I live on the bluff on Opal Cliff Dr.

Currently most of Opal Cliff Dr. bluffs have armoring which is non-uniform, hazardous, and very unattractive. It does not allow for public access to much of the beaches except at very low tides. Nevertheless the armoring does a reasonable job of protecting many of the bluffs, but with the problems mentioned.

What is proposed is to clean up and remove all of the current problematic armoring and replace it with a uniform seawall from the bedrock to the top of the bluffs, with a walking path as part of the seawall. This will open all of the beaches and make the area beautiful and safe. To accomplish this, all of the property owners and the County will form a GHAD with very detailed requirements negotiated by the interested parties. This will all done with private money, at no public expense. We stand ready to work out a detailed plan that is a win-win for all parties.

The current opposition is worried about the long term potential loss of some surfing due to a seawall. Ironically most of these properties are already armored and will cause the same potential problems without any of the benefits of the new uniform seawall.

I ask that you keep the SPEA in any plans moving forward and give us a chance to workout an acceptable detailed plan.

Thank You,

Richard Berg

Fw: SPEA

CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Wed 10/5/2022 10:25 AM
To: Thalhuber, Tristen@Coastal <tristen.thalhuber@coastal.ca.gov>

Central Coast District Office
725 Front St., Ste 300
Santa Cruz, CA 95060
(831) 427-4863

CALIFORNIA COASTAL COMMISSION

From: Christine Hooper <chrisbhooper@hotmail.com>
Sent: Tuesday, October 4, 2022 8:13 PM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: SPEA

To Whom it May Concern:

I would like, on behalf of myself as a property owner, for over 50 years, on the cliff on Opal Cliff Drive, to voice my support of the SPEA Exception Area.
I see daily the hazards the public faces trying to visit the shoreline below my home.
I support the County's proposal for a "Shoreline Protection Exception Area" and installing a uniform seawall along Opal Cliffs.
Sincerely,
Christine B. Hooper
APN: 033-170-10

101Shell Road, S-59
Watsonville, CA 95076
October 6, 2022

California Coastal Commission -
Central Coast District
Re: October 14, 2022 CCC Meeting
Item F10 e) Local Coastal Programs
Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards Update)

Dear Commissioners:

I am a resident and property owner at Pajaro Dunes, a condominium association located along the southern Santa Cruz County coast. I wish to protest the Commission staff's recommendation that the Commission reject Santa Cruz County's Local Coastal Plan Coastal Hazards Update. I believe the staff has made several errors of logic and fairness in their recommendation. On the contrary, the County has worked diligently and with considerable input from Commission staff and local residents to create the plan you are considering.

It is clear that sea level rise is occurring. What is not clear, as clearly stated by the agencies that have published predictions, is at exactly what rate this rise will occur at any period in the future. For Commission staff to insist on using the worst case scenario into the distant future as the standard of rise is unreasonable; more appropriate and fairer is to accept a probable level of rise now and periodically revise the expected rise based on updated predictions at the time of revision. This later approach is the one taken by the County plan.

The Commission staff position that only developments constructed at the time the Coastal Act was effective in 1977 can be protected from the ocean, and not those constructed or majorly remodeled since with legal permits, is an overreach not supported in the Coastal Act or in case law. That protective structures placed with legal permits since 1977 cannot be maintained is grossly unfair. The County plan avoids this unnecessary and unfair approach while still implementing reasonable limits.

Commission staff has maintained a view that all coastal protective barriers are detrimental to maintenance of beaches. This position is contrary to fact. For example, despite the existence of a revetment covered by dunes at Pajaro Dunes the beach in front of this protection has actually grown in depth and width since the revetment was installed. The County plan recognizes that the effect of barriers on beaches varies considerably depending on local conditions.

I support the Commission's goal of protecting California's coastline and beaches, but maintain that the County's plan before you does this with great care not dictated by the arbitrary and extreme assumptions of Commission staff. I therefore urge you to reject your staff's recommendation that you disapprove the County's Coastal Hazards Update and that instead you approve it.

Thank you for your attention.

Sincerely,

Lawrence Laslett

Fw: Santa Cruz LCP - feedback for October meeting

CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Thu 10/6/2022 10:46 AM
To: Thalhuber, Tristen@Coastal <tristen.thalhuber@coastal.ca.gov>

Central Coast District Office
725 Front St., Ste 300
Santa Cruz, CA 95060
(831) 427-4863

CALIFORNIA COASTAL COMMISSION

From: Heidi Rielly <heidirielly@me.com>
Sent: Thursday, October 6, 2022 10:28 AM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Santa Cruz LCP - feedback for October meeting

Dear Coastal Commission Members,

I am writing in support of Santa Cruz County's proposal for a Shoreline Protection Exception Area from Soquel Point to the Capitola City border, and want to express my strong support for the installation of a uniform seawall along Opal Cliffs that would offer much more public access to that area of the coast. My family enjoys walking along the beach at low tide, but even when it's at its lowest, we often feel unsafe walking along Opal Cliffs, as the cliffs have been known to be unstable. Additionally, it's often impossible to walk all the way to Capitola, and the old stairways and tires along the coast are unsightly at best and hazardous at worst.

A uniform walkway would not only make Opal Cliffs safer for the public to enjoy, and allow coastal access all the way to Capitola, but would provide an incredible recreational opportunity similar to the walkway from Pleasure Point to the Hook, which has created an abundance of joy and community in Santa Cruz.

I urge you to allow our community to improve our ocean access and remain a place that the public can enjoy. Santa Cruz is a gem that deserves preservation, and we must face the challenges of sea level rise with smart solutions that recognize the unique character of these neighborhoods. Please approve the Shoreline Protection Exception Area, which would do just that.

Thank you!

Heidi Rielly
831-818-9572

Fw: Public Comment on October 2022 Agenda Item Friday 10e - Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards Update).

CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Thu 10/6/2022 11:36 AM
To: Thalhuber, Tristen@Coastal <tristen.thalhuber@coastal.ca.gov>

Central Coast District Office
725 Front St., Ste 300
Santa Cruz, CA 95060
(831) 427-4863

CALIFORNIA COASTAL COMMISSION

From: Teagan Baiotto <baiotto@usc.edu>
Sent: Thursday, October 6, 2022 11:11 AM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Cc: Jill Sohm <sohm@usc.edu>
Subject: Public Comment on October 2022 Agenda Item Friday 10e - Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards Update).

Dear Members of the California Coastal Commission,

I am writing to express agreement with the California Coastal Commission staff recommendation to deny Santa Cruz County's LCP amendment number LCP-3-SCO-20-0066-2. The proposed amendments to the Santa Cruz LCP by the county board of supervisors have several concerning features that disagree with the California Coastal Act. Specifically, as mentioned in staff recommendations, some of the key problems with the LCP update are overly generous coastal armoring rules associated with development and redevelopment and contradictory text that is both internally inconsistent and inconsistent with the Coastal Act. The Santa Cruz County Board of Supervisors were advised by their own staff not to move forward with these Land Use Plan (LUP) and Implementation Plan (IP) amendments in their current state, but they still proceeded to do so. The Santa Cruz County Board of Supervisors should not be able to strongarm their way into accepted revisions to the LUP and IP when it obviously falls short of consistency with the Coastal Act. Below, I provide additional evidence on how the LUP and IP revisions proposal disagrees with key tenets of the Coastal Act and thus should not be accepted.
Section 30001. of the California Coastal Act (1976) explicitly declares the importance of protecting the "ecological balance of the coastal zone" for the just benefit of all – including people and wildlife. Coastal armoring has a suite of environmental impacts – from localized to regional. On beaches with seawalls and revetments, the diversity and abundance of intertidal invertebrates (which are commonly important to the greater communities) are significantly lower than similar beaches that do not have artificial armoring (Jaramillo et al. 2021). UC Santa Cruz's very own Gary Griggs warned of the impacts of coastal armoring on beach erosion and lateral beach access because of narrowing/eroding beaches (2005). This means that coastal armoring has the potential to fundamentally alter adjacent ecosystems and decrease coastal access. Why then is the county attempting to go out of their way to protect coastal armoring –

predominantly located on wealthy properties that have been redeveloped since the Coastal Act – and allow additional armoring nearby when it clearly goes against the goals we hold for our coastline? Furthermore, Santa Cruz County's LCP amendment does not adequately incorporate Sea Level Rise (SLR) projections and impacts, as required by Section 30001.5. of the Coastal Act (1976, Amended 2021). SLR will increase coastal retreat, exacerbating the issues associated with erosion today (Griggs and Patsch. 2019). Coastal armoring, while often effective at protecting the property it is co-located with, is not a feasible long-term solution for both protecting co- located properties or adjacent coastline. I encourage the Coastal Commission to further encourage Santa Cruz County to closely follow recommendations put forth by the Ocean Protect Council's Sea Level Rise Guidance report (2018).
I would like to reiterate my support for the Coastal Commission staff's recommendation to deny the LCP amendment put forth by Santa Cruz County and encourage significant revisions before their proposal is to be accepted. It is in the best interest of the majority of Californians that, wherever possible, our coastline is adaptively managed to encourage retreat and removal of armoring for the long-term protection of coastal ecosystems and public access.

Sincerely,
Teagan Baiotto
PhD Student, University of Southern California https://www.edslab.org

References:

California Coastal Act. Stat. $ 30001 (1976 & rev. 2021). https://www.coastal.ca.gov/laws/

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California Coastal Commission - Central Coast District
Re: October 14, 2020 CCC Meeting
Item F10(e) Local Coastal Programs
Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards Update)
Comment Letter

Commissioners:

Originally, this letter was long and boring (like your staff reports). Fortunately, I had time to make it much, much shorter and much, much pithier. You can thank me later.

First let me comment on how swiftly you commissioners have abandoned your fiduciary duty of loyalty. I've sat on nearly 50 boards of directors - I'm solidly impressed. Abandoning a sworn duty is no mean feat, but you guys do it with such elan and panache - and so quickly. Go, team Coastal Commissioners!

I hate to be a pest, but here's the oath you took on the day that you became a Commissioner:

I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Did I mention that I'm a graduate of both Stanford and Harvard? (Let's not get too far into this without that brag slipping out.) So I know that we elites like to be pests. I'm in the mood to be especially pest-y today, so here's what our state constitution (you know, that pesky document that you swore to support and defend) says about property rights:

Article 1 Section 1: *All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and* ***protecting property****, and pursuing and obtaining safety, happiness, and privacy.*

Wow! Article 1 Section 1 - they decided to lead with this property rights crap? Who were the morons that wrote this drivel? Here's what our federal constitution (another pesky document that you swore to support and defend - will these pesky documents never end?) says about property rights:

Amendment V: *No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall* ***private property*** *be taken for public use, without just compensation.*

Wow, double morons. Look, we're the Coastal Commission, and we're more important than some pesky, pesty antiquated property rights that you swells have - or think you have. Oh, wait. We have a mandate? There are rules to this game? Will these tribulations never cease? (All references in the Coastal Act to 'private property'):

30001(c): *That to promote the public safety, health, and welfare, and to protect public and* ***private property,*** *wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.*

30001.5(c) *Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of* ***private property*** *owners.*

30010: *The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage* ***private property*** *for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.*

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.*

30609.5(f): *Nothing in this section is intended to restrict a* ***private property*** *owner's right to sell or transfer private property.*

No fair! You hit us with an oath and two constitutions and our own Act. You meanie! Protect private property? Holy schnikes, Batman! We can't do that. It might interfere with this crusade we're on. It's a cool crusade, too. Cocktails on the Lido Deck every night at 5pm. Fiduciary duty be damned - we've got real work to do. The threat of a sea level rise of 5 feet! Or was it 10 feet? 8 feet? By 2050. No, wait. By 2070. That's it, 7.76 feet on August 14th of 2064. That's the ticket. Let's scramble everyone's eggs with our insightful crystal ball visions.

In the face of future uncertainty (how much the sea will rise and by when), a prudent person strives to forge consensus. Because, if we all go together, then we have the best chance of overcoming an uncertain future. Put succinctly, none of us is as smart as all of us (or, in the case of you commissioners, none of you is as smart as any of us). The science of consensus is what we were taught in Managerial Science class. That's another piece of 'best available science'. You'd be surprised how much science is out there beyond the science of global warming and sea level rise. Try it - you'll like it.

Who needs consensus, anyway? We're the Coastal Commission! Do you like how we dropped a ponderous 60 page, poorly written screed on you less than two weeks before we are to act on Santa Cruz' LCP? Hey, it worked with book reports in the fourth grade. An LCP, we might add, that has

been in place for over two years. In other words, we let more than 99% of the clock 'run out' without lifting a finger to forge consensus. That's eye of newt level sorcery. A two-year clock, we might add, which *we* asked for back in 2020. We're talking DaVinci Code level intrigue now.

Throwing something ponderous over the transom at the 11th hour with zero input from property owners is the very antithesis of consensus. But we knew that - that was our diabolical plan all along. Mwah-ha-ha. Let's throw prudence to the wind and trample all over our fiduciary duty of care (the 'prudent person' rule). Hey, we detonated our fiduciary duty of loyalty in record time - hold our beers while we work our magic on our fiduciary duty of care. And how smart were we to not include a single reference to the rights of property owners in our long-winded screed? Let's not even make an iota of pretense that we give a rat's ass about the oath we took. Or show even a crumb of concern for fellow citizens who own homes on the coast - who said evil is the absence of empathy? We're the Coastal Commission, dammit, get the hell out of our way and watch our smoke!

Here's another piece of best available science - this one from the field of Econometrics. The weighted cost of something is the probability of it happening times the cost were it to happen. It's why I wear a seat belt. The odds of my ever being in a serious car accident are small but the cost could be my life. I'll bet by now you're wishing I didn't wear a seatbelt and I got unlucky.

Wait, wait. I have it. Let's go to Vegas and bet on the H++ scenario. It's only got 1-in-100 odds (per NOAA). But, hey, we're feelin' lucky. And the cost is more than you could ever imagine. Impossible odds? Enormous cost? You couldn't write a movie script this delicious. And it follows the 'best available science' of Econometrics, doesn't it?

We're the friggin' Coastal Commission. We hope 10% of humanity gets refugeed because their homes are underwater. Famine and death - hey, those were the two horsemen we picked in the lottery. It serves those peasants right for not listening to our dire warnings. Wait. What's that you say? Rather than spend 10 trillion dollars to relocate half a billion people the mundanes banded together as a species to engineer the climate? How dare they! That isn't 'best available science'. Best available science has to have an apocalyptic edge to it. Where's my apocalyptic edge? You promised me an apocalyptic edge. Oh. The seas are falling? Impossible. Man is tainted - he got us into this mess and his taint makes it impossible for him to undo the mess he created. Original sin, right? Well, so be it. The seas clearly rose by the hand of man but are falling by the grace of Mother Nature - and not your idiot climate engineers. You people are the poor unwashed but we, we are the mighty Coastal Commission. Hosannah in the highest. Is it time for the Lido Deck happy hour yet? We're thirsty and we want to take off this raiment and we grow tired of the incessant yapping.

Drew Lanza

Smart Coast California

RECEIVED
OCT 11 2022
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

October 10, 2022

From: Smart Coast California
To: California Coastal Commission
Submission via Email to CentralCoast@coastal.ca.gov and Donne.Brownsey@coastal.ca.gov
Re: Public Comment on October 2022 Agenda Item Friday 10e - Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards Update).

Honorable Chair Brownsey and members of the California Coastal Commission,

Smart Coast California (SCCa) is grateful for the opportunity to submit our comments to the Coastal Commission regarding Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0066-2 (Coastal Hazards Update). SCCa is a 501(c)6 organization established in 2019 to promote and advocate for smart land use policies affecting California's 1,271 miles of coastline. Smart Coast California is dedicated to community sustainability, property rights and the environment. Our comments are informed by our detailed review of the following documents, including, but not limited to:

Santa Cruz County Local Coastal Plan Public Safety Element and Attachments, adopted by the Board of Supervisors, September 15, 2020.
Formal comment Letter from CCC staff Central Coast District Supervisor Kevin Kahn, September 9, 2020
Santa Cruz County GPA/LCPA Staff Report, March 10, 2020,

1. CCC Staff Report and exhibits for approval of Pleasure Point/ East Cliff Drive Parkway CDP 3-07-019 December 13, 2007
2. California Coastal Commission Sea Level Rise Policy Guidance, Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits

Smart Coast California acknowledges the task before you is formidable. You will be asked if you can find the Santa Cruz County LCPA to be consistent with the Coastal Act, and Smart Coast California urges you to make those findings and certify this document.

A Local Coastal Program
The Coastal Act creates a unique partnership between the state and local governments. Section 30500 (c) of the Coastal Act states,

> "The precise content of each local coastal program shall be determined by the local government, consistent with Section 30501, in full consultation with the commission and with full public participation."

Local jurisdictions need to be able to plan for their specific circumstances. Section 30004 (a) of the Coastal Act states:

> "To achieve maximum responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely heavily on **local government** and local land use planning procedures and enforcement." (emphasis added)

Santa Cruz County began background studies in 2011, collaborated with key stakeholders, held multiple public hearings, and developed several drafts of the LCPA, completing roughly $500,000 of focused work to develop a community-driven plan that is consistent with Coastal Act policies.

"Existing"

In our review of the Coastal Commission Staff Report for Item F10e, the most consistent basis for the case the staff makes against certifying the Santa Cruz County LCPA is based on their interpretation of the definition of "existing".

According to Section 30235 of the Coastal Act (Coastal Act codified in Public Resources Code Sections 30000 through 30900), property owners of existing structures are afforded certain rights to shoreline protections. The interpretation of what constitutes "existing" as being what existed prior to the effective date of the Coastal Act, January 1, 1977, compels communities to accept "Managed Retreat" as the accepted response to Sea Level Rise (SLR), as it eliminates their legal rights to defend their properties under the Coastal Act. SCCa believes managed retreat can be a commonsense land use practice, especially in rural areas where existing structures can be relocated further inland. However, in areas such as those defined in the Santa Cruz County LCPA as "Shoreline Protection Exception Area" (SPEA) managed retreat is not practical. The County of Santa Cruz must be allowed to defend both public access to the shoreline and private property from wave attack. This is a geographically focused response that meets the specific needs of their community.

The following excerpt from the staff report for the East Cliff Drive County Parkway (CDP 0-07-19 & A-3-SCO-07-015) also clarifies the Coastal Commission Staff's interpretation of existing by stating that the structures along East Cliff Drive are existing and subject to the shoreline protection rights of Section 30235 of the Coastal Act.

> "Proposed Armoring Is Necessary. There are clearly significant blufftop recreational resources atop the bluff in the East Cliff Drive right of-way, and staff believes that the seawalls are necessary to protect existing structures in danger from erosion (East Cliff Drive and related pedestrian/bicyclist trail and utilities) and that other alternatives are not capable of adequately protecting such structures." (page 3)

For further comments related to the definition of "existing", we respectfully ask that you refer to the comment letter submitted by Steven H. Kaufman of Nossaman, LLP on October 7, 2022, to the California Coastal Commission regarding Agenda Item F10e. We trust Mr. Kaufman's perspective as he served from 1977 (the year the Coastal Act became effective) to 1991 at the California Attorney General's office, representing the California Coastal Commission as well as other state agencies including the California State Lands Commission. It should be noted that Mr. Kaufman was the recipient of the California Attorney General's Award for Excellence in 1990.

Shoreline Protection

SCCa would like to draw your attention to the blanket statements made in the staff report that any form of shoreline protection is detrimental. The Coastal Commission staff is repeating different versions of this message throughout the staff report. The specific conditions of the Santa Cruz coast must be understood in order to provide an informed response to these assertions, and to do so requires differentiation between the various forms of shoreline protection. The County's intent is described clearly in Exhibit B Public Safety Element Amendments, page 27:

GUIDING PRINCIPLES: REGULATION OF PROPOSED DEVELOPMENT ACTIVITIES ON COASTAL BLUFFS & BEACHES

> "Strive to avoid placement of new rip rap that is typically associated with "emergency permits", in favor of early planning for construction of modern more-vertical armoring approaches in identified urbanized

"shoreline protection exception areas" that would reduce or replace rip rap, in a manner that would lead to improved public access and improved visual resources during the planning horizon for the expected life of structures, when armoring is determined to be appropriate. Establish triggers for when property owners would be required to address imminent danger from coastal hazards."

The Coastal Commission approved the East Cliff Drive County Parkway referred to as the "Pleasure Point Parkway and Seawall project" which serves as a model for proposed Shoreline Protection Exception Area (Refer to Exhibit 1). The staff report makes reference to this approval in Footnote 26:

"[26] And indeed, the Commission recognized as much in approving the Pleasure Point Parkway and Seawall Project in 2007, conditioning it upon also enhancing the Parkway for public use, where the Commission accepted the trade off of potential loss of beach for the benefit of a protected public CCT and parkway open to the coast and ocean."

SCCa supports the County of Santa Cruz policies that provide for the inclusion of community-wide solutions for shoreline protection through collaboration among public agencies, special districts (GHADs) and private property owners. There are many legally permitted shoreline protection devices within the Opal Cliffs and Pleasure Point neighborhoods which are included in the SPEA that can continue to be maintained (Refer to Exhibit 2). The County is proposing to exchange this collection of disparate materials which hold a large footprint on the beach (Exhibit 3) for a **zero-footprint modern uniform bluff stabilization soil-nail wall** (Refer to Exhibit 4) to include an extension of the with a 16' wide blufftop public walkway (Exhibit 5). Should the Commission choose to do so, you can provide direction to the County of Santa Cruz to more narrowly define the activities of the Shoreline Protection Exception Area to what was approved by the Coastal Commission in December of 2007 for the East Cliff Drive County Parkway/Pleasure Point Parkway and Seawall Project, and certify this document.

Neighborhood Solutions

SCCa appreciates that the Coastal Commission staff report (Page 59) indicates the CCC is open to Neighborhood solutions.

"In addition, the Commission here does not intend to 'shut the door' on exploring the concept of 'neighborhood-scale adaptation,' [82] and does not intend its action here to be construed as an action evincing an intent to deny all such proposals moving forward.

[82] The concept of 'neighborhood-scale' or 'community adaptation' is premised on the idea that there may be sections of shoreline for which strict application of the Coastal Act might not allow armoring, but where the context might suggest that armoring is the more practical approach that minimizes and better mitigates for impacts to coastal resources overall (e.g., a mostly armored shoreline that is unlikely to lead to significant and naturally occurring beach space if there was no armoring, etc.), at least in the short term, and when it is accompanied by appropriate mitigation for impacts and triggers for future shoreline planning to identify preferred longer term outcomes."

SCCa believes that neighborhood solutions are the basis of Santa Cruz County's LCPA (Coastal Hazards).

Balanced Approach, not an either/or choice

Lastly, SCCa respectfully disagrees with the content of this excerpt from the staff report, Page 56.

"If the shoreline were allowed to react to such factors naturally, including were it allowed to naturally erode and allow for new beaches and new surfing areas to naturally form, then those natural processes would likely be sufficient to maintain these resources indefinitely. At the same time, however, the County's more urban shoreline is also fronted by significant development, including public roads and utilities, but mostly by private high-priced residential development (ranging in value from some $5 million to $10 million or more for each such unit), and allowing nature to take its course in that way would be at the expense of such development. On the other hand, a choice to protect such development in place, such as via shoreline armoring, would be at the expense of these beach and ocean recreational resources." (Emphasis added).

We do not believe that the Coastal Commission is faced with an either/or choice when it comes to coastal policy decisions as we describe in the above section entitled **Shoreline Protection** A balanced approach was taken by the Coastal Commission to protect the shoreline and existing structures with the approval of the East Cliff Drive County Parkway on December 13, 2007, CDP-07-19 & A-3-SCO-07-015 approved with conditions (Refer to Exhibit 1)**.** Coastal Commission staff concludes their recommendations with:

> "Pleasure Point and the Live Oak beach area as a whole are important recreational assets for Live Oak residents, other County residents, and visitors to the area. The site includes a portion of the largest marine sanctuary in the nation, and a surfing resource of State and worldwide significance. This project area is clearly a very special place, with valuable and irreplaceable resource value. The approved project will serve to protect and improve an important and very popular component of East Cliff Drive and the California Coastal Trail for public recreational access in a manner that should blend into the community aesthetic as part of the defining element that it is. The beach area at the toe of the bluffs will be enhanced by the removal of significant rock and concrete debris, and impacts to offshore surfing areas should not be significant. All things considered, staff believes that the project, as conditioned, is consistent with the LCP and the Coastal Act and that it is the most appropriate public policy and planning outcome for this stretch of coast." (page 5)

The Santa Cruz community now has years of experience with the East Cliff Drive County Parkway to prove these adaptation measures have been effective, and have not resulted in negative impacts.

Regulatory Takings

Property owners are afforded certain rights and those rights are delineated in The Fifth Amendment of the US Constitution and the Constitution of the State of California Article I - Declaration of Rights - Section 1. Should the CCC take actions that require a property owner to allow the ocean to consume their structure, effectively taking it for a public use, it is imperative that there be an established mechanism to pay full market value for the property that is being sacrificed for the planning goals of preserving the beach and comport with the Takings reference in the Coastal Act, Section 30010.

Consensus

SCCa appreciates the staff's acknowledgement of some of the valuable aspects of the County's LCPA on Page 58, and agrees that there are many points of consensus:

> "Fortunately, the County's proposal does include many forward-thinking elements that can form the foundation for a successful LCP coastal hazards amendment. In particular, the proposal clearly understands the phenomenon of coastal hazards as affected by sea level rise, and points to the need for such things as using best available science, applying hazard disclosures for properties in harm's way, allowing managed retreat in rural and less developed portions of the County, and deferring to future shoreline management planning to fine tune LCP provisions in light of changing future context. It

appears that these types of provisions need to and can be extricated from the rest of the text to help form a number of consensus points almost immediately."

Conclusion

In conclusion, SCCa commends the County of Santa Cruz for their unanimous vote to bring their adopted plan to you for certification, rather than withdrawal of their plan from your Agenda. A number of jurisdictions have chosen to withdraw their LCPA from the process of certification by the Coastal Commission, after expending significant resources to study SLR in their communities including extensive stakeholder involvement, summarizing SLR risks and vulnerabilities to said risks, and drafting policy to address SLR (largely funded with State grant monies).

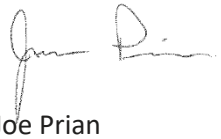
At your September 8, 2021 Coastal Commission hearing, then Chair Padilla spoke about listening to each other and trying to find a pathway forward.

> "…the only way of doing this is not to withdraw, and I think there needs to be better communication around that in advance…but I think on the other end of that, we need to be prepared to be able to work with the local jurisdictions around timelines and around taking more time to resolve issues…
>
> …we really need to be listening to each other and trying to find a pathway to getting these things certified and getting some real resiliency planning and incentivization going. "

We look forward to a constructive discussion with the Coastal Commissioners during the upcoming hearing. SCCa understands there is a recommendation for denial from your staff which would lose the opportunity to achieve an important certification capitalizing on years' worth of work. We understand that the path forward may be difficult for the Commission; however, the Commission could add Commissioner-sponsored suggested modifications during the hearing and a recommendation for certification based on those modifications, which is a viable option for your consideration.

Smart Coast California is committed to protecting our coast so that Californians and our many visitors will continue to enjoy its beauty for years to come. Thank you again for the opportunity to provide our comments on the Santa Cruz County Local Coastal Program Amendment (Coastal Hazards Update). We appreciate your service, and will be available in-person for testimony, further comment and answers to any questions you may have at the hearing in San Diego on Friday October 14, 2022.

Sincerely,



Joe Prian
President
Smart Coast California

Exhibit 1

Pleasure Point/East Cliff Drive Parkway and Seawall

Redevelopment of East Cliff Drive between 32nd and 41st Avenues

Coastal Commission Hearing December 13, 2007
CDP 0-07-19 & A-3-SCO-07-015
Approved by Coastal Commission with Conditions
https://documents.coastal.ca.gov/reports/2007/12/Th13a-s-12-2007.pdf

Project description: Reconstruct East Cliff Drive between 32nd and 41st Avenues (including drainage, water quality, park, trail and related public recreational improvements) and construct full bluff seawalls at two locations just seaward of East Cliff Drive (one between 32nd and 36th Avenues and another at 41st Avenue at the Hook), including removal of an abandoned restroom, removal of rip-rap and rubble on the beach, and the construction of three beach and surf access stairways (one new stairway and two replacement stairways).

Summary and Conclusion of Coastal Commission Staff Report, dated November 30, 2007:

Summary of Staff Recommendation, page 1

> "Staff believes that the project, if conditioned as recommended to avoid coastal resource impacts and to mitigate for those that are unavoidable, is consistent with the LCP and the Coastal Act, and will result in significant public recreational access enhancement in an important public access area. Staff recommends that the Commission find substantial issue with the appeal, and approve coastal permits for the project. Motions and resolutions to do this are found on staff report pages 10 (for finding substantial issue) and 10-11 (for approval of the project)."

Proposed Armoring is Necessary, page 3

> "Proposed Armoring Is Necessary. There are clearly significant blufftop recreational resources atop the bluff in the East Cliff Drive right of-way, and staff believes that the seawalls are necessary to protect existing structures in danger from erosion (East Cliff Drive and related pedestrian/bicyclist trail and utilities) and that other alternatives are not capable of adequately protecting such structures. There is inadequate space within which to move endangered structures inland to avoid the need for armoring, or even to delay the need for armoring in any sort of meaningful way. The dense residential neighborhood of Pleasure Point is directly inland of the road at this location, and even were East Cliff Drive to be abandoned and allowed to naturally erode into the ocean, eventually (and in the relatively short term), assuming current California law regarding existing structures, and lacking a substantial social and financial commitment to planned retreat, armoring would be installed to protect the row of houses directly inland of East Cliff Drive. This would not be uncommon in coastal Live Oak, a relatively urbanized area where most of the shoreline is armored (including surrounding the project area). To the extent that space still existed in the right-ofway seaward of these houses at that point in time, there would still be some through recreational access, but its value would be diminished because the amount of space would be significantly less. The larger the right-of-way, the more space available to accommodate public recreational enhancements such as trails, overlooks, benches, picnic areas, restrooms, et cetera. The amount of space, and the stability of it over the long-term, is also directly related to the amount of improvements that may be pursued for it. Staff believes it is clear that armoring is necessary to protect the important public structures present in East Cliff Drive."

Conclusion of Staff Recommendations, page 5

“Pleasure Point and the Live Oak beach area as a whole are important recreational assets for Live Oak residents, other County residents, and visitors to the area. The site includes a portion of the largest marine sanctuary in the nation, and a surfing resource of State and worldwide significance. This project area is clearly a very special place, with valuable and irreplaceable resource value. The approved project will serve to protect and improve an important and very popular component of East Cliff Drive and the California Coastal Trail for public recreational access in a manner that should blend into the community aesthetic as part of the defining element that it is. The beach area at the toe of the bluffs will be enhanced by the removal of significant rock and concrete debris, and impacts to offshore surfing areas should not be significant. All things considered, staff believes that the project, as conditioned, is consistent with the LCP and the Coastal Act and that it is the most appropriate public policy and planning outcome for this stretch of coast."

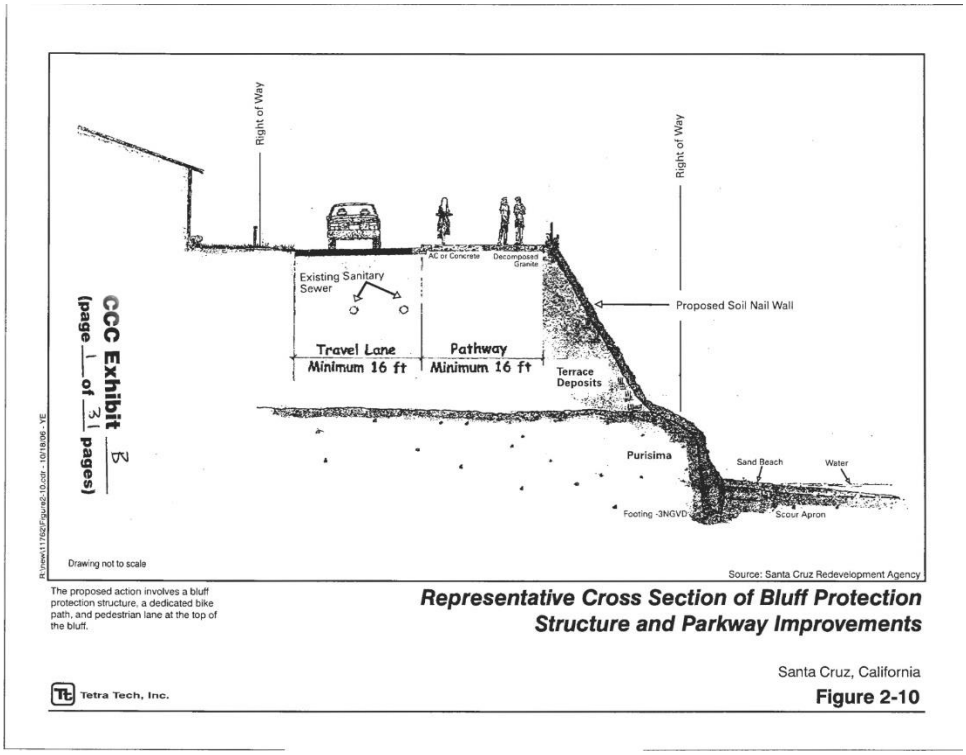
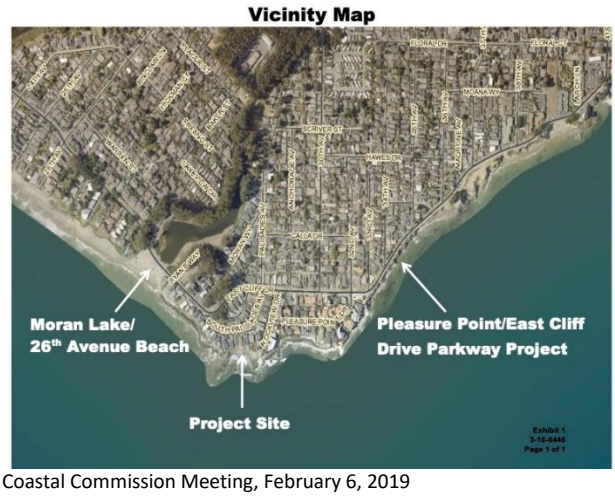


Exhibit 2

Rockview Drive Seawall

Coastal Commission Meeting, February 6, 2019
Exhibits, W16b, 3-16-0446 (Rockview Drive Seawall)
Approved with Conditions
file:///Users/lynettesmacbookpro/Desktop/W16b-2-2019-report.pdf
file:///Users/lynettesmacbookpro/Desktop/W16b-2-2019-exhibits.pdf



Coastal Commission Meeting, February 6, 2019
Exhibits, W16b, 3-16-0446 (Rockview Drive Seawall)

Project Description: Rockview Seawall - Coastal Permit application to recognize emergency repair work done on an existing retaining wall (Emergency Permit #G-3-16-0005). Work performed includes the construction of a 75' long, 8-9' deep cutoff wall and the restacking of existing Rip Rap along the sides of the seawall.

Timeline: Application Received - 05/13/2016; Coastal Commission Hearing Date - 02/06/2019 (approved with conditions).

Exhibit 3

Source: “Coastal Plans at the Local Level” presentation by Santa Cruz County Supervisor Koenig, First District at Smart Coast California Policy Summit, May 2022.

Exhibit 4

Source: “Coastal Plans at the Local Level” presentation by Santa Cruz County Supervisor Koenig, First District at Smart Coast California Policy Summit, May 2022.

Exhibit 5

Source: “Coastal Plans at the Local Level” presentation by Santa Cruz County Supervisor Koenig, First District at Smart Coast California Policy Summit, May 2022.

NOSSAMAN LLP

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Refer To File # - 504026-0001

F10E

RECEIVED
OCT 10 2022
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

October 10, 2022

Donne Browsey, Chair
Honorable Coastal Commissioners
California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94104

Re: Santa Cruz County LCPA No. LCP-3-SCO-20-0066-2 (Coastal Hazards Update)
Hearing Date: Friday, October 14, 2022, Agenda Item F10

Dear Chair Brownsey and Commissioners:

On October 7, 2022, we sent the Commission and Staff a letter regarding the Santa Cruz County LCPA on behalf of Pajaro Dunes Association and Pajaro Dunes Association North. Attached please find the following documents that were referenced in the letter:

1. The Commission's Opposition Brief in the trial court in *Surfrider Foundation v. Califonia Coastal Commission*, SFSC Case No. .
2. The Commission's Respondent's Brief in the Court of Appeal in *Surfrider Foundation v. California Coastal Commission*.
3. The transcript of oral argument in the trial court in *Surfrider Foundation v. California Coastal Commission*.
4. The trial court decision in *Surfrider Foundation v. California Coastal Commission*.
5. Assembly Bills 2943 [2002 Wiggins] and 1129 [2017 Stone] and the legislative record relating to both bills.

I hope these are helpful to you.

Sincerely,

Steven H. Kaufmann
Nossaman LLP

cc: Dan Carl, Central Coast District Director, CCC
Rainey Graeven, Central Coast District Supervisor, CCC
Tristen Thalhuber, Coastal Planner, CCC
Bob Scranton, President, Pajaro Dunes Association
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The Commission's Opposition Brief in the trial court in *Surfrider Foundation v. California Coastal Com.*, San Francisco Sup. Court Case No. CPF 03603643

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

SURFRIDER FOUNDATION, a California nonprofit public benefit corporation, Petitioner, v. **CALIFORNIA COASTAL COMMISSION,** Respondent. **WALTER CAVANAGH, et al.,** Real Parties in Interest.	CASE NO. CPF03503643 **CALIFORNIA COASTAL COMMISSION'S OPPOSITION TO PETITIONER'S OPENING BRIEF** Date: Sept. 13, 2004 Time: 9:30 a.m. Dept: 301 Judge: The Honorable James L. Warren Action Filed: Oct. 5, 2003

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I. INTRODUCTION

In this case, Petitioner Surfrider Foundation ("petitioner") challenges a permit decision involving a unique set of facts, yet seeks a broad ruling regarding the interpretation of important coastal protection policies. The California Coastal Commission ("Commission") agrees with many of petitioner's concerns, but, unlike petitioner, contends that its ultimate decision was reasonable and consistent with the requirements of the California Coastal Act. In particular, the Commission agrees that shoreline protective devices, including seawalls, can cause serious harm to existing beaches along the California coast. The Commission also agrees with petitioner's contention that, under the Coastal Act, shoreline armoring is disfavored and should be allowed only if specific criteria are met and all alternatives are carefully considered. Nevertheless, petitioner is incorrect in asserting that the Commission had no discretion to approve the shoreline protection device in this case.

On August 6, 2003, the Commission approved with conditions the issuance of a coastal development permit to real parties in interest Walter Cavanagh and Gary Grossman (collectively, "real parties") for a seawall to protect two houses located on a coastal bluff in the City of Pismo Beach. One of these structures, the Grossman residence at 121 Indio Drive, was originally built on the bluff more than 30 years ago, before the passage of the Coastal Act in 1976. The other home, owned by Walter Cavanagh and located at 125 Indio Drive, was built in 1998, just five years before the Commission's approval of the seawall at issue in this case.

The original permit for the residence at 125 Indio Drive was approved by the City of Pismo Beach in 1997 pursuant to its local coastal program and was never appealed to the Commission. The City analyzed predicted bluff erosion rates and required that the structure be set back at least 25 feet from the bluff edge. Shortly after the City approved the permit, the El Niño storms of 1997-1998 caused the sudden and unexpected collapse of five feet of the bluff at the rear of 125 Indio Drive. Following this event, new scientific evidence revealed that predicted future erosion threatened the stability of both the 125 Indio Drive and the 121 Indio Drive residences. Seeking protection for both structures, real parties applied for a coastal development permit to authorize the seawall at issue here. The permit for the seawall was approved by the City and then by the Commission on appeal.

Petitioner now challenges the Commission's decision to approve the seawall. Petitioner's legal

challenge, however, is fundamentally flawed because it applies the wrong legal standard. In cases such as the permit decision here where the Commission is considering an appeal of a local government decision, the Commission's review is limited to a determination of whether the project is in conformity with the local coastal program ("LCP"). Petitioner ignores the existence of the LCP, however, and instead seeks an interpretation of Coastal Act provisions that do not apply to this permit decision.

Petitioner's legal challenge in this case is based on the contention that Coastal Act sections 30235 and 30253 are inconsistent unless the words "as of January 1, 1977" are impliedly read into the provisions of section 30235 to modify the term "existing." This interpretation of section 30235 would have the effect of limiting the structures that can be protected by new seawalls to those structures in existence prior to the effective date of the Coastal Act. Because the Commission's decision here was based on the City of Pismo Beach's LCP rather than section 30235 of the Coastal Act, petitioner's arguments are inapplicable here. Moreover, even if the Court evaluates petitioner's theory regarding the meaning of the term "existing" as it is used in section 30235, petitioner should not prevail because the Commission's interpretation of the term "existing" is a reasonable one to which the Court should give great weight. Accordingly, the petition for writ of mandate should be denied.

II. BACKGROUND

Petitioner challenges the Commission's approval of a shoreline protection device, or "seawall," to protect two residential structures at 121 and 125 Indio Drive, which are located on a bluff overlooking the ocean in Pismo Beach. (Petition for Writ of Mandamus ("Petition") at p. 9; 11 AR 2083-2084.) As approved, the 18-inch wide seawall would run 165 feet along the bluff face to support the approximately 40-foot high, nearly vertical cliff at the rear of the two residences. (11 Administrative Record ("AR") 2078-2079, 2083, 2106; see also 11 AR 2143-2146 [plans depicting proposed seawall].) The seawall would connect two existing shoreline protective devices on both sides of a public cul-de-sac. (*Ibid.*)

One of the bluff-top houses, 121 Indio Drive, was constructed prior to January 1, 1977, the effective date of the Coastal Act. (11 AR 2102.) Construction of the other residence at 125 Indio

Drive was approved by the City of Pismo Beach in 1997 and completed in 1998. (11 AR 2084.) The City's approval of the 125 Indio Drive house was not appealed to the Commission and therefore the Commission never reviewed or approved the project. (11 AR 2078.)

The City's 1997 approval of the residence at 125 Indio Drive included an evaluation of bluff erosion and a corresponding assessment of sufficient set-back requirements to insure that the project site would be stable given the estimated rate of bluff retreat. (11 AR 2084.) After considering all available scientific evidence, the City required that the structure be set back 25 feet from the bluff face. (11 AR 2084 & 2132.) The City considered this distance to be sufficient based on evidence of a bluff retreat rate of two to three inches per year. (*Ibid.*) In light of the predicted bluff retreat rate, the City determined that the 25-foot set-back would insure the safety of the 125 Indo Drive house for the estimated economic lifespan of the home, or 100 years. (11 AR 2086; 2102.)

Shortly after the 125 Indio Drive residence was completed, the El Niño storms of 1997-1998 caused approximately 22 inches of rain to fall in the area. (3 AR 400; 11 AR 2103.) The ensuing loss of a five-foot section of the bluff at the rear of 125 Indio Drive — one-fifth of the rear set back area — was not predicted in the geological report reviewed by the City and therefore was not reflected in the estimated bluff retreat rate. (2 AR 344-346 [Terratech Inc. Report, Jan. 9, 1997]; 3 AR 400; 11 AR 2084, 2103.) Following the winter storms, real parties conducted new studies. (11 AR 2087-2088.) The new geological reports concluded that, four years after construction of the residence, the structure was in fact at risk from erosion.[1] (11 AR 2087.) Real parties submitted these reports with an application to the City for a seawall to protect both 121 and 125 Indio Drive from future erosion. The City approved the application, finding that the expert reports, demonstrated the need for a seawall to insure the stability of both residences. (3 AR 400-403; 11 AR 2088; 3 AR 379.) Two Commissioners appealed this decision to the Commission. (11 AR 2136-2142.)

The Commission determined that the appeals raised a substantial issue as to the consistency of the City's approval with the LCP (11 AR 2083-2091) and conducted a de novo review of the project

1. Petitioner implies that real parties' original expert reports were biased, yet provides no evidence of bias and does not challenge the conclusions. The question framed by petitioner here is not whether the Commission had substantial evidence to support the finding that a seawall was necessary to protect the structure.

(11 AR 2100-2121). The Commission's conclusions are summarized in its staff report, including the statement of findings adopted by the Commission in support of the project approval. (11 AR 2077-2160.)

As demonstrated by the findings, the Commission applied the City's LCP, including policy S-6, which mandates that a seawall "be permitted only when necessary to protect existing principal structures . . . in danger of erosion." (11 AR 2100 & 2102-2105.) The Commission noted that both structures at issue were legally present at the site — the 121 Indio Drive residence was constructed prior to the enactment of the Coastal Act and the 125 Indio Drive residence was constructed pursuant to the City's approval in 1997 — and concluded that they were both "existing." (11 AR 2102, 2105 ["the residences qualify as . . . existing structure[s]"].)

In approving the seawall, however, the Commission also undertook a detailed analysis of additional LCP requirements that discourage the approval of shoreline protective devices. For example, the Commission's staff geologist, Mark Johnsson, visited the site and analyzed all available geotechnical reports to determine whether the two residences were "in danger from erosion."[2/] (11 AR 2086-2088 & 2102-2103.) (*Ibid.*) Consistent with the LCP policies and the Commission's practices, Dr. Johnsson evaluated whether residences at 121 and 125 Indio Drive "would be unsafe to occupy in the next two or three storm cycles (generally, the next few years) if nothing were to be done [to protect the structures]." (11 AR 2102; see also 10 AR 1835-1836, 1850-1851.) Based on all available scientific evidence and recognizing that it was a "borderline" case, the Commission found that "the fact that waves now routinely impact an area that consists of poorly consolidated

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2. The following geological assessments were reviewed by the Commission's geologist: (1) *Geologic Assessment of Bluff Erosion and Sea Cliff Retreat,* Terratech, Jan. 9, 1997; (2) *Geologic Assessment of Bluff Erosion and Sea Cliff Retreat,* GeoSolutions LLC, Jan. 26, 1998; (3) *Bluff Protection Plan for 121 and 125 Indo Drive,* Fred Schott & Associates, Nov. 6, 2000; (4) Golden State Aerial Surveys, Inc. photogrammetric data; (5) R.T. Wooley report, Mar. 11, 2001; (6) Earth Systems Pacific report, Jan. 15, 2001 and June 8, 2001; R.T. Wooley report, July 31, 2001; (7) R.T. Wooley report, Feb. 13, 2002; (8) *Geotechnical Investigation of Potential Seacliff Hazards,* (9) Cotton, Shires, & Assoc., Inc. report, Jan. 23, 2003; (10) *Review of Seacliff Hazards Report,* Earth Systems Pacific, Feb. 13, 2003; (11) *Coastal Hazard Study,* Skelly Engineering, Feb. 17, 2003; (12) *Response to Peer Review of Cotton, Shires and Associates, Inc. Report,* Cotton, Shires, and Assoc., Inc., Mar. 12, 2003; (13) *Beach Bedrock Survey and MHTL Projection to Proposed Protective Structure,* Cotton, Shires, and Assoc., Inc. June 5, 2003. (11 AR 2086-2088 & 2102; 4 AR 1850.)

marine terrace material indicates that, absent some form of shore protection, a clear danger from erosion would exist in the very near future." (11 AR 2105.) In light of these circumstances, it concluded that the residences at 121 and 125 Indio Drive met the requirements of LCP policy S-6 as "existing principal structures . . . in danger from erosion." (11 AR 2102-2103.)

The Commission also found that, in addition to the residential structures, the Florin Street cul-de-sac, an important public viewpoint, was in danger from erosion. (11 AR 2104 & 2120.) The proposed seawall would protect all three lots and would connect two existing shoreline protection devices, a quarry stone revetment on the Florin Street end and a shotcrete wall at 121 Indio Drive. (11 AR 2106; 2143-2146.)

As required by the LCP, real parties and the Commission also analyzed various alternative methods of reducing the bluff-retreat risk. For example, real parties considered the relocation of the structures farther from the bluff edge, as well as alternative shoreline armoring systems such as a drilled caisson system or a rip-rap revetment located on the beach. (11 AR 2105-2106.) Based on feasibility studies evaluating each alternative, expert reports concluded that a vertical seawall would be the most environmentally suitable and only feasible alternative. (*Ibid.*) The Commission concurred with the conclusions of these studies, but further refined the proposed seawall's design to insure it occupied the minimum footprint necessary and required modifications to improve visual aspects, such as a texture and color that would complement the natural landscape. (11 AR 2114 & 2092.) The approval also included mitigation for the impacts of the seawall, including installation of a new storm water filtering system, removal of the existing storm water outfall pipe and pedestal, and a fee to improve public access at the Florin Street cul-de-sac. (11 AR 2092-2100.) The permit was approved with conditions requiring construction best management plans, drainage and landscaping controls, and beach restoration. (11 AR 2092-2100.)

The Commission approved the seawall permit on August 6, 2003. Petitioner filed this writ of mandate action challenging the Commission's decision on October 5, 2003.

III. ARGUMENT

A. The Roles of the Coastal Act and the City's Local Coastal Program.

The Coastal Act of 1976 (Pub. Resources Code, § 30000 et seq.) is the permanent replacement

of Proposition 20, the original coastal protection initiative passed by California voters in 1972.[3] Both the initiative and the Act have as their primary purpose the avoidance of deleterious consequences of development on coastal resources. (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158 163; *CEED v. California Coastal Zone Conservation Com.* (1974) 43 Cal.App.3d 315, 321.) The Coastal Act is recognized as a comprehensive scheme to govern land use planning for the entire coastal zone of California. (*Yost v. Thomas* (1984) 36 Cal.3d 561, 565.)

The Act initially vests the Commission with the authority to issue permits for any coastal development. (Pub. Resources Code, § 30600, subd. (a).) The statutory scheme, however, is designed to transfer primary permitting authority from the Commission to local governments through the creation of local coastal programs ("LCPs"). An LCP consists of land use plans, zoning ordinances and other implementing actions which are designed to satisfy the policies of the Act. (*Id.*, § 30108.6.)

The local government is responsible for preparing an LCP and submitting it to the Commission for its review and approval. (*Id.*, §§ 30500-30525.) Once the Commission certifies that the entire LCP (including the land use plan, the zoning ordinances and other implementation) is in conformity with the resource protection policies of the Coastal Act, permit authority over coastal zone development is transferred to the local government. (*Id.*, §§ 30512, 30519.) The local government will then issue coastal development permits ("CDP") for any project that conforms with the provisions of the LCP.

Even after it certifies an LCP, the Commission retains appellate jurisdiction over local government CDP decisions for certain forms of development, such as development "between the sea and the first public road paralleling the sea." (Pub. Resources Code, § 30603.) Decisions of local governments under their LCPs may be appealed to the Commission by members of the public who have participated in the local government's proceedings or by members of the Commission itself. (*Id.*, § 30625, 30603, subd. (b)(1).) Unless the Commission finds that an appeal raises no substantial issue with respect to the grounds raised by the appeal, the Commission conducts a de novo review

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3. Proposition 20 was codified in the Coastal Zone Conservation Act of 1972 (former Pub. Resources Code, § 27000, et seq.). The Coastal Zone Conservation Act expired on December 31, 1976 and was replaced by the Coastal Act of 1976.

of the permit application. (Pub. Resources Code, § 30625, subd. (b)(2); see also Pub. Resources Code, § 30621; Cal. Code Regs., tit. 14, §§ 13115, subd. (b), 13321; *Coronado Yacht Club v. California Coastal Commission* (1993) 13 Cal.App.4th 860, 867.) Like the City's review of the initial permit application, the Commission's de novo review involves an evaluation of whether the project is in conformity with the LCP. (Pub. Resources Code, § 30604, subd. (b); Cal. Code Regs., tit. 14, § 13119.) In addition, for projects like the seawall here that are located between the first public road and the sea, the Commission is required to make the additional finding that the project conforms with the public access and recreation policies of Chapter Three of the Coastal Act (Pub. Resources Code, §§ 30210-30224). (*Id.*, § 30604, subd. (c).)

The City of Pismo Beach has a certified LCP. (4 AR 607-700.) The City originally approved the Grossman/Cavanagh seawall, and two of the Coastal Commissioners filed an appeal of the City's action. (11 AR 2136-2142.) On appeal, the Commission found a substantial issue was raised and conducted a do novo review of the application, properly evaluating the proposed seawall for consistency with the City's LCP. (11 AR 2077-2121.) Following the Commission staff's review of the project and the applicants' substantial revisions to the proposed design of the seawall, the Commission approved the application on August 6, 2003 as being in conformity with the City's LCP. (11 AR 2075 & 2079.) The issue raised by petitioner here is whether the Commission's decision is inconsistent with section 30235 of the Coastal Act, which states in pertinent part: "seawalls . . . shall be permitted when required to . . . protect existing structures . . . ." (See Petition at p. 9-10.)

B. Courts Afford Deference to an Administrative Agency's Interpretation of its Own Laws and Policies.

Typically, Courts evaluate decisions of administrative agencies by applying the "substantial evidence" standard to review all questions of fact. (See, e.g., *Paoli v. California Coastal Com.* (1986) 178 Cal.App.3d 544, 550-51; *Whaler's Village Club v. California Coastal Com.* (1985) 173 Cal.App.3d 240, 251.) In applying this standard, "the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514.) In this case, however, petitioner

only raises a question of law, conceding that the evidence was sufficient to support the Commission's decision. Although the Court exercises independent review over questions of law (see, e.g., *Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888), "courts must give great weight and respect to an administrative agency's interpretation of a statute governing its powers and responsibilities" (*Mason v. Retirement Board of the City and County of San Francisco* (2003) 111 Cal.App.4th 1221, 1228). "Consistent administrative construction of a statute, especially when it originates with an agency that is charged with putting the statutory machinery into effect, is accorded great weight." (*Ibid.*)

Here, the Commission evaluated the seawall project for conformity with the City's LCP, a land use planning document that was certified by the Commission pursuant to authority delegated to the Commission by the Legislature. (See Pub. Resources Code, § 30512, 30512.1, 30512.2.) The Commission's interpretation of a City's certified LCP is entitled to deference because the Commission is essentially "charged with putting [the LCP] into effect." (*Mason v. Retirement Board of the City and County of San Francisco, supra,* 111 Cal.App.4th at 1228; see also Pub. Resources Code, § 30625, subd. (c) [Commission decisions shall guide local government actions under the Coastal Act].) Additionally, the Court should defer to the Commission's decision in this case because the Commission's interpretation of "existing structure" has been consistent. (11 AR 2018-2019 [testimony at the public hearing on this permit by the Commission's chief counsel indicates that the Commission has "interpreted existing structure to mean whatever structure was there legally at the time that it was making its decision"]; see *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 12 [evidence that an agency's statutory construction has been consistent weighs in favor of affording deference to that interpretation].)

Petitioner cites the Commission's Chief Counsel's testimony, insisting that the Commission has "vacillated" in its interpretation of "existing structure." (Petitioner's Opening Brief, at pp. 15:2-16:6.) This contention, however, is based on an inaccurate quotation of the hearing testimony. (*Id.*, at p. 15:12-13 [the parenthetical "[of existing structure]" is improperly inserted in the block quote].) Petitioner also misconstrues the testimony, suggesting that the Commission has previously determined that the terms "existing structure" under section 30235 apply only to pre-Coastal Act

structures. To the contrary, the Chief Counsel's testimony, read in context, clarifies that the "change," cited by petitioner, was the new practice of incorporating a "no future seawall" condition in permits for new bluff-top development, not a change in the interpretation of "existing structure." (11 AR 2018-2019; see section III.D, *infra*, for discussion of "no future seawall" conditions.) Indeed, even petitioner tacitly concedes that the Commission has never determined that seawall approval under section 30235 is limited to protection of pre-Coastal Act structures. (*Id.*, at pp. 16:8-27 & 15, fn. 14.) Petitioner cites examples of permit decisions where the Commission did not need to interpret the term "existing structure" for purposes of section 30235 and insists that these decisions are "further evidence of vacillation." (*Id.*, at p. 16:8-27.) Despite the desires of petitioner, the Commission has no obligation to decide questions that are not raised by the application before it.

Thus, the Court should defer to the Commission's interpretation of the City of Pismo Beach's LCP and the Coastal Act. (*Ibid.*)

C. The Policies Applicable to the Permit Decision Here are Found in the City's LCP Not the Coastal Act.

In this writ action, petitioner urges the Court to interpret two provisions of the Coastal Act: Public Resources Code sections 30235 and 30253. These sections provide:

> **Section 30235. Construction altering natural shoreline**
>
> 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.
>
> **Section 30253. Minimization of adverse impacts**
>
> New development shall: . . . [¶]
>
> (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.

Petitioner does not challenge the substantial evidence in support of the Commission's decision, but instead raises the purely legal question of the interpretation of the term "existing structure" in section 30235 of the Coastal Act.

Although it is not apparent from the Petition or petitioner's opening brief, the Commission

did not rely on sections 30235 and 30253 in approving the seawall here because its review consisted of an appeal from the City of Pismo Beach's CDP decision. Accordingly, the Commission properly looked to the provisions of the LCP applicable to seawalls and determined that the project was in conformity with the LCP. (Pub. Resources Code, § 30604, subd. (b); 11 AR 2100-2101.)

1. Although Seawalls are Disfavored Under the LCP, the Requirements For Seawall Authorization Were Met In this Case.

The Pismo Beach LCP includes policies intended to prevent the need for seawalls after new development is approved. For example, LCP policy S-3 addresses bluff set-backs:

> S-3 Bluff Set-Backs
>
> All structures shall be set back a safe distance from the top of the bluff in order to retain the structure for a minimum of 100 years, and to neither create nor contribute significantly to erosion, geologic instability or destruction of the site or require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

(California Coastal Commission's Request for Judicial Notice in Support of Opposition ("RFJN"), Exh. B at p. S-6; 11 AR 2100.) In order to avoid the need for shoreline protection devices, this policy thus requires an applicant seeking approval of a new beachfront structure to anticipate naturally occurring erosion. The structure must then be designed with a sufficient "set back," or distance from the bluff edge, to account for the anticipated erosion. When the bluff naturally retreats over time, the structure — if properly sited and designed — should still have a safe buffer separating it from the cliff edge, and there should be no need to use an artificial device to support the existing bluff.

In addition, once a structure is in place, the LCP places limitations on shoreline armoring, allowing such devices to protect the structure only under very limited circumstances. Specifically, LCP policy S-6 provides:

> S-6 Shoreline Protective Devices
>
> *Shoreline protective devices, such as seawalls, revetments, groins, breakwaters, and riprap shall be permitted only when necessary to protect existing principal structures, coastal dependent uses, and public beaches in danger of erosion.* If no feasible alternative is available, shoreline protection structures shall be designed and constructed in conformance with Section 30235 of the Coastal Act and all other policies and standards of the City's Local Coastal Program. Devices must be designed to eliminate or mitigate adverse impacts on local shoreline sand supply, and to maintain public access to and along the shoreline. Design and construction of

> protection devices shall minimize alteration of natural landforms, and shall be constructed to minimize visual impacts. The City shall develop detailed standards for the construction of new and repair of existing shoreline protective structure and devices. As funding is available, the City will inventory all existing shoreline protective structures within its boundaries.

(RFJN, Exh. B at p. S-8 & Exh. C at p. 15 [showing final version of policy S-6 as modified by the Commission]; 11 AR 2100-2101 [emphasis added].) A seawall is thus available under the LCP to protect an "existing principal structure," only if "no feasible alternative is available," the device is designed in conformance with Coastal Act section 30235[4] and the policies of the LCP, it is designed to "eliminate or mitigate adverse impacts on local shoreline sand supply," public access to the shoreline is maintained, and it is designed to "minimize alteration of natural landforms" and "minimize visual impacts." In addition, the City must have "detailed standards" for seawall construction.

In addition, LCP section 17.078.060 prohibits seawall approvals unless specific criteria are met:

> (4) Seawalls shall not be permitted unless the City has determined that there are no other less environmentally damaging alternatives for protection of existing development or coastal dependent uses. If permitted, seawall design must a) respect natural landforms; b) provide for lateral beach access; and c) use visually compatible colors and materials and will [sic] eliminate or mitigate any adverse impacts on local shoreline sand supply.

(6 AR 1029; 11 AR 2101.) The LCP also requires that shoreline structures be designed to "(a) Eliminate or mitigate impacts on local shoreline sand supply; (b) Provide lateral beach access; (c) Avoid significant rocky points and intertidal or subtidal areas; [and] (d) Enhance public recreational opportunities." (LCP section 17.078.060, subd. (6); 6 AR 1029; 11 AR 2101.)

These provisions demonstrate that the LCP disfavors shoreline protective devices, specifying that should be reviewed carefully and used sparingly. In this case, the Commission looked at the particular facts regarding the physical condition of the bluff and potential effects of possible storm and earthquake events. It considered all alternatives, including relocation of the structures. Applying the LCP policies, it determined that the 121 and 125 Indio residences were "existing

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4. Notably, policy S-6 refers to section 30235 on with respect to construction and design issues, not for guidance on whether a seawall can be approved at the site.

structures" that were "in danger from erosion" under policy S-6.

2. The Commission Has Discretion to Interpret the LCP to Allow Seawalls for Structures "Existing" as of the Date of the Seawall Approval.

Surfrider does not challenge the Commission's finding that the 125 Indio Drive residence was an "existing structure" under the LCP, but instead argues the 125 Indio Drive residence was not an "existing structure" under section 30235 of the Coastal Act. It contends that section 30235 cannot be interpreted to include 125 Indio as an "existing structure" because the residence was not in existence when the Coastal Act became effective on January 1, 1977. The legal standard here, however, is the City's LCP, not the general policies in the Coastal Act. (Pub. Resources Code, § 30604, subd. (b).) In this case, the Commission chose to treat the 125 Indio Drive residence as an "existing principal structure" under LCP policy S-6, implicitly interpreting the term "existing" to mean any structure in existence at the time the seawall application was filed. Nothing in the LCP suggests that this interpretation of policy S-6 is unreasonable.

The City of Pismo Beach adopted the original version of its LCP in 1981 and obtained permit authority when the Commission certified the LCP in 1984. (4 AR 607-608.) The City amended the several times after 1984 and, in 1992, completely revised and replaced the land use plan ("LUP") component of the LCP, including the seawall policies. The Commission certified the new updated plan on April 14, 1993. (RFJN, Exh. A at 1.) The LUP policies regarding shoreline protection in the 1993 LUP were the applicable policies at the time of the Commission's approval of the seawall in this case. (See 11 AR 2100-2101.)

In its original form, the LUP policy that addressed approval of seawalls included the same limitation found in the current version, allowing new seawalls to protect "existing" structures. (4 AR 681[Policy S-13].) In 1993, this policy was replaced by an amended version, but the reference to "existing" structures was retained. (RFJN, Exh. A at 3 [Policy S-6]; see also 11 AR 2100-2101.) Neither the original LUP nor the current LUP as amended in 1993 indicates that the term "existing" means "existing as of January 1, 1977." (4 AR 681; RFJN, Exh. A at 3; 11 AR 2100-2101.) Without a specific reference in the LCP to the date that the Coastal Act was adopted, it is reasonable to decline to read such a limitation into policy S-6. Indeed, it is unlikely that an ordinary reader of

the LCP — a document serving as part of the "City's constitution for land use decision making" (4 AR 621) — would rely on independent knowledge of the effective date of the Coastal Act to interpret the term "existing" to mean "existing as of January 1, 1997." Although seawalls are clearly disfavored under the LCP, it is illogical to claim that a document adopted in 1984 or 1993 would use the term "existing" to refer only to structures "existing" as of January 1, 1977.

The petition should be denied because the Commission's approval is based on a reasonable interpretation of the LCP.

D. Even If Coastal Act Sections 30253 and 30235 Governed the Commission's Analysis a Finding that the 125 Indio Residence Is an "Existing Structure" Would Be Reasonable.

Because the LCP controls, petitioner's argument that section 30235 applies only to pre-Coastal Act structures is misdirected. Nevertheless, if section 30235 applied in this case, it is within the Commission's discretion to find that the 125 Indio Drive residence is an "existing structure" under section 30235.

The "touchstone" of statutory interpretation is legislative intent. (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632.) In evaluating the meaning of a statute "the aim . . . should be the ascertainment of legislative intent so that the purpose of the law may be effectuated." (*Select Base Materials, Inc. v. Board of Equalization* (1959) 51 Cal.2d 640, 645.) We must look at "the purpose sought to be achieved and the evils to be eliminated . . . in ascertaining the legislative intent." (*Freedland v. Grecko* (1955) 45 Cal.2d 462, 467.) Statutory provisions must be harmonized if possible (*Consumers Union of United States, Inc. v. California Milk Producers Advisory Board* (1978) 82 Cal.App.3d 445-447), and statutes are to be construed to give meaning to every provision and to avoid making any provision surplusage (*Yoffie v. Marin Hospital Dist.* (1987) 193 Cal.App.3d 743, 752). "[I]t is a well-established rule of construction that when a word or phrase has been given a particular scope or meaning in one part or portion of a law it shall be given the same scope and meaning in other parts or portions of the law." (*Stillwell v. State Bar of California* (1946) 29 Cal.2d 119, 123.)

The Legislative intent of section 30235 can be discerned from review of the Coastal Act as a whole. For instance, the Legislature has used the term "existing" in other Coastal Act provisions.

"Existing" is used to refer to current conditions such as "existing water depths" (§ 30705, subd. (b)), "existing water quality" (§ 30711, subd. (a)(3)), "existing zoning requirements" (§ 30610, subd. (g)(1)), "existing administrative methods for resolving a violation [of the Act]" (30812, subd. (g)). Additionally, section 30235 itself refers to the phasing out of "[e]xisting marine structures." (*Id.*, § 30235.) Nowhere in any of these provisions in there any indication that the legislature intended to limit the Commission's review to the water depths, water quality, zoning requirements, administrative methods or marine structures that existed as of January 1, 1977. Indeed, this would be patently absurd. Similarly, when viewed in light of these provisions, it is reasonable to interpret the term "existing structure" to similarly refer to currently existing structures rather than structures existing as of the effective date of the Coastal Act.

In addition, in two provisions the Coastal Act specifically include a date to clarify the term "existing." Section 30610.6, refers to existing legal lots, but specifically limits the application of the section to any "legal lot existing . . . on the effective date of this section." Similarly, in section 30614, the Act refers to "coastal development permit conditions existing as of January 1, 2002." (Pub. Resources Code, § 30614.) Thus, when the Legislature intended to limit the term "existing" to a certain point in time, it did so specifically. That it did not do so in Section 30235 is a further indication that it is not unreasonable for the Commission to interpret the term "existing structure" in section 30235 as existing at the time the decision regarding the shoreline protection device is made.[5]

Petitioner also contends that section 30235 and section 30253 are conflicting. Of course, such an argument is on its face inconsistent with rules of statutory construction that require that a

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5. Two years ago, the California Legislature considered the addition of the specific language that petitioner seeks to "read into" section 30235. AB 2943, if adopted, would have amended section 30235 to add two new subdivisions. The proposed subdivision (c) defined "existing structure" for the purposes of section 30235 to mean "a structure that has obtained a vested right as of January 1, 1977, the effective date of the California Coastal Act of 1976." (RFJN, Exh. C [Sen. Amend. to Assem. Bill No. 2943 (2001-2002 Reg. Sess.) Aug. 26, 2002].) AB 2943 died on the Senate inactive file on November 30, 2002. (*Id.*, Exh. D [Complete Bill History].) Although "only limited inferences can be drawn from [unpassed bills]" (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 795), the Legislature's rejection of AB 2943 undermines petitioner's interpretation of section 30235. Without the specific provisions of the failed amendment, there is no requirement that the Commission interpret that section to apply solely to pre-Coastal Act structures.

statute must be read "with reference to the entire scheme of law of which it is a part so that the whole may be harmonized and retain effectiveness." (*People v. Kennedy* (2001) 91 Cal.App.4th 288, 293; see also *Romano v. Rockwell* (1996) 14 Cal.4th 479, 493.) Here, there is no conflict and the seawall sections of the Coastal Act are easily harmonized.

Section 30253 is directed at new development and instructs the Commission to take all reasonable measures to insure that new development will not require a shoreline protective device. In carrying out this policy, the Commission typically reviews new development proposed for coastal bluffs to determine if it has been adequately designed to prevent the need for any shoreline protective device for the lifetime of the project. As section 30253 makes clear, an application for development on the shoreline must show that the new development will not "in any way require the construction of protective devices." In effectuating this policy, the Commission may require that a development be reduced in size or set back farther from the bluff to reduce the likelihood that a seawall might be necessary to preserve the structure in the future. Indeed, in certain instances, the Commission has even imposed a "no future seawall" condition to forewarn property owners that a seawall will not be permitted at a later date. (11 AR 2019.) With such a condition, the development can be approved, but it is subject to a requirement that, for that particular development, a shoreline protective device will never be proposed as a means to stabilize an eroding bluff at the site. The permit therefore insures that a property owner does not attempt to circumvent the requirements of section 30253 after a structure is completed.

Nevertheless, the coast is a dynamic environment and in spite of best efforts the Coastal Act also recognizes that seawalls may sometimes be necessary and permitted. To this end, section 30235 specifically authorizes the approval of new seawalls and similar protective devices, but only where these devices are necessary to ensure the safety of "existing structures" (meaning structures existing at the time the application for a seawall is filed with the Commission) and only when such structures are "in danger of erosion" and certain other criteria are met. In sum, the two provisions are harmonious because, as even petitioner concedes, "one prohibits the construction of new development in a manner that would require a seawall in the future" (Petitioner's Opening Brief, at p. 2:26-27 [referring to section 30253]), while the other recognizes that even the best of intentions

can go awry and allows the Commission to approve seawalls to protect "existing structures in danger from erosion" (section 30235).

Additionally, contrary to petitioner's assertion, the Commission's interpretation of the term "existing" in section 30235 does not render it a meaningless, surplus term. (See Petitioner's Opening Brief, at p. 12:22-24.) With the term "existing," section 30235 prevents a permit applicant from requesting a seawall as a component of an application for a new bluff-top structure. If "existing" is omitted from section 30235, the Commission could be asked to approve seawalls for any *planned* structures that met the additional requirements of the section. In other words, an applicant could request a seawall as part of an application a new development project when erosion of the development site could not otherwise be prevented. Thus, the term "existing," meaning currently existing, is essential to limit seawall approval to protection of structures existing at the time of the approval, thereby harmonizing sections 30235 and 30253.[6]

V. CONCLUSION

Reasonable application of the policies by the City, implementing the analogous seawall policies in the LCP, is demonstrated by this case. When the City initially reviewed the proposal to construct a residence at 125 Indio Drive residence, it conducted a thorough review of the facts to insure no future seawall would be necessary. And based on uncontradicted evidence that demonstrated the structure would be adequately set back from the bluff edge given predicted erosion rates for the area, the project was approved. If the Coastal Commission had reviewed this project, it might have also imposed a "no future seawall" condition to provide notice that a seawall would not be allowed if these predictions and evidence proved false, but this project was instead approved by the City, so no such condition was adopted. Unfortunately, an unpredicted acceleration in the bluff erosion rate occurred after the residence was constructed and it is uncontested that it is now in jeopardy. In such a situation, where an existing structure is in danger from erosion, approval of a seawall is permitted by the Coastal Act. Nothing in the Act or LCP mandates that this house must

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6. Similarly, petitioner's argument regarding early legislative bills proposing section 30235 (Petitioner's Opening Brief, at pp. 11-13) is unpersuasive. There is no evidence that the addition of the term "existing" in the bill that was ultimately passed by the Legislature requires the Commission to limit "existing structures" to pre-Coastal Act structures.

be allowed to fall into the sea.

Accordingly, the Court should deny the petition for writ of mandamus.

Dated: July 30, 2004

Respectfully submitted,

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PROOF OF SERVICE

CASE NAME: ***Surfrider Foundation v. California Coastal Commission***

CASE NO.: Superior Court of the State of California County of San Francisco
Case No. CPF03503643

I am employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within entitled cause; my business address is P. O. Box 70550; 1515 Clay Street, 20th Floor, Oakland, California 94612-0550. On **July 30, 2004**, I served the following document(s):

1. **CALIFORNIA COASTAL COMMISSION'S OPPOSITION TO PETITIONER'S OPENING BRIEF**
2. CALIFORNIA COASTAL COMMISSION'S REQUEST FOR JUDICIAL NOTICE

on the parties through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

(A) **By First Class Mail**: I caused each such envelope to be placed in the internal mail collection system at the Office of the Attorney General with first-class postage thereon fully prepaid in a sealed envelope, for deposit in the United States Postal Service that same day in the ordinary course of business.

(B) **By Messenger Service**: I caused each such envelope to be delivered by a courier employed by King Courier, with whom we have a direct billing account, who personally delivered each such envelope to the office of the address on the date last written below.

(C) **By Overnite Mail**: I caused each such envelope to be placed in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.

(D) **By Facsimile**: I caused such document to be served via facsimile electronic equipment transmission (fax) on the parties in this action by transmitting a true copy to the following fax numbers listed under each addressee below.

TYPE OF SERVICE	ADDRESSEE
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I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on **July 30, 2004**, at Oakland, California.

R. OWENS

The Commission's Respondent's Brief in the Court of Appeal in *Surfrider Foundation v. California Coastal Com*.

ORIGINAL

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION FIVE

SURFRIDER FOUNDATION,
Petitioner and Appellant,
v.
CALIFORNIA COASTAL COMMISSION,
Defendant and Respondent,
WALTER CAVANAGH, et al.,
Real Parties In Interest and Respondents.

Case No. A110033

San Francisco County Superior Court No. CPF 03-503643
The Honorable James L. Warren, Judge

BRIEF OF RESPONDENT CALIFORNIA COASTAL COMMISSION

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INTRODUCTION

This is a case in which the rules of statutory construction, sound public policy and common sense converge in harmony. A landowner's 1997 coastal development permit required that he set his proposed house 25 feet back from the bluff to assure the stability of the site and avoid the later need for a seawall. The 1997-98 El Niño storms unexpectedly caused substantial loss of the bluff top, causing the landowner to apply for a seawall to protect his home. After the California Coastal Commission's staff geologist agreed with the conclusion of numerous experts that the house was in substantial danger, the Commission approved a coastal development permit for the seawall. The Commission imposed 15 stringent conditions that would mitigate the seawall's impacts on sand supply and public access. The Surfrider Foundation then brought this action to argue that the Commission had no discretion as a matter of law to allow the seawall.

The trial court rejected Surfrider's argument, and the trial court's judgment should be affirmed. Section 30235 of the Coastal Act allows the construction of shoreline protective structures to protect "existing" structures in danger from erosion when they are designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Because the Commission found that the landowner's existing home was in danger from erosion and that his proposed seawall as conditioned would mitigate its adverse impacts—factual findings never contested by Surfrider—the Commission properly approved the construction of the seawall.

Surfrider, however, wishes to add some language to section 30235. It contends that "'[e]xisting structure' must be interpreted to mean 'existing structure as of 1976.'" (Surfrider Br. at p. 41.) To support its reworking of section 30235, Surfrider argues that the Commission's interpretation of section 30235 conflicts with section 30253. Section 30253 provides that new

development should not require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. But there is no conflict between these two provisions—section 30253 requires that new development be constructed in a way that avoids the need for protective devices; section 30235 allows the Commission to approve a seawall if, despite this effort, the development later becomes endangered by erosion and a properly designed seawall can avoid adverse impacts.

The manner in which the word "existing" appears throughout the Coastal Act confirms the trial court's conclusion that existing structures are those structures that exist at the time of the seawall application. Chapter 3 of the Coastal Act (Pub. Resources Code, §§ 30200-30265.5) contains the resource policies that the Commission applies to pending applications. (*Id.*, § 30604(a).) Including section 30235, the word "existing" appears no fewer than 15 times in Chapter 3 and each time refers to currently existing conditions. (*Post*, at pp. 18-19.) It is logical that these Chapter 3 policies, including section 30235, refer to conditions that exist at the time of a permit application. It would make little sense to evaluate permit applications under conditions as they existed thirty or more years ago and ignore the considerable changes that have taken place along California's coast since the Coastal Act's passage.

Finally, Surfrider's antagonism toward the Commission is misdirected. Surfrider suggests that the Commission is indifferent to the impacts of seawalls and that its interpretation of section 30235 would "guarantee" every applicant a seawall. (E.g., Surfrider Br. at p. 37.) Under the Commission's interpretation, however, obtaining approval for a seawall remains a taxing proposition. Applicants must demonstrate that their existing structures are in genuine danger and they must design protective devices in a way to eliminate or mitigate their adverse impacts. (Pub. Resources Code, § 30235.) For the applicants here, that meant submitting over 15 technical reports, accepting important design

modifications, and agreeing to numerous conditions that will mitigate the seawall's possible impact on shoreline processes, visual resources and public access.

When these exacting standards are met, section 30235 authorizes the Commission to approve seawalls. The Commission's interpretation of section 30235 is "absurd" only if one is prepared to say that it would be absurd for the Legislature to pass a law that allows the construction of properly designed seawalls to protect existing houses, roads and other structures, not to mention human lives, that are endangered by the ravages of the ocean.

The trial court's judgment should be affirmed.

BACKGROUND

Surfrider challenges the Commission's approval of a single shoreline protection device, or "seawall," to protect two residential structures at 121 and 125 Indio Drive in Pismo Beach that are located on a bluff overlooking the ocean. (11 Administrative Record ("AR") 2083-2084.) The 165-foot long seawall would connect two existing shoreline protective devices on both sides of a public cul-de-sac. (11 AR 2078-2079, 2083, 2106, 2143-2146 [proposed seawall plans].) Gary Grossman owns the house at 121 Indio Drive and Walter Cavanagh owns the house at 125 Indio Drive. (The real parties in interest are referred to in this brief collectively as "the applicants.")[1]

The house at 121 Indio Drive was constructed before January 1, 1977, the effective date of the Coastal Act. (11 AR 2102.) In 1997, acting under its local coastal program (or "LCP"), the City of Pismo Beach approved a coastal development permit for construction of the house at 125 Indio Drive. (11 AR

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1. Grossman at one time also owned 125 Indio Drive property, and applied for the 1997 permit to build the house. He later sold the 125 Indio Drive property to Cavanagh, who joined with Grossman as a co-applicant for the seawall in dispute. (1 AR 77; 7 AR 1138.)

2084.) The City's approval was not appealed to the Commission, and therefore the Commission never reviewed the project. (11 AR 2078.) The house at 125 Indio Drive was constructed in 1998. (11 AR 2084.)

Before it approved the house at 125 Indio Drive, the City evaluated the site's potential for bluff erosion and considered the distance that the house would need to be set back so that the project site would be stable. (11 AR 2084.) After receiving expert evidence that the bluff retreat rate was two to three inches per year, the City required that the structure be set back 25 feet from the bluff face. (11 AR 2084, 2132.) The City determined that the 25-foot setback would be adequate to withstand 100 years of erosion. (11 AR 2086; 2102.)

After the City approved the house at 125 Indio Drive house, the El Niño storms of 1997-1998 brought approximately 22 inches of rainfall to the area. (3 AR 400; 11 AR 2103.) These storms caused the loss of a five-foot section of the bluff at the rear of 125 Indio Drive. (11 AR 2083.) This unexpected loss was not predicted in the geological report that the City reviewed and was not reflected in the estimated bluff retreat rate. (2 AR 344-346 [Terratech Inc. Report, Jan. 9, 1997]; 3 AR 400; 11 AR 2084, 2103.) Following the winter storms, the applicants conducted new studies. (11 AR 2087-2088.) The new geological reports concluded that their houses were in serious jeopardy from erosion. (11 AR 2087.) The applicants submitted these reports to the City with an application for a coastal permit to construct a single seawall to protect both houses from future erosion. The City approved the coastal permit, finding that the expert reports demonstrated that both residences required a seawall to insure their stability. (3 AR 400-403; 11 AR 2088; 3 AR 379.) Two Commission members appealed the City's decision to the Commission. (11 AR 2136-2142.)

The Commission determined that the appeals raised a substantial issue whether the City's approval was consistent with the City's LCP. (11 AR 2083-

2091.) Having found a substantial issue, the Commission conducted a de novo review of the project. (Pub. Resources Code, § 30621.) After a public hearing, the Commission approved the proposed seawall, subject to 15 special conditions. (11 AR 2100-2121). The Commission adopted its staff's proposed findings in support of its decision. (11 AR 2077-2160.)

Because the Coastal Act requires that the Commission on appeal apply the policies of the LCP, not the Coastal Act (see Pub. Resources Code, § 30604(d)), the Commission's findings addressed whether the project was consistent with the relevant policies of the City's LCP. The primary policy was LCP policy S-6, which provides that a seawall "be permitted only when necessary to protect existing principal structures . . . in danger of erosion." (11 AR 2100, 2102-2105.) The Commission found that "the residences qualify as . . . existing structure[s]" under LCP policy S-6. (11 AR 2102, 2105.)

The Commission then considered whether these existing structures were in "danger of erosion." To meet this standard, the Commission required proof that the houses "would be unsafe to occupy in the next two or three storm cycles (generally, the next few years) if nothing were to be done [to protect the structures]." (11 AR 2102; see also 10 AR 1835-1836, 1850-1851.) The Commission's staff geologist, Mark Johnsson, visited the site and analyzed no fewer than 14 expert reports to determine whether the two houses were endangered. (11 AR 2086-2088, 2102-2103.)[2] Using Dr. Johnsson's analysis,

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2. These geotechnical reports included: (1) *Geologic Assessment of Bluff Erosion and Sea Cliff Retreat,* Terratech, Jan. 9, 1997 (1 AR 111); (2) *Geologic Assessment of Bluff Erosion and Sea Cliff Retreat*, GeoSolutions LLC, Jan. 26, 1998 (1 AR 92); (3) *Bluff Protection Plan for 121 and 125 Indo Drive*, Fred Schott & Associates, Nov. 6, 2000; (4) Golden State Aerial Surveys, Inc. photogrammetric data (1 AR 133); (5) R.T. Wooley report, Mar. 11, 2001 (1 AR 130); (6) Earth Systems Pacific report, Jan. 15, 2001 (1 AR 124); (7) Earth Systems Pacific report, June 8, 2001 (1 AR 128); (8) R.T. Wooley report, July 31, 2001 (1 AR 173); (9) R.T. Wooley report, Feb. 13, 2002 (3 AR 448); (10) *Geotechnical Investigation of Potential Seacliff Hazards,* Cotton, Shires, and

the Commission found that the houses were in danger: "the fact that waves now routinely impact an area that consists of poorly consolidated marine terrace material indicates that, absent some form of shore protection, a clear danger from erosion would exist in the very near future." (11 AR 2105.)

The Commission also found that, in addition to the residential structures, the Florin Street cul-de-sac, an important public viewpoint, was in danger from erosion. (11 AR 2104, 2120.) The proposed seawall would protect both the houses and the viewpoint, by connecting with two existing shoreline protection devices, a quarry stone revetment on the Florin Street end and a shotcrete wall at 121 Indio Drive. (11 AR 2106, 2143-2146.)

The Commission also analyzed alternative methods of reducing the bluff-retreat risk, as required by the LCP. For example, the applicants' experts considered relocating the structures farther from the bluff edge, as well as installing alternative shoreline armoring systems such as a drilled caisson system or a rip-rap revetment located on the beach. (11 AR 2105-2106.) Based on feasibility studies evaluating each alternative, the geotechnical reports concluded that a vertical seawall would be the most environmentally suitable and the only feasible alternative. (*Ibid.*) The Commission concurred with these conclusions, but required substantial changes in the proposed seawall's design to insure that the seawall occupied the minimum footprint necessary and that it was less visually intrusive than the one proposed. (11 AR 2114, 2092.) In all, the Commission imposed 15 conditions to mitigate or eliminate any remaining adverse impacts of the project. Among others, these conditions required that

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Assoc., Jan. 23, 2003 (8 AR 1258); (11) *Review of Seacliff Hazards Report*, Earth Systems Pacific, Feb. 13, 2003 (8 AR 1412); (12) *Coastal Hazard Study*, Skelly Engineering, Feb. 17, 2003 (8 AR 1420); (13) *Response to Peer Review*, Cotton, Shires, and Assoc., Mar. 12, 2003 (8 AR 1403); (14) *Beach Bedrock Survey and MHTL Projection to Proposed Protective Structure*, Cotton, Shires, and Assoc., June 5, 2003 (9 AR 1535).

the applicants:

- Limit the width of the toe of the seawall to 18 inches (11 AR 2066);
- Face the seawall with a sculpted concrete surface that mimics natural bluffs in color, texture and undulation (*ibid.*);
- Install a new storm water filtering system, remove the existing storm water outfall pipe, and make a $50,000 deposit to implement the City's nonpoint source storm water runoff control (*ibid.*);
- Install permanent devices to collect all surface runoff from the two houses (11 AR 2068);
- Implement a native plant landscaping plan (11 AR 2068-2069);
- Before finishing construction, test to the Commission's satisfaction that the seawall facing met the permit requirements (11 AR 2069-2070);
- Pay $10,000 for public access improvements at the Florin cul-de-sac (AR 2070-2071);
- Make an irrevocable offer to dedicate permanent public access to the beachfront property that is west of the seawall on Grossman's property (11 AR 2071); and
- Monitor the success of the seawall and storm water outfall on a permanent basis (11 AR 2071-2072).

Surfrider filed a timely petition for a writ of mandate challenging the Commission's decision. (CT 1.) After briefing and oral argument, the trial court denied Surfrider's petition. (CT 301.) The trial court rejected the applicants' argument that the City should have been named as a real party interest. (CT 7-9.) It also rejected the Commission's argument that the writ should be denied because Surfrider failed to challenge whether the project was consistent with the LCP. (CT 9-11.)

On the merits, however, the trial court determined that the Commission's

treatment of the 125 Indio house as an "existing" structure was reasonable and within the Commission's discretion. (CT 310-317.) Among many reasons, the trial court found that the Commission's interpretation of section 30235 comported with the plain language of the statute; that the Commission's interpretation of the statute was longstanding; that the word "existing" throughout the Coastal Act referred to currently existing conditions, not just those that existed as of January 1, 1977; and that sections 30235 and 30253 were not in conflict but easily harmonized. (*Ibid.*)

Surfrider filed a timely appeal and has served its opening brief.

STANDARD OF REVIEW

In reviewing an appeal from a trial court's determination of a petition for a writ of administrative mandamus, the Court of Appeal occupies the same position as the trial court. (E.g., *City of San Diego v. California Coastal Com.* (1981) 119 Cal.App.3d 228, 232; *McGill v. Regents of University of California* (1996) 44 Cal. App. 4th 1776, 1786.) The Commission's permit decisions must be upheld if they are supported by "substantial evidence" in light of the entire record. (E.g., *Paoli v. California Coastal Commission* (1986) 178 Cal.App.3d 544, 550-51.) The agency's decision is presumed correct, and unless the petitioners produce or cite evidence to the contrary, the decision is presumed to be supported by substantial evidence. (See *Smith v. Regents of the University of California* (1976) 58 Cal.App.3d 397, 404-05; *Alford v. Pierno* (1972) 27 Cal.App.3d 682, 690-91.) The Court exercises independent review over questions of law. (E.g., *Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888.)

In this action, Surfrider raises only a single question of law—the meaning of the word "existing" in Public Resources Code section 30235. Surfrider's tactical decision means that the Court must accept as true the Commission's unchallenged factual findings, including its findings that the applicants' houses

were in danger from erosion and that the permits as conditioned comply with the policies of the Coastal Act. In addition, because Surfrider does not describe the material evidence in the administrative record, it has waived any challenge to the sufficiency of the evidence to support the Commission's decision. (See, e.g., *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.)

RULES OF STATUTORY CONSTRUCTION

The usual rules apply. The "touchstone" of statutory interpretation is legislative intent. (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632.) In evaluating the meaning of a statute "the aim . . . should be the ascertainment of legislative intent so that the purpose of the law may be effectuated." (*Select Base Materials, Inc. v. Board of Equalization* (1959) 51 Cal.2d 640, 645.) The courts look at "the purpose sought to be achieved and the evils to be eliminated . . . in ascertaining the legislative intent." (*Freedland v. Grecko* (1955) 45 Cal.2d 462, 467.) Statutory provisions must be harmonized if possible (*Consumers Union of United States, Inc. v. California Milk Producers Advisory Board* (1978) 82 Cal.App.3d 431, 445-447), and statutes are to be construed to give meaning to every provision and to avoid making any provision surplusage (*Yoffie v. Marin Hospital Dist.* (1987) 193 Cal.App.3d 743, 752). "[I]t is a well-established rule of construction that when a word or phrase has been given a particular scope or meaning in one part or portion of a law it shall be given the same scope and meaning in other parts or portions of the law." (*Stillwell v. State Bar of California* (1946) 29 Cal.2d 119, 123.)

ARGUMENT

I. SURFRIDER'S PETITION SHOULD BE DENIED BECAUSE SURFRIDER DOES NOT CHALLENGE THE COMMISSION'S FINDING THAT THE PROPOSED SEAWALL IS IN CONFORMITY WITH THE CITY'S LOCAL COASTAL PROGRAM

Surfrider's approach has caused it a real problem. Surfrider raises only the issue whether the Commission's action violated Coastal Act section 30235. But that issue was not before the Commission, which considered (and legally was only allowed to consider) whether the project was consistent with the City's LCP. (Pub. Resources Code, § 30604(d).) Because it failed to challenge the basis upon which the Commission acted, Surfrider's appeal should be denied.

The Coastal Act initially vests the Commission with the authority to issue permits for coastal development. (Pub. Resources Code, § 30600(a).) The Act transfers primary permitting authority to local governments through the creation of local coastal programs. An LCP consists of a local government's land use plans, zoning ordinances and other implementing actions that the Commission has certified as consistent with the resource protection policies contained in Chapter 3 of the Coastal Act. (See *id.*, §§ 30108.6, 30512, 30519.) A certified LCP may be more restrictive than the Chapter 3 policies, but it may not be less restrictive. (Pub. Resources Code, § 30512(c); see *Yost v. Thomas* (1984) 36 Cal.3d 561, 572.) Once the Commission has certified the local government's LCP, permitting authority is transferred to the local government. (Pub. Resources Code, § 30600(d).)

Local government LCP permit decisions in many circumstances may be appealed to the Commission. (Pub. Resources Code, §§ 30603, 30625.) Unless the Commission finds that an appeal raises no substantial issue, the Commission conducts a de novo review of the permit application. (*Id.*, § 30625(b)(2); see *id.*, § 30621; Cal. Code Regs., tit. 14, §§ 13115(b), 13321;

Coronado Yacht Club v. California Coastal Commission (1993) 13 Cal.App.4th 860, 867.) The Commission's de novo review requires that it determine whether the project is in conformity with the LCP and, where applicable, the public access and recreation policies of the Coastal Act, but not the other Chapter 3 policies such as section 30235. (Pub. Resources Code, § 30604(b), (c); Cal. Code Regs., tit. 14, § 13119.) The Commission here found that the seawall as conditioned was in conformity with the seawall policies in the City's LCP. (E.g., 11 AR 2085-2086.)

Therefore, to set aside the Commission's decision on appeal, Surfrider must demonstrate that there is no substantial evidence to support the Commission's finding that the project is in conformity with the City's LCP. But Surfrider does not challenge this finding. It contends that the Commission misinterpreted the word "existing" in section 30235 in the Coastal Act. Even if the Court were to agree with Surfrider, it could not accord Surfrider relief because the Commission's finding that the project was in conformity with the policies of the City's LCP would not be affected.

Surfrider perhaps can be extricated from this dilemma if the Court chooses to do two things. First, the Court would be required to assume that the word "existing" in section 30235 has the same meaning as "existing" in the City's LCP. It is fair to make this assumption because the Commission may not certify an LCP that is less restrictive than the Chapter 3 policies of the Coastal Act. (*Post*, at p. 10.) Second, the Court would be required to treat Surfrider's argument about the meaning of section 30235 as an implicit challenge to the Commission's interpretation of "existing" in LCP Policy S-6. Because Surfrider has never requested to amend its petition to state a proper cause of action, however, there is no compelling reason why the Court on its own should allow a de facto amendment of Surfrider's petition.

In summary of this point, the Court should deny Surfrider's petition

because it failed to challenge the legal basis on which the Commission made its decision. Alternatively, should the Court consider the appeal, it should treat the petition as if it were directed to the Commission's interpretation of the LCP.

For the remainder of this brief, the Commission will assume that the words "existing" in section 30235 and in LCP policy S-6 have the same meaning and that the Court will construe Surfrider's argument about the interpretation of section 30235 as an implicit challenge to the Commission's decision under the LCP.[3]

II. SURFRIDER'S PETITION SHOULD BE DENIED BECAUSE THE TERM "EXISTING STRUCTURES" REFERS TO EXISTING STRUCTURES AT THE TIME OF THE PERMIT APPLICATION AND IS NOT LIMITED TO STRUCTURES THAT PREDATED THE COASTAL ACT

A. Substantial Evidence Supports the Commission's Decision That the Proposed Seawall Was in Conformity With the City's LCP.

Substantial evidence supports the Commission's decision that the proposed seawall was in conformity with the City's LCP.

Under LCP policy S-6, a seawall may be approved to protect an "existing principal structure," only if no feasible alternative is available and the device is designed to eliminate or mitigate adverse impacts on local shoreline sand supply, maintain public access to the shoreline, and minimize visual impacts.[4]

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3. Although the trial court rejected this argument, the Commission may raise this argument on appeal without a cross appeal because the trial court made no order adverse to the Commission. (See, e.g., *Selger v. Stevens Bros., Inc.* (1990) 222 Cal.App.3d 1585, 1593-1594.)

4. LCP policy S-6 provides:

> Shoreline protective devices, such as seawalls, revetments, groins, breakwaters, and riprap shall be permitted only when necessary to protect existing principal structures, coastal dependent uses, and public beaches in danger of erosion. If no feasible alternative is available,

Related LCP policies require that shoreline structures provide lateral beach access, avoid significant rocky points and intertidal or subtidal areas, and enhance public recreational opportunities. (6 AR 1029; 11 AR 2101 [LCP section 17.078.060(6)].)

The Commission found that the applicants' proposed seawall was in conformity with the City's LCP. The Commission found that their houses legally existed at the time of the application, that the houses were in danger from erosion, that there were no feasible alternatives to the proposed seawall, and that, as conditioned, the seawall was designed in a manner that would mitigate its impact on shoreline sand supply, public access and visual resources. (11 AR 2077-2160; *ante*, at pp. 5-7.) The Commission's decision was supported by abundant expert analysis, including the independent review of its own staff geologist. Surfrider does not challenge these findings, and the Commission's decision is presumptively supported by substantial evidence. (*Ante,* at pp. 8-9.)

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shoreline protection structures shall be designed and constructed in conformance with Section 30235 of the Coastal Act and all other policies and standards of the City's Local Coastal Program. Devices must be designed to eliminate or mitigate adverse impacts on local shoreline sand supply, and to maintain public access to and along the shoreline. Design and construction of protection devices shall minimize alteration of natural landforms, and shall be constructed to minimize visual impacts. The City shall develop detailed standards for the construction of new and repair of existing shoreline protective structure and devices. As funding is available, the City will inventory all existing shoreline protective structures within its boundaries. (11 AR 2100-2101.)

B. The Commission's Interpretation of Section 30235 Is Compelled by Both the Language of the Statute and the Legislature's Intent to Allow Seawalls Where Necessary to Protect Life and Property.

In the face of this, Surfrider maintains one argument. It contends that the word "existing" as used in section 30235[5] (and implicitly LCP policy S-6) means "existing as of January 1, 1977," the date that the Coastal Act went into effect; in other words, the Commission may approve a seawall only to protect structures that existed on January 1, 1977. Because Cavanagh's house did not exist until 1998, Surfrider contends that, as a matter of law, the Commission had no discretion to approve his seawall.

This argument is meritless. The Commission's interpretation follows the plain language of the statute: "Existing" means "existing" and Cavanagh's house legally existed on the date that he applied for the seawall.

The Commission's interpretation makes sense and comports with the Legislature's intent. Protective shoreline devices are disfavored under the Coastal Act, but the Legislature did not ban them. Even Surfrider concedes that, at least as to structures that predated the Coastal Act, section 30235 allows the Commission to approve protective devices in appropriate circumstances. As proof of this, Surfrider does not challenge the Commission's decision to approve a seawall to protect the 121 Indio residence that predated the Coastal Act. (Surfrider Br. at p. 7, fn. 7.)

The question implicitly raised by Surfrider—but one that it scrupulously

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5. Section 30235 provides in part:

> 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

avoids asking—is whether the Legislature intended that, as a matter of law, the Commission may not approve seawalls to protect structures that were legally built after the enactment of the Coastal Act regardless of how much life and property might be lost if the structures were not protected. Although Surfrider nods in the direction of legislative intent, its abstract conception of legislative intent is divorced from reality and common sense. As the trial court pointed out, section 30235 protects a wide range of existing structures, not just private residences. (CT 317, fn.6.) Assume, for example, that the Commission in the 1980's approved a state park facility that included a parking lot, restrooms, landscaping, public walkways and stairs that were later severely damaged by winter storms. In Surfrider's view, the Commission would be precluded from approving a seawall to protect this public park facility regardless of how endangered it might be. But Surfrider does not demonstrate that the Legislature would have intended such a harmful result.

Although Surfrider asserts that the Commission's interpretation of section 30235 conflicts with section 30253 (Surfrider Br. at pp. 34-39), the Commission's interpretation harmonizes the two statutes because it gives effect to the Legislature's wish to avoid the harmful impacts of seawalls as well as its wish to protect legally existing structures in danger from erosion. Section 30253 provides in part that:

> New development shall: . . . [¶] (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.

Section 30253 requires that new development be constructed in a way that does not require the later construction of protective devices. It does not govern already existing development. Read together, sections 30235 and 30253 nicely complement each other. Section 30253 assures that new development is constructed and sited in a way that avoids the future need for a seawall. Section

30235 recognizes that, despite the best efforts to avoid the later need for seawalls, it may sometimes be necessary to protect lives and property endangered by erosion. Therefore, the Commission may approve seawalls for post-Coastal Act structures where the effort to avoid a seawall has failed and the new structure is in danger from erosion.

C. When the Word "Existing" Is Used in Chapter 3 of the Coastal Act, It Refers to Currently Existing Conditions Because Permit Applications Are Typically Evaluated Under Conditions That Exist at the Time of the Application.

When a word or phrase has been given a particular meaning in one part of a law it typically is given the same meaning in other parts of the law. (*Stillwell v. State Bar of California, supra,* 29 Cal.2d at p. 123.) The manner in which the word "existing" appears throughout the Coastal Act confirms the Commission's interpretation.

The word "existing" appears frequently in the Coastal Act but one reference stands out. Section 30236 limits the approval of flood control projects to the situation "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." Once again, the Legislature balanced the need to protect the public from physical harm with the need to avoid the adverse impacts of a particular type of development (flood control projects). As in section 30235, the Legislature found that it could prevent the destruction of post-Coastal Act development by permitting the erection of protective structures but adopting strict standards calibrated to avoid environmental harms.

The use of "existing" in the last sentence of section 30235 makes a similar point. This sentence provides that "[e]xisting marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out

or upgraded where feasible." Suppose that the Commission in 1978 approved a permit for a marine structure that today is causing water stagnation and pollution despite the imposition of permit conditions in 1978 designed to avoid those impacts. The polluting marine structure should be treating as "existing" and phased out, even though it was constructed after the Coastal Act's passage.

The Legislature's use of the word "existing" in the remainder of Chapter 3 of the Coastal Act also provides powerful confirmation of the Commission's interpretation of the word "existing." Chapter 3 (Pub. Resources Code, §§ 30200-30265.5) contains the resource policies that the Commission applies when reviewing permit applications. (*Id.*, § 30604(a).) The word "existing" appears throughout Chapter 3 and each time refers to conditions as they exist at the time of the application, not at the time of the Coastal Act's passage. In addition to sections 30235 and 30236, the references to "existing" in Chapter 3 include:

- Providing additional berthing space in "existing harbors" (Pub. Resources Code, § 30224);
- Maintaining "existing" depths in "existing" navigational channels (*id.*, § 30233(a)(2));
- Allowing maintenance of "existing" intake lines (*id.*, § 30233(a)(5));
- Limiting diking, filling and dredging of "existing" estuary and wetlands (*id.*, § 30233(c));
- Restricting reduction of "existing" boating harbor space (*id.*, § 30234);
- Limiting conversion of agricultural lands where viability of "existing" agricultural use is severely limited (*id.*, §§ 30241, 30241.5);
- Restricting land divisions outside "existing" developed areas (*id.*, § 30250(a));
- Siting new hazardous industrial development away from "existing"

development (*id.*, § 30250(b));

- Locating visitor-serving development in "existing" developed areas (*id.*, § 30250(c));
- Favoring certain types of uses where "existing" public facilities are limited (*id.*, § 30254));
- Encouraging multicompany use of "existing" tanker facilities (*id.*, § 30261); and
- Defining "expanded oil extraction" as an increase in the geographical extent of "existing" leases.

These Chapter 3 provisions logically refer to conditions that exist at the time of a permit application. It would make little sense to evaluate permit applications under conditions as they existed thirty or more years ago and ignore the considerable changes that have taken place along California's coast since the Coastal Act's passage. Consistent with the use of "existing" throughout Chapter 3, section 30235 should be construed to refer to currently existing structures.

Outside of Chapter 3, there are a number of other Coastal Act provisions that treat "existing" as currently existing. (See Pub. Resources Code, § 30705(b) ["existing water depths"]; § 30711(a)(3) ["existing water quality"]; § 30610(g)(1) ["existing zoning requirements"]; *id.*, 30812(g) ["existing administrative methods for resolving a violation"].) In addition, the Legislature twice used specific dates when it intended "existing" to mean something other than currently existing. Section 30610.6 limits the section's application to any "legal lot existing . . . on the effective date of this section." Similarly, section 30614 refers to "permit conditions existing as of January 1, 2002." (*Id.*, § 30614.)

Surfrider's response is anemic. Surfrider points to four Coastal Act sections where, it contends, the word "existing" refers to conditions existing on

the date of the Coastal Act's passage. (Surfrider Br. at pp. 25-26 [citing sections 30001(d), 30004(b), 30007 and 30103.5(b)].) Sections 30001(b) and 30007 juxtapose "existing" with references to future developments and future laws, expressing the Legislature's specific intent that "existing" in those provisions refers to conditions on the date of the Coastal Act's passage. Moreover, Surfrider's citations are mostly found in the "findings" section of the Coastal Act, in which the Legislature would be expected to refer to conditions as they then existed to explain the need for the Act. None of the provisions upon which Surfrider relies (other than section 30235 itself) are found in Chapter 3 of the Coastal Act.

The Commission's harmonious construction of the Coastal Act confirms that the Legislature intended that section 30235 be applied to structures that existed on the date of the permit application.[6]

D. The Court Should Defer to the Commission's Interpretation of Section 30235 and the LCP.

Surfrider incorrectly contends that the Commission's interpretation of section 30235 is "vacillating" and not entitled to deference. (Surfrider Br. at pp. 41-45.) The Commission's interpretation of section 30235 has been consistent, and provides more weight to support the Court's interpretation.

Courts "must give great weight and respect to an administrative agency's interpretation of a statute governing its powers and responsibilities." (*Mason*

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6. Three years ago, the Legislature considered adding the specific language that Surfrider seeks to read into section 30235. AB 2943, if adopted, would have defined "existing structure" in section 30235 to mean "a structure that has obtained a vested right as of January 1, 1977, the effective date of the California Coastal Act of 1976." (CT 119-120 [Sen. Amend. to Assem. Bill No. 2943 (2001-2002 Reg. Sess.) Aug. 26, 2002].) AB 2943 died on the Senate inactive file on November 30, 2002. (CT 122.) Although "only limited inferences can be drawn from [unpassed bills]" (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 795), the Legislature's rejection of AB 2943 undermines Surfrider's interpretation of section 30235.

v. Retirement Board of the City and County of San Francisco (2003) 111 Cal.App.4th 1221, 1228 (Jones, J).) "Consistent administrative construction of a statute, especially when it originates with an agency that is charged with putting the statutory machinery into effect, is accorded great weight." (*Ibid.*)

Here, the Commission evaluated the seawall project for conformity with the City's LCP that the Commission previously had certified. (See Pub. Resources Code, §§ 30512, 30512.1, 30512.2.) The Commission's interpretation of a certified LCP is entitled to deference because, when an appeal reaches it, the Commission is charged with putting the LCP into effect. (*Mason v. Retirement Board of the City and County of San Francisco, supra*, 111 Cal.App.4th at p. 1228; see also Pub. Resources Code, § 30625(c) [Commission decisions shall guide local government actions under the Coastal Act].) The Commission's interpretation of section 30235 is entitled to no less weight, because the Commission alone is responsible for administering the Coastal Act.

In addition, the Court should accord the Commission's interpretation of "existing structures" great weight because the Commission has consistently interpreted section 30235 to refer to structures that exist at the time of the application. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12.) As proof of this, the Commission's chief counsel confirmed at the public hearing that the Commission has "interpreted existing structure to mean whatever structure was there legally at the time that it was making its decision." (11 AR 2018-2019.)

Surfrider contends that the Commission has "vacillated" because in two previous permit decisions the Commission found that it did not need to reach the issue whether the term "existing structure" was limited to pre-Coastal Act structures. (Surfrider Br. at pp. 41-45.) The Commission's decision to refrain from reaching an issue that was not raised by a pending permit application

reflects judicious decisionmaking, not vacillation. (See *id.* at p. 44 [conceding that the issue was not before the Commission].)

Surfrider also cites the chief counsel's testimony as an additional indication that the Commission has "vacillated" in its interpretation of "existing structure." (Surfrider Br. at p. 45.) Surfrider, however, has inaccurately quoted the chief counsel's testimony, improperly inserting the parenthetical "[of existing structure]" into the quotation. (Cal. Style Manual (4th ed. 2000) § 4.16 [may not use brackets to rewrite quotation].) Surfrider then misconstrues the testimony, suggesting that the Commission has previously determined that the term "existing structure" in section 30235 applies only to pre-Coastal Act structures. Instead, the complete text of the chief counsel's statement demonstrates that the "change" to which he referred was the Commission's recent practice of incorporating a "no future seawall" condition in permits for new bluff-top development, not a change in the interpretation of "existing structure." (11 AR 2018-2019; see *post,* at p. 24.)

The Commission is not aware of a single instance in the history of the Coastal Act in which it has determined that "existing structures" in section 30235 refers only to structures that predated the Coastal Act. The Court should defer to the Commission's construction of section 30235 and the corresponding LCP provisions.

III. NONE OF SURFRIDER'S REMAINING ARGUMENTS HAVE MERIT.

Most of Surfrider's arguments have been addressed. There are a few others, but none have merit.

1. Surfrider repeatedly states that the Commission's interpretation would "entitle" or "guarantee" a seawall to any completed structure. (E.g., Surfrider Br. at pp. 4, 37, 39, 47, fn. 9.) This is a gross misstatement. The Commission's interpretation of section 30235 does not entitle or guarantee anyone a seawall.

The Commission may approve a seawall only if, at a minimum, the applicant establishes that a structure is in danger of erosion and that the seawall is designed to eliminate or mitigate the seawall's impacts on sand supply. (Pub. Resources Code, §§ 30235, 30604(a).) The applicant also would be required to satisfy numerous other conditions designed to mitigate project impacts on public access and other coastal resources. The California Environmental Quality Act also requires the Commission to evaluate feasible alternatives and mitigation measures. (Pub. Resources Code, § 21080.5(d)(2)(A).)

2. The Commission agrees that the Coastal Act should be liberally construed in favor of protecting coastal resources. (Surfrider Br. at pp. 12-13.) That rule of construction does not come into play here because the language of section 30235 and rules of statutory construction support the Commission's interpretation. The Commission's interpretation both protects coastal resources and fulfills the Legislature's intent to protect endangered structures in appropriate circumstances.

3. Surfrider argues that the legislative history of the Coastal Act supports its interpretation. (Surfrider Br. at pp. 28-32.) This argument has two components. First, Surfrider argues that the Legislature rejected the "developer friendly" coastal legislation and enacted the bill favored by environmentalists. Surfrider never explains why an "environmentally friendly" Coastal Act would necessarily require that the Commission deny seawalls to protect endangered post-Coastal Act structures.

Second, Surfrider argues that, shortly before the Coastal Act's passage, the Legislature amended SB 1277 to include the word "existing" before structures in section 30235. (Surfrider Br. at p. 32.) Surfrider provides no other evidence about this amendment. Nevertheless, Surfrider says that there was "no rational reason" why the Legislature would have added this word unless to clarify that section 30235 applied only to structures that predated the Coastal Act.

Actually, there is a very rational explanation. Had the Legislature not included the word "existing" in section 30235, applicants could apply to build seawalls to protect a future proposed structure, rather than be forced to site the proposed structure so that it would not necessitate a seawall. Far from making the word "existing" in section 30235 "surplusage," as Surfrider contends (Surfrider Br. at pp. 33-34), the Commission's interpretation harmonizes sections 30235 and 30253. Section 30253 requires that proposed new development be designed so that it does not require a seawall; without the word "existing," section 30235 could have been construed to allow a seawall for a proposed structure that would have been forbidden by section 30253.

4. Surfrider mistakenly relies on Public Resources Code section 30007.5 when arguing that the Court should resolve doubts in its favor. (Surfrider Br. at pp. 14, 15, 38.) Section 30007.5 provides that conflicts among Coastal Act policies should be resolved in a manner that on balance is most protective of coastal resources. Section 30007.5 is a mechanism for resolving policy conflicts that the Commission must employ when reviewing permit applications. (See, e.g., *Sierra Club v. California Coastal Comm'n* (1993) 19 Cal.App.4th 547, 562 [section 30007.5 authorized Commission to resolve conflict] .) It is not a directive to the courts about how to interpret provisions of the Coastal Act, but guides how the Commission should implement conflicting Coastal Act policies as they apply to a specific project. In this case, the Commission found that the project met the criteria in section 30235, and there was no conflict among applicable policies.

5. The Commission's interpretation of section 30235 does not make the "mandatory setback provisions" of section 30253 "meaningless." (Surfrider Br. at p. 4.) Enforcement of section 30253's setback provisions for new structures is meaningful because it makes seawalls unnecessary in most instances. It is only on those infrequent occasions that bluff retreat drastically exceeds its

predicted retreat that a seawall may become necessary.

6. Surfrider argues that landowners would have an incentive to mislead the Commission into approving structures through the use of "purchased science" that would misstate erosion rates with the hope of later qualifying for a seawall, and it suggests that happened here. (Surfrider Br. at pp. 39-41.) Surfrider's insinuations are misguided. There is no evidence that the applicants' experts intentionally tried to mislead anyone; the unchallenged evidence demonstrated that the bluff rate was caused by the unforeseen El Niño storms. Moreover, anyone who intentionally supplies false evidence may be subject to a permit revocation. (Cal. Code Regs., tit., §§ 13104-13108.5.) And, because no one is "guaranteed" a seawall, anyone who plays the high-stakes game proposed by Surfrider risks having their seawall application turned down.

7. Finally, Surfrider contends that the Commission's imposition of a "no new seawall" condition on recent permits for new structures exceeds the Commission's power because this condition would force the Commission to deny seawalls that might otherwise be entitled to a permit under section 30235. (Surfrider Br. at p. 47.) This case does not involve a "no new seawall" condition, and there is no reason for the Court to offer an advisory opinion about whether the Commission might impose one.

Moreover, this is a strange argument for Surfrider to make. The Commission has imposed a "no future seawall" condition on new bluff top development so that property owners will not seek a shoreline protective device in the future. (11 AR 2019.) The Commission's approach deters applicants from circumventing section's 30253 setback requirements and minimizes the need for new seawalls in the future—an approach that is consistent with the philosophy that Surfrider purports to advocate. The Commission's reasoned approach, however, undermines the need to adopt the extreme position advocated by Surfrider, which may explain Surfrider's criticism.

CONCLUSION

The trial court's judgment should be affirmed.

Dated: January 9, 2006

Respectfully submitted,

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of the State of California
TOM GREENE
Chief Assistant Attorney General
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CERTIFICATE OF COMPLIANCE

Pursuant to rule 14(c)(1) and (4) of the California Rules of Court, counsel for Respondent California Coastal Commission certifies that this brief contains 7,216 as counted by the Corel WordPerfect version 8 word-processing program used to generate the brief.

Dated: January 9, 2006

Respectfully submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***Surfrider Foundation, et al. v. California Coastal Commission***

Case No. **CPF03503643**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On January 10 2006, I served the **BRIEF OF RESPONDENT CALIFORNIA COASTAL COMMISSION** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1515 Clay Street, Suite 2000, P.O. Box 70550, Oakland, California 94612-0550, addressed as follows:

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Proof of Service Continued.

The Honorable James L. Warren
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Clerk of the Supreme Court
California Supreme Court
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5 COPIES

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 10, 2006 at Oakland, California.

TANISHA MARSHALL
Declarant

Tanisha Marshall
Signature

The transcript of oral argument in the trial court in *Surfrider Foundation v. California Coastal Com*.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

HONORABLE JAMES L. WARREN, JUDGE

DEPARTMENT 301

---oOo---

SURFRIDER FOUNDATION, Petitioner,	)	
vs.	)	Case No. 503643
CALIFORNIA COASTAL COMMISSION, Respondent.	)	

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

Held on Tuesday, October 29, 2004

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TODD T. CARDIFF, ESQ.

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Official Court Reporter :	Christina T. Paxton, C.S.R. Certificate No. 1558

San Francisco, California October 19, 2004

PROCEEDINGS:

THE CLERK: Line 13, Surfrider Foundation versus California Coastal Commission.

MR. GONZALEZ: Good morning, Your Honor. Marco Gonzalez and Todd Cardiff of Coast Law Group on behalf of petitioner Surfrider Foundation.

THE COURT: Mr. Gonzalez and I am sorry?

MR. CARDIFF: Todd Cardiff on behalf of Surfrider Foundation.

THE COURT: Mr. Cardiff, good morning.

MR. CARDIFF: Good morning.

MS. REYNOLDS: Good morning, Your Honor. Alice Reynolds on behalf of respondent California Coastal Commission.

THE COURT: Ms. Reynolds, good morning.

MR. KAUFMANN: Good morning, Your Honor. Steven Kaufmann with the law firm of Richard, Watson and Gershon for real parties in interest Walter Cavanagh and Gary Grossman.

THE COURT: Mr. Kaufmann?

MR. KAUFMANN: Kaufmann.

THE COURT: Kaufmann.

All right. We are talking about the property down at 121 and 125 Indio as well as the Florin Street cul-de-sac. What we have is a substantial dispute about the seawall that I understand is almost constructed. Is that correct?

MR. GONZALEZ: That is correct.

THE COURT: That might be an issue that you people are going to want to address. This might almost be a moot situation.

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But what we have here is an argument regarding the Public Resources Code 30235 versus 30253 -- which I wish you guys could have chosen two sections that didn't interlock their numbers quite so well -- dealing with what is an "existing structure." And the word "existing" is the key word here, how that fits in with 30007, I guess, .5, which is an ultimate resolution situation, and how that all fits in with the Local Coastal Program that has been certified by the Coastal Commission,

applies to this area -- this is the one by Pismo Beach -- and which has been approved.

First of all, let me address specifically the Foundation here. Anybody from there? All right. We received a purported amicus brief from Pacific Legal Foundation. It didn't get permission to file it, it was filed late. To the extent the filing of their brief is deemed a request to file it, it's denied for failing to follow court procedures.

Counsel, I note that you have got -- I see all kinds of stuff that you have got here so why don't I simply turn this over to you. I read your papers. My colleague, who has been working on it with me, is in court to be able to watch everything that is going on. I might have some questions later on but why don't you --

MR. GONZALEZ: Mr. Cardiff will begin the presentation, approximately 15-20 minutes that will bring us through the case. I will respond to any comments made by the opposition.

THE COURT: Hold on for just a second.

Okay.

(Whereupon, there followed an off-the-record discussion,

after which the following proceedings were had:)

MR. GONZALEZ: Your Honor, I would like to approach the bench and give you a copy of our presentation. Do you have an

extra copy for my colleague by any chance?

MR. GONZALEZ: I do in black and white.

THE COURT: That's okay.

MR. CARDIFF: Your Honor, we would also like to submit our slides to opposing counsel.

THE COURT: I am sorry. I thought they had copies of it. They definitely should have copies.

THE COURT: Mr. Cardiff.

MR. CARDIFF: Thank you, Your Honor.

Before you today is Surfrider's petition for writ of mandamus requesting that you overturn a seawall permit granted to 125 and 121 Indio in Pismo Beach, California granted by the Coastal Commission. The Coastal Commission granted a coastal development permit to both 121 and 125 Indio based on their interpretation of Coastal Act Section 30235, based on their interpretation that both 121 and 125 Indio were existing structures despite the fact that 125 Indio was built just five years ago and was required by law to have a 100 years setback. They were off by 95 years.

And as you noted in your opening remarks, this is really more than just asking you to overturn a coastal development permit, this is asking you to resolve a conflict between two sections of the Coastal Act. One section, a mandatory section, states that new development shall not in any way require the construction of protective devices that would substantially

alter natural landforms along bluffs and cliffs. This has been interpreted consistently as requiring sufficient setback by new development so that a seawall is not required for the economic life of the structure, estimated to be 75 to 100 years depending on the jurisdiction.

This other section, Coastal Act Section 30235, states that seawalls shall be permitted to protect existing structures from danger of erosion. Thus you have a direct conflict between two mandatory policies, one that says that for new development, no seawalls may be permitted and another one that says for existing development -- for an existing development or existing structures, seawalls must be permitted. And of course as you recognize, this comes down to an interpretation of "existing structure."

THE COURT: Did you say those two are at odds with each other?

MR. CARDIFF: Yes. Yes, Your Honor, they are in direct odds with each other, and this is how it works. If new development can suddenly become an existing structure as soon as it's built, two minutes after the paint is dry --

THE COURT: I remember your wet paint analogy there.

MR. CARDIFF: Two minutes after the paint is dry, then Coastal Act Section 30253, which mandates a proper setback, mandates that construction, new development shall not in any way

require the construction of a protective device, that is meaningless. That is just a permissive section that is open to be violated at will ad nauseam just like we see in this case.

THE COURT: Well, is the Commission really arguing that this

is a as-soon-as-the-paint-is-dry type situation? There is a somewhat teutonic break that we won't use here but bad things happen.

And one of their arguments as I read it -- and correct me if I am wrong -- seems to be look, a proper reading of this statute is existing -- and they point to 15 places in the Coastal Act where the word "existing" is used in connection with all other areas.

"Existing" means a building that is there regardless of when it was put up. It does not go back to 1977 when the Coastal Act was passed. It can be any time because bad things happen. If you go to both the Coastal Act and the Local Coastal Program, you are correct as I read it that buildings have to be constructed in such a way that a certain amount of -- of time has to be built into the construction so that natural erosion is taken into account and economic life of the building is built in such a way as to address that. So by the time the coast erodes up to the point where the building becomes unsafe, it's probably going to be torn down anyway because it simply exhausted the

economic life.

What they seem to say is that sure, all buildings -- and nobody argues this -- all buildings that were in existence -- and this, of course, would include Mr. Grossman. Nobody is disputing that he doesn't have a right to a seawall because his building was in existence at 121 Indio when the Coastal Act was passed. All buildings that are in existence are entitled to the protection of a seawall, which is the last resort because they are dangerous, they do bad things to the coastline. The Coastal

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Act is designed to protect the coastline. However, if new structures are built and they are built in compliance with either the Coastal Act or the Local Coastal Program, which is passed and which then -- it must be in compliance with the Coastal Act. It can be more restrictive but not less restrictive as I read the case.

When you take into account something such as the El Nino phenomenon, that seems to be what we are talking about here as an example, that when Mr. Cavanagh's house went up, they predicted -- I believe it was a Terratech design team came up with a two to three inches per year erosion factor and the house was built with that in mind and then all of a sudden in 1998, five feet of the cliff disappeared. So I haven't bothered to divide five feet by two to three inches a year to see how many years are swallowed up by that one year.

Why isn't a reasonable interpretation that as soon as a structure goes up that built into it the 75 or 100-year economic life, that when something unanticipated happens, that a protective device is entitled to go into place? And on the other hand, why isn't the interpretation -- I am not sure that the two sections you are talking about, 30235 and 30253, are at odds with each other. In fact, I think they tend to compliment each other and they tend to compliment each other in a way that conforms to your argument, namely that -235 says it's okay to put up a seawall to protect structures that were in existence at the time this was passed in 1977 but any new development -- and this is the -253 section -- will not permit the construction of seawalls. Or I guess the better way of saying it is new

development will not require construction of seawalls that would substantially alter the shoreline. Doesn't that actually tend to support the position that you are taking? So I am not sure why you say the two are in conflict with each other because I think they can be read harmoniously, but they can also be read the way the Coastal Commission is arguing. That I think is reasonable, too.

MR. CARDIFF: Well, and let me be clear. There is a conflict in interpretation only and it's only a conflict when an existing structure -- or a new development suddenly becomes an

existing structure as soon as it's completed.

But let me just address --

THE COURT: Wait a second, wait. You are kind of jumping over this. I think it's an important point. This is -- I think it's very catchy to give the paint dry argument, but if the paint dry argument is right, then somebody is in violation of law by permitting that structure in the first instance because you can't put a building up under 30253 that requires a seawall or that might require a seawall such that as soon as the paint is dry, you put in an application for a seawall.

I mean the only thing I can think of that might happen is you put a structure up and San Andreas fault goes off and a week after the paint is dry, that he gets a terrible earthquake that suddenly creates something unanticipated that would require some protective device on the shoreline. But otherwise, I think if anybody tried to say I am building a building, I am building it so close to the coastline that there is going to be an erosion problem, as soon as the paint is dry, I have got an existing

building, gotcha, now I get my seawall, that probably wouldn't be granted and there probably most likely would be a cause of action against the people who granted it in the first place for failing to follow the statutory requirements for mandating the construction taking into account a 75 to 100-year economic life.

MR. CARDIFF: Well, first of all, two responses. We are

concerned here with what was the intent of the Legislature, not what the Coastal Act -- Coastal Commission says now but what was the intent of the Legislature, which I can address right now if that is what you like.

Factually, we are looking at a situation where somebody really is -- was in danger even before the paint is dry. If you look at what happened here -- and let me just barge ahead if you don't mind. I am going to have to tell you which slide I am on.

THE COURT: I can find it.

MR. CARDIFF: This is Slide A.

THE COURT: Yes, I have got it except mine has a circle on it.

MR. CARDIFF: Yes, you do.

The structure circled is 125 Indio. That was built in 1998. And right to the south of it in fact is 121 Indio, right to the south of that is, in fact, new development at 117 Indio. We are all wondering when they are going to come to seek a seawall. And right below them is 113 Indio, which was seeking a seawall by the way at the same time as Mr. Grossman was seeking a coastal development permit.

THE COURT: Looks like that one already has a seawall of some kind.

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MR. CARDIFF: Now, it has a seawall but in 1997, in fact I

worked on this and this is reflected in the administrative record. When I was giving a presentation to the Coastal Commission, 113 Indio actually was seeking a seawall for their house, which was 25 feet from the edge of the bluff, and I went to the Coastal Commission and I said how could 113 Indio possibly be in danger from erosion when Mr. Grossman is seeking new development.

But the fact is 125 Indio, if you flip to the next slide, you know, if you look at the record here, you know, we have Mr. Grossman has an empty lot and on January 9th, 1997, he has this geologist named Richard Pfost, P-f-o-s-t, provide him a geology report that you see that says 25 set -- foot setback is fine for a 100 year, it's two or three inches of erosion. And, in fact, actually Mr. Grossman got -- he put his house even closer. He wanted to have his house -- the balcony actually 20 feet from the edge of the shoreline. And you can see that from the pillars.

But nevertheless, he received a coastal development permit on May 13th, 1997 and it wasn't until late in the year that he received his -- his building permits, in December. And then he received -- then about a month later, the bluff collapsed at the start of the construction. We don't know when he actually started his construction. He may have had the foundation poured but we know that the bluff collapse probably was somewhere around January 23rd, 1998. And if you look at the record, at 1

AR 93, the geologist doesn't mention a structure there because there wasn't a structure there but it says that a seawall will

be necessary to mitigate erosion.

Then late in 1998, Mr. Grossman finished the -- finished his project and sold it to Mr. Cavanagh at 125 Indio, the current owner, and Mr. Cavanagh immediately started seeking shoreline armor or a seawall. And, of course, Mr. Cavanagh got his own geologist.

By the way, I just want to say one point. On January 23rd, 1998, it was the very same geologist that a year before had said that this would be safe, this siding of the structure would be safe for a hundred years, he came back a year later and said now it needs a seawall.

Going back, though, to July 31st, 2001, then Mr. Cavanagh gets his own geologist, who said now the erosion rate in the last ten years is 22 and a half feet, and this is -- this is the kind of thing that the Coastal Act was designed to prevent. This is exactly what the -- what the Legislature was trying to prevent when they inserted the word "existing" before structures, and that was a very, very conscious act.

On August 2nd, 1976, the Legislature changed one -- one term in there and that was to insert the word "existing" and our job here is to determine what that meaning was.

Now, the Coastal Commission -- and I am going to have to

jump around here because we are -- we are doing this a little bit out of order, but the Coastal Commission --

THE COURT: No problem.

MR. CARDIFF: But the Coastal Commission -- and just go to the next slide. This is my legislative intent slide and it shows the progression of these coastal bills.

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The top bill is Senate Bill 1277 as it was submitted. And if you notice there, this early version that was Section 30204, which was eventually changed to 30235, but it says that a seawall shall be permitted at structures in danger from erosion.

There is another section, it's somewhat relevant. It's AD 3875. It's a developer friendly bill, and that version of course would allow seawalls to serve coastal-related uses or to protect structures, nonexisting structures, development of beaches or cliffs in danger from erosion. We know that's not the legislative intent.

The final is what we see as 30235, and that says of course as we know that seawalls shall be permitted when required to serve coastal-dependent uses or to protect existing structures.

And on August 2nd, 1976, the Legislature did a very, very important thing, which was inserting that word "existing." Now, the Coastal Commission is arguing that the word "existing" is to distinguish between those structures that are existing now at

any time and future structures, i.e. empty lots. Well, I ask you if you look at the original -- the original language as submitted, doesn't the word "structure" already prevent granting seawalls to protect against -- protect empty lots? I mean one of the main purposes or main canons of statutory construction is that every word is important and every word must be given force and effect and their interpretation doesn't give existing force and effect and does create a direct conflict between 30235 and 30253.

The other thing that should be noted -- and I am going to have to jump again to another section of my presentation -- is

that when the Coastal Commission says --

THE COURT: If I don't know it well enough to be able to be able to jump around with you, then I shouldn't be here listening to you.

MR. CARDIFF: Well, I fully appreciate that and I am glad that you are following along with this and I think that these are great questions because there is questions that I have looked at as well. And what the -- what the Coastal Commission is suddenly arguing is that this 30235 isn't a grandfather clause as we contend that it is, but it's a safety net. It's a safety net. But you have to remember -- and I am going to jump. I have to jump backwards all the way to what Chief Counsel Ralph Faust said on Slide 6.

THE COURT: Okay.

MR. CARDIFF: What you have to remember is that the Coastal Commission changed its interpretation -- changed its interpretation. And I am going to read this directly. It says "Approximately half a dozen years ago, six or seven years ago, the Commission changed its interpretation and began applying what I characterized a moment ago as the no future seawall condition. Basically, in instances where this Commission was approving new development along the shoreline, finding that that new development was new development rather than existing development within the meaning of both 30253 and 30235, and as a consequence imposing the no future seawall condition to insure that someone did not come in in the future and propose a seawall and get it pursuant to the mandate of Section 30235."

Now, not only does it talk about the change in

interpretation but the power to -- to enforce and impose this no future seawall condition necessarily requires a rejection of the Coastal Commission's now safety net theory because if Section 30235 is a safety net, they don't have the power to impose this no future seawall condition. This required a change in interpretation and a change in interpretation to exactly what we are suggesting today.

MR. GONZALEZ: Your Honor, just to -- to close up, you

started the line of questioning with the issue of harmony. You stated that you thought that they could be read both in harmony from their perspective and from our perspective, but the problem is the harmonization of these two statutory provisions also has to be read in harmony with the rest of the Coastal Act.

THE COURT: That is -- that is the nub of it. I can read these two together and I really don't have a problem coming down in support of either one of you.

MR. GONZALEZ: Exactly. And that's exactly why it's important to put yourself in two different positions. One is in the context of the Legislature and the citizens who wrote Prop. 20 because at that time, they were looking at rampant coastal development without coastal protections and so they were thinking let's protect what we have. Sure, if you came before and you built something, it makes sense to allow you to protect it, but let's not lose the battle as we move forward. So it would make sense that they would say don't build anything new that is going to require a seawall, and that we find in 30235 -- or 0253. Now, I even get them confused.

Obviously, that was codified, but then the first period the

Coastal Commission was considering these applications, it's common sense that all of the structures that would be coming forward would be those existing structures for the first few years and then obviously the politics of the Commission, they

are appointed bodies, it changes. But underlying the entire vein of development of the Coastal Act law is the notion that the coastal law has been developed for long-term protection. So looking at down the road, if you are allowed to build something and next week come in and say it's existing, eventually the entire coast will be full of seawalls.

The Coastal Commission, themselves, in their brief acknowledge that coastal arming is bad for public access, for recreation, it has negative impacts. Mr. Faust states here they have now recognized to the extent that they are going to limit anybody who comes in today by derestriction from ever coming back for a seawall. Well, when you harmonize this intent of the Coastal Act as a whole to protect above all else natural resources and the public's right to access those resources, it's impossible to fathom that at some point in the future this act was written to allow for the seawallification of the entire coast as would be the natural result if you took this immediately existing entitled to a seawall provision.

THE COURT: All right. Mr. Cardiff.

MR. CARDIFF: Do you have any other questions, Your Honor?

THE COURT: No. I interrupted your presentation and --

MR. CARDIFF: Well, again, I would like to point out that the -- that the Coastal -- that the Legislature really told you how to proceed in this way. And I guess I really do need to

talk about the standard of review and what kind of deference that you should be giving to the Coastal Commission.

Now, the Coastal Commission as we have just pointed out states that they have had a long-standing interpretation. And we question that, whether there has been a long-standing interpretation. This is a question of first impression for the Court and, quite frankly, this is really a case of first impression for the Coastal Commission. This is the first time in history that this issue has come directly before the Coastal Commission that we are aware of, directly before the Coastal Commission and directly in a way that the Coastal Commission had to rule on whether a structure built after 1976 was an existing structure. So we question that. And then, of course, there has been a change of interpretation. So we are all the way down to as we see in Yamaha, the Yamaha case, which discusses what kind of deference to give to the agency down to a no deference situation.

Plus you have got to look at it that here, the Coastal Commission is arguing for something that is absolutely contrary to the beneficial purpose of the -- of the Coastal Act. They are actually arguing that development is more important than the natural resources and that is completely adverse to the way the Coastal -- sorry. This is completely adverse to the way the Legislature intended the Coastal Act to be interpreted.

The Coastal Act is to be interpreted as it states in 30001(b) that scenic and natural resources are of paramount concern, they are a (inaudible) development. Further, you can see in 30725 that it says if there is conflicts within the

policies, -- and I believe that there is a conflict in interpretation only -- that this must be resolved in a manner that is most protective of significant cultural resources. What is a significant cultural resource? The beach, public access, recreation like surfing. Those are all significant coastal resources. Single-family residences are not significant coastal resources. Thank you.

THE COURT: Okay. Mr. Gonzalez, anything further?

MR. GONZALEZ: No, Your Honor. We will respond to questions.

THE COURT: Ms. Reynolds, Mr. Kaufmann.

MS. REYNOLDS: Your Honor, I don't have a fancy power point presentation but it sounds like from Your Honor's characteristic of the case that you have a good understanding of the background and the way each Coastal Act provision fits together.

THE COURT: I have gone through it but I need to be educated.

MS. REYNOLDS: Okay. Surfriders brought up the purely legal question of whether the Commission is required to read language into Section 30235 that is not in the statute. They contend

that the Commission has no discretion to interpret the word "existing structure" to mean what it says, any structure that is there at the time that the Commission is making its decision. And the contention raised here is that instead, the Commission is required to read that language to mean existing as of the effective date of the Coastal Act. That's language that is not included in that code section.

The Commission shares the Commissioner's concerns about the

proliferation of seawalls along the coast and clearly the Coastal Act reflects an intent to protect natural resources, natural landforms, to allow erosion to occur naturally and a preference for this natural erosion rather than using seawalls as support of the bluffs. However, the Coastal Act also reflects consideration for the interest of property owners, and we see in Section 30235 a recognition that the reality is sometimes certain seawalls are going to be required to protect houses from falling into the ocean.

You mentioned at the beginning of this hearing that -- that recognized that 30253 will normally prevent the need for seawalls. So when an applicant comes in with wanting to build a new structure on the bluff, there is a rigorous scrutiny that is undertaken and I think that any applicant would be surprised to hear the petitioners say that the section is meaningless when --

because they know that the scrutiny that they have to go through to present reports from experts and really make a showing that their structure is stable. It needs to be set back sufficiently, they need to have experts present reports to show that this is the estimated rate of erosion and this is why we think the structure is going to be safe. In the City of Pismo Beach, that time period is 100 years. So normally, the situation is that -- that 30253 will prevent seawalls from being built and allow the coast to erode naturally.

30235 recognizes that in some instances seawalls may be approved, and this is also after the Commission takes a hard look at an application for a seawall and determines whether this structure is, in fact, going to fall into the ocean or is, in

fact, in danger from erosion. Someone can't just come in and ask for a seawall and say I want a seawall, I think my house is not stable. Again, the Coastal Commission will look at that carefully.

And at times when the requirements of 30253 don't work such as the situation we have here where all of a sudden El Nino comes along and the predicted rate of erosion is very different from the actual rate of erosion, then sometimes we need to allow seawalls.

It sounds like part of petitioner's complaint is with the original approval and so they were referring to the expert

reports that were presented at the time that the Cavanagh house was originally built. And so what may have happened is that -- that their complaint should have been raised at that point, say well, your house really isn't set back far enough, these predictions are unrealistic, and at that point they could have come in and challenged the original permit. They chose not to do that.

The petitioner also claims that the word "existing" is not necessary in the statute, in Section 203 -- 30235 and we disagree.

THE COURT: I am glad to see that you people who have worked with this for so much longer than I have have the same problem.

MS. REYNOLDS: You are right, it's the 3 and the 5.

The word "existing" is necessary in the statute to harmonize the two sections. So Section 30235 makes it clear that someone can't come in with plans -- come into the Coastal Commission and say we have plans to build a house and here is where we need to

put it according to the local requirements for setbacks from the street and the only place we can put our house is here but it's not stable and so we need to -- we have a seawall here proposed and we need that seawall to protect the structure that we are going to build.

30235 prevents this type of application because seawalls are

only allowed to protect existing structures. So they look at that and say that structure is not existing so we are not going to even look into your expert reports about how the bluff is unstable, you need to comply with 30253 and set the structure back sufficiently and make sure it's stable. So the word "existing" harmonizes the two sections to make them fit better.

The other argument that the petitioner makes is that the Commission has vacillated in its interpretation so they argue that at some point it changed the way it looked at the word "existing." This is not correct and the only -- notably the petitioner has not submitted any showing that there has been a seawall application that the Commission has looked at and said well, your house was built after the Coastal Act was enacted so it's not existing. We haven't seen that. What we have is testimony from the Commission's General Counsel that talks about what's been -- it starts out -- and we have a slide here and it's also quoted in the brief. The General Counsel talks about the Commission's longstanding interpretation of -- to interpret "existing" as meaning what's there at the time the Commission considered the application. And then he references a change in -- what he calls a change in interpretation. But if you look at it in contrast and you look at the description, it's really a

change in the tactic that six or seven years ago, the Commission began looking at the initial application for new development so

when they are applying 30253 and looking at where they go through the analysis of making sure that the structure is going to be stable and it's set back far enough from the bluff. But the other thing they do is they get the applicant to agree that the applicant is never going to come in and seek the protection of 30235.

So it's not that they would interpret 30235 differently, it's really a waiver by the applicant. And so the applicant says -- stands by an experts' report initially and says these are expert reports, we think that the structure is going to be stable for a hundred years and we are so sure that we are willing to agree to the condition that waives the benefit of 30235 so we can't come in later and ask for a seawall. So the Commission is not saying well, that house isn't existing once it's built, they are just saying that we are asking that person to waive their right to come in and ask for a seawall.

In addition, there is nothing in the legislative history to suggest that the Commission's interpretation is incorrect. So there is nothing that the Legislature did or said or no reference to any other section of the Coastal Commission which requires the Commission to -- Coastal Act -- which requires the Commission to read in this extra language.

As you mentioned, there are other sections of the Coastal Act that use the word "existing," refer to things like water ducts (phonetic), water quality. It's obvious you are not going

to go back and look at the water ducts that were the condition

at the time the Coastal Act was passed. So similarly, the word "existing" in Section 30235 refers to the condition. You look at the condition, the structure, whether it's existing at the time that the Commission is considering its decision.

I think it's evident that this is a unique case and it's -- we don't have to fear that all of a sudden seawalls are going to spring up everywhere. As I have subscribed, we still have the protection of 30253, we have the Commission's practice of imposing this agreement of waiver of the rights under 30235, the no future seawall condition.

This case is unique because when the Cavanagh residence was originally approved, it never came to the Commission, it was approved under the Local Coastal Program so there is no new future seawall provision -- or condition that applies to this house. And I think Surfrider recognizes that it's unique and that is why it's saying it's the first time we have seen this.

The Commission's intent that the Court should not require it to depart from its consistent interpretation of 30235 by reading the words as of January 1, 1977 into the section. And it requests that the Court find that the Commission did not abuse its discretion in interpreting the section to mean what it says and that because the Indio Drive structure was present at the

time the Commission considered the seawall and the other stringent requirements of Section 30235 have been met, the Commission's approval of the seawall was correct.

THE COURT: Part of the problem here is that as I understand it, I haven't seen a picture of it, but I gather that the seawall is largely in, in place. Is that substantially correct?

MS. REYNOLDS: That is my understanding. I think probably counsel for the real parties can address that.

THE COURT: Mr. Kaufmann.

MR. KAUFMANN: The answer is yes.

THE COURT: Okay. I also understand that when the original seawall was designed -- I think it was Cotton, Shires or somebody, because we have got the 121 Indio house that clearly is entitled to protection, the 125 Indio house is up for grabs as far as you are concerned, and then the cul-de-sac down there is also entitled to protection as I understand it, there was a determination made, although it wasn't stated in this way, that in order for --it's rather like a sandwich. In order to protect the pieces of bread on either end and to avoid the term, which I am simply interpreting sort of laid back here, the seawall has to be integrated and it has to run in front of 125 Indio simply to protect the coast as it relates to the two properties that are clearly entitled to a seawall. How does that fit into this?

MS. REYNOLDS: Well, I think that is a reasonable assumption and any layperson can look at the properties and think that is probably the case. In this case, the Commission never made a determination of whether the seawall would work.

THE COURT: Okay. I understand it wasn't.

MS. REYNOLDS: Uh-huh.

THE COURT: I don't know whether a seawall in front of 121 by itself would create more or less a problem or was it considered. I don't know whether that should play a role in here or not.

How about joining the City of Pismo Beach?

MS. REYNOLDS: We have haven't addressed that issue and I think that counsel for the real parties is probably better to address that.

THE COURT: All right. Counsel.

Are we finished with the slides so we could put the lights back on?

MR. GONZALEZ: We will be using it on rebuttal.

MR. KAUFMANN: At the outset, the Court raised a question of mootness and I would like to start with that.

We don't contend that it's moot. Frankly, I think there is case law that would say that you take the risk. What we did do was this. In the fall, we got our permit, we talked to

Surfrider, let them know we were going forward, we were prepared to argue this in the fall on a TRO, preliminary injunction, however they wished to proceed and they elected to let us go forward. They said you are taking the risk and they wanted to address this on the merits.

As I said, I think what we have here today is an academic argument. I want to come back to it because I would like to go to the procedural issue first, but I will have to say that all the discussion today centers around two Coastal Act sections. And I will twist my tongue on it, too, I have done it for 27 years but the way I get around it is this. This case is not about the Coastal Act, it's not about those code sections. It's about Policy S-6 and Section 177860 in the City's LCP and to decide it otherwise would be to ignore the Commission's decision and to ignore the LCP process.

THE COURT: I understand that is your basic argument.

MR. KAUFMANN: Let me start first with the procedural issues. We had two of them. One, I am not going to dwell on. That was the question of the failure to state a cause of action against Mr. Grossman. The fact is his house predates the Coastal Act. They concede, they raise no issues with respect to his house. And he doesn't own 125 Indio. That's Mr. Cavanagh, who is here today.

So there is no cause of action stated against Mr. Grossman.

But I think that the fact that he was named as a real party is probably more telling on the issue of the failure to name the City as the indispensable party. And the case that I would bring to the Courts' attention that we cite was Sierra Club versus California Coastal Commission, 95 Cal.App.3d. It's a case where the Sierra Club, which is like this organization, sued the Commission over the approval of redevelopment but they failed to name the person whose real interest was at stake as a real party and as a result, the court held that that failure to do so in a timely manner, 60 days statute of limitations, barred the action.

The City here is just like the real party is here. It owns the land being eroded. You can see it from the photo although it doesn't really show all of it. I don't know if this helps, Judge, but this is the seawall on the other side, this is Florin Street. There is the indention for the Cavanagh residence and then the Grossman residence here (indicating). The City property is in this area here (indicating). It's quite substantial.

THE COURT: I really can't see it that well.

MR. KAUFMANN: May I approach? You can keep this if you wish because I am going to use the other side, too.

Thank you. I will address another point.

The City's property consists of the Florin Street LCP designated distal point. It's a street in, it's a flush top, it's a 42-inch drain, all of which without any dispute in this case are in danger of collapse. And even if the petitioner concedes that the City has a right to protect its property because the improvements on it predate the Coastal Act, if the Court were to agree with Surfrider and to overturn the Commission's decision, the entire permit approval, not just a piece of it will go by the by including the protection of the City's property and the City would lose that opportunity to protect its property.

Now, they named Mr. Grossman. They should have named the City and is fatal to their case in my judgment.

So they question what would the City have brought to the table. If we are in court today, what would the City being saying here in court. Well, we concentrate mostly on our own private property. That's my client. I don't represent the City. But you would have heard the City defend its property rights. It may be equally important. You would have heard the City jump up and down and say wait a second, why are we talking about Sections 30235 and 30523, that is not our LCP, our LCP is this document, the document with our own policies in it. And they could have perhaps told you that there is a record on this. They could have told you anything. I don't know. I don't

represent the City.

The flaw here is that they focused on the wrong statutes and that's a problem. I think there is also a potential problem with inconsistent judgments. If you were to rule in favor of Surfrider and somehow read into the City's LCP a different date for existing, the City or some other property owner who comes in for a seawall later might disagree with that. They wouldn't have been necessarily bound by a judgment.

While they ignore Sierra Club, they rely on the Deltakeeper case, and I wanted to make clear that the Court understood there is a real difference between these cases. Deltakeeper involved nonjoined parties that had a litigation agreement with defendants that allowed them to vote and control litigation. We don't have that here. The nonjoined parties actually conceded that the defendants could fully represent their interests in the litigation. We don't have that here. And Deltakeeper, the defendants had an escape clause in the contract with the nonjoining parties that would protect them in the event the court struck down the environmental reported issue. We don't have that here. The City doesn't have any protection.

Two other points I wanted to raise on this if I may. One is that the petitioners had said that the City's permit had a requirement that the real parties in interest indemnify the City in the event of a challenge to the City's permit. They didn't give you a cite to that but I will. It's at Volume II of the

administrative record at Page 384. The City did have a condition. But this was appealed to the Commission and as a result of that, much like when the Supreme Court takes a case,

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the Court of Appeal decision was vacated. And this is elementary. It's a coastal case on this, City of San Diego versus Coastal Commission, 119 Cal.App.3d at Page 228, Section Footnote 3. Basically the only permit now is the Commission's permit.

And the last point on indispensable party related to the exhibit. The Court hit the nail on the head when it noted that this property is indented. So when they say well, the City can just go and issue itself an after-the-fact permit, it can't.

Was it studied? Actually, it was studied in the Cotton, Shires report. I don't have that cite right in front of me but Cotton Shires proposed the integrated seawall for a reason. It's-- it's completely evident when you look at this. If the City were to armor its part, Mr. Grossman were to armor his part, it would cause the water to go right to the most -- to the weakest spot of this bluff.

That's my argument on indispensable party.

THE COURT: All right.

MR. KAUFMANN: I want to talk briefly about --I think it's really the only true issue on the merits -- the question of the

LCP versus Section 30235. Frankly, there is no doubt that Mr. Cardiff was passionate about this issue. He wrote an Law Review article on it and this is his day to argue the Law Review article. Yet you saw no reference to the sections that apply here. You saw only sections that would apply if this was an uncertified portion of the coast. Wrong statute, wrong standard of review, wrong case to make this argument. The case simply has no merit.

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I guess in a sense, they failed to state a cause of action in this case. What they have attempted to do is craft their own definition of "existing" and then import that into the City's LCP and say well, it's a default definition. And there is really nothing in the record that supports that.

Certainly the City used the word "existing" in its own seawall policy but it did so during this entire period of time when the Chief Counsel explained that the Commission interpreted "existing" to mean existing at the time the application is being considered. That's what the City intended when it approved this, that is what the Commission -- that is how the Commission applied it. And, in fact, there wouldn't have been any reason why the City, in adopting its own seawall policy in 1993 is the operative policy, would have intended "existing" to mean existing as of January 1, 1977. Again, the Commission, itself, never interpreted it that way so why should the City of Pismo

Beach do that? And it is the city of Pismo Beach's document, it's not the Coastal Act.

But by contrast, the City knew exactly how to qualify "existing" in this LCP and cited an example of an ordinance dealing with nonconforming uses where the City referred to structural alterations to -- and I will quote -- "any buildings or structures existing as of the date of the adoption of this ordinance." The point is the City could have done it, the City didn't do it.

The petitioner suggests that somehow or another an LCP is a rubber stamp for the Coastal Act. I have been doing this for 27 years, half on one side representing the Commission, half on the

other and I can tell you there is no LCP that is a mere rubber stamp for the Coastal Act. The fact is -- and this case illustrates it -- knowledge and experience in this coastal regulatory process is an evolving thing. It goes generally from much looser back in the early 1980's to much more stringent today and it comes with experience. And what was approved in this LCP back then is different perhaps than what some other city might come up with today or what the Commission might certify.

It's true that this LCP does pick up portions of 30235 and 30253 but I just wanted to compare two sections, compare Section

30253, that's the one. You can't see it, I am sure it looks like I am holding something up.

THE COURT: I know.

MR. KAUFMANN: It says "New development shall not in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." We know that. But that's not what S-6 said. S-6 folds in those concepts. S-6 says "Design and construction of protective devices shall minimize alterations of natural landforms." It's really a less strict standard. In fact, the argument that they are advancing, assuming that there was a conflict and we completely disagreed with that, it wouldn't work if you apply the LCP and the LCP control. So the lawsuit is misdirected, the argument today I think is misdirected. But I would like to address that and I will see if I can avoid duplicating the argument because I recognize the Court has indulged us.

Let me just say this. The Legislature in 19 -- in 2002

rejected the Wiggins (phonetic) Bill. In the reply brief, they say well, Wiggins was just a qualification of existing law. When a bill is intended to be a clarification of existing law, it says so. This one didn't. They say the bill wasn't rejected, it was just placed on inactive status. Well, it was proposed in 2002 and it wasn't adopted, it was rejected.

And lastly, they argue that the bill is irrelevant in

determining the legislative intent and they are wrong on the law. The parties really rely on two different principles here. They rely on a case that says candidly that the California Supreme Court is not clear on the issue of whether the failure of the Legislature is determinative of legislative intent.

Here, we have a different rule and the reason is because we are dealing here with a long continued administrative practice and the Legislature is presumed to know of that practice. So the governing rule is this. Where the Legislature acquiesces in that administrative construction or practice, failing to take any action towards its repeal of the amendment, that's a strong factor indicating that the construction or practice is consistent with legislative intent.

The Court made reference to the coastal policy provisions that deal with the word "existing." I won't repeat them. The Attorney General actually cited two from the chapter of the Coastal Act dealing with port (phonetic) policies. Same thing. Existing water depths, existing zoning requirements could not possibly mean January 1, 1977.

Petitioners offered in their reply brief what they say were numerous sections on this issue. In fact, there were four that

they cited but let me just give you the flavor of it because it really doesn't help their argument.

First was 30001(d), general legislative finding that refers to "existing developed uses and future developments." They are in context so the Legislature knew how to distinguish between existing and future and it said so.

30007, nothing in the Coastal Act regarding meeting its obligation related to housing imposed by existing law or any law hereinafter enacted. Yes, it uses the word "existing" but clearly the Legislature was able to differentiate.

When you look at Section 3 -- I am sorry. I am going to rap this up real quick. When you look at 30235, you have to look at this section in context. Before "existing" was added to this section in the coastal bill, there was a sentence already in the provision that said "Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible."

Then the Legislature comes along in the very next bill version and adds the word "existing." They are forced to argue that the word "existing marine structures" really means only those structures that were in place on January 1, 1977. I got to tell you the evil here is whether these marine structures caused water stagnation that contributes to pollution and fishkills and it shouldn't matter whether they are replaced in -- in 1977 or any time between then and now. The evil is the same. This policy could not possibly have been tailored to that.

28 The Court actually made a comment that I thought was

1 interesting. There is this well-established principle cited by
2 both parties here that great weight has to be given to the
3 administrative construction of those charged with the
4 enforcement and interpretation of the statute. And the rule
5 goes on to say the court will not depart from such construction
6 unless it is clearly erroneous.
7 On Page 9 of their opening brief, they say both arguments
8 are reasonable on their face. The Court says I think I could go
9 either way. That's not clearly erroneous so they cannot
10 prevail.
11 The Commission has not vacillated. I think they really have
12 given you a partial quote they showed on the screen and, in
13 fact, the Commission's interpretation was the same at the time
14 they certified the Pismo LCP, at the time it acted on its
15 application and at the time it adopted the no future seawall
16 condition. If the Commission agreed that existing meant
17 something else, it would never have had to adopt a no future
18 seawall condition. It could have simply said sorry, it really
19 wasn't existing as of January 1, '77 so you are out of luck.
20 And so this is brought home by the Commission Chairman's
21 explanation in the record in Volume XI at Page 2026 where he
22 says about this condition, it really doesn't speak to the
23 different interpretation of the word "existing", it simply

speaks to the new process that the Commission adopted about that time in terms of how we treat seawalls. And the Commission Chief Counsel said yes, that's correct.

There has been a lot of discussion about the interplay of these two sections and I am not going to repeat that. I will

say this. This case evidences that this is not an exact science. If you look at Footnote 2 in the Attorney General's brief, you will see the litany of reports that were done on this and it didn't even include the Commission's expert, who is of more recent vintage than this exercise.

I am going to close with two points. I think petitioners are really afraid to say this but I think that their position is this. The threatened structure must fall into the ocean. But there is nothing here in the legislative record to suggest that that is what the Legislature intended, nothing to suggest that the Legislature intended to jeopardize life and property of those who simply happen to live on the coast or that the Legislature intended to have a destroyed structure sitting up on a bluff that everybody could see as a visual light. This is part of the coastal resource. There is nothing to suggest the Legislature intended to require a house chunk off the bluff and dump all its debris. And imagine what the debris would consist of: Glass, metal, wood, bricks, et cetera, et cetera. Dump it

onto the beach or into the water where there are swimmers or surfers. It could not have been the legislative intent but that's the logical consequence of petitioner's argument.

And I think the argument is even further misguided because in their brief, they make it clear that what they are directing their concern at is single-family residential development. And yet "structure" in Section 30235 doesn't only include houses. It includes all sorts of public facilities. And that was a point in the coastal plan in Volume XI at Page 1937 where it said "to protect public facilities" -- and I can give you a

laundry list of public facilities, we have one here, the Florin Street Vista Point -- "worthy of protection." So I think they are reading it too narrowly but frankly, I don't think it's really the argument that is the true issue in this case. Thank you very much.

THE COURT: Thank you. Mr. Gonzalez, Mr. Cardiff.

MR. GONZALEZ: Mr. Cardiff will respond.

MR. CARDIFF: I want to start my rebuttal regarding the issue of joinder of Pismo Beach.

First of all, I believe that the Sierra Club case can easily be distinguished. First of all, there the Sierra Club failed to add the -- add the applicant -- the actual applicant for it. And when they tried to add the applicant later, then the applicant moved to dismiss it and based on 389. And of course,

we don't see Pismo Beach here screaming about that they want to be in this lawsuit.

And really, even if you look at some of the other cases like Save our Bay, in that case, you know, it was a landowner that was specifically damaged because of the -- and it was specifically identified in the Coastal Commission report. But if you look at some of the other cases, specifically cases from -- from this case -- from this jurisdiction such as the Deltakeeper, you notice that it's prejudice that really was looked at by the court.

If you look at, for example, the Save Our Bay case, the Save our Bay only -- only was suing the agency and the Port District and the Port District didn't care who was -- who was actually developing a port.

So it really comes down to prejudice. And, in fact, one of the very interesting cases, if you look at -- and we did not cite this because it just very minorly talks about 389, but if you look at Citizens Association for Sensible Development of Bishop Area versus the County of Inyo at 172 Cal.App.3d 151 at 157, they discuss an essential party and they discuss a very similar issue. And I can provide you the case if you would like.

THE COURT: All right.

MR. CARDIFF: Would you like the case provided to you right now?

THE COURT: Any objection?

MR. KAUFMANN: No.

THE COURT: Sure.

MR. CARDIFF: One of the very interesting parts of this case was that the -- the real parties in interest was named, was the developer who actually was an escrow buyer of certain property. And in that case, of course the citizen group challenged and made declarations of its own and the court there looked at it and said well, the person who owns the land is really in the exact same position as the escrow holder, the developer and the developer is in court arguing vociferously and very ably that this -- these mitigating (inaudible) are proper and therefore the project should go forward.

Well, that's exactly what we have here. We have two applicants, the two named applicants. Of course, the City of Pismo wasn't really an applicant for the seawall project but instead just a beneficiary, which are arguing vociferously first

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of all that the LCP is what controls and that they deserve a seawall under the Coastal Act or under the LCP or apparently because they feel that we want their house to fall in the ocean, which is not true. We would like them to move back from the ocean. So really, it becomes a question of prejudice.

And in this case, there is no prejudice because the -- because of Mr. Kaufmann, who is a very able attorney. And quite frankly, I didn't get to see his case, which he claimed that the indemnity provision is waived as soon as a Coastal Act case is appealed to the Coastal Commission. But I believe that it is important to note that I believe that the indemnity provision would be enforced and Mr. Kaufmann would be up here representing every single real parties in interest, including the City of Pismo.

And I guess we have to ask would the City of Pismo bring anything into this case? We have a very, very narrow issue. They are going to be -- they are going to be relegated to either what Mr. Kaufmann argued: That the LCP controls, or that the Coastal Act states what the Coastal Commission is asking. So if you look at the Deltakeeper case, which is controlling, it is out of the Sixth District and this Court of Appeal, they really state that if somebody is representing with the same interest in court, there is no prejudice to the real parties in interest.

And I do not believe -- I question whether they are a necessary party under the City of Inyo case. But I definitely question whether they are an indispensable party because they wouldn't bring anything. There is no extra evidence that they can provide here.

Regarding the Wiggins bill, I was there. We know how politics works, don't we? It's not -- there are so many good bills out there that don't get passed and there is a variety of reasons. This bill was really to clarify the Coastal Act. That's what the author -- the author talking to me discussed. And we discussed how we wanted to bring this bill forward. And, in effect, if you look -- if you look at the history of that bill making it through the Legislature, you -- you would be truly amazed because it passed almost unanimously out of the Assembly by some Republicans and it passed out of the Natural Resources Committee and the Appropriations Committee in the -- in the Senate. And we were actually quite surprised when it got pulled off the schedule and we actually do not know why it didn't come before the Legislature for a vote. But the case law is pretty clear. If you are hanging a hat on the inaction of the Legislature, that is a very weak hat to wear. So it really is irrelevant.

Mr. Gonzalez, did you want to talk about the LCP issue?

MR. GONZALEZ: Your Honor, Mr. Kaufmann takes the majority of his brief and his strongest statements today stating that it's the LCP provisions that the Court should be focusing on, that challenging these provisions of the Coastal Act are improper procedurally. But what we have to ask ourselves is what does the LCP say, what does it do to change the Coastal Act's version of "existing"? And we to do that within the

construct of the notion that the LCP must comply with the Coastal Act, that it can be more stringent but it can't be less.

One word: Principle. It doesn't change what the word

"existing" means. When the Coastal Commission certified the LCP back in 1984, we were in the midst of that 20-year period that Mr. Faust, Chief Counsel, called before.

Now, it was characterized as a change in tactic but when we go back and look at what it was that Mr. Faust actually said, he said it was a change in interpretation. And if you look at the transcript that was quoted, Chairman Reilly, when he brought -- he brought up the issue of whether this was, in fact, a reconsideration of -- he said "It simply speaks to the process that the Commission adopted about that time in terms of about how you treat seawalls." Chief Counsel Faust said "Yes, that is correct." Chairman Reilly said "All right." Well, then Chief Counsel Faust said "But that ultimately pertains to what is existing."

The entire discussion at the Coastal Commission was about this issue of the Coastal Act. The conflict that was discussed there, the decision that was rendered there was in the context of what Mr. Faust called this change in interpretation. So to simply say that because we didn't go and appeal the setback provision at the LCP stage does not change the fact that upon de novo review at the Coastal Commission, this issue was squarely

before the Commission and the facts are as we have presented them here to you.

I think with that being said, we have addressed most of the issues that they raised.

THE COURT: One more question. You pointed me to S-6 as part of Pismo Beach's LCP. The argument isn't made but it just crossed my mind. You are referring there to "existing." That

was certified as I recall in 1984, something like that, by the Coastal Commission. Is there an argument that "existing" as it relates to the LCP relates to acts that are existing as of 1984?

MR. GONZALEZ: Well, I believe that --

THE COURT: Because that refers back.

MR. GONZALEZ: There is an argument, it's not a correct argument. I think that the argument could be made that an LCP interprets a provision of the Coastal Act in a way that is inconsistent with the Coastal Act and thereby gains a right. I don't think that there is anything in the law that would presume that -- that conflict could be able to withstand.

You raised an interesting point earlier about when in the process the public is supposed to come forward and challenge these types of scenarios, these types of circumstances. Geotechnical expertise is purchased. The public doesn't purchase it, the applicant purchases it. And as we saw in this

case, the applicant purchases essentially what they need. And we have seen this time and time again throughout the coast and that is why we are before you: Because we are sick of it.

When they want to come forward with an application to put their house on the bluff, the geologist comes forward as they did here and says the retreat rate is so slow, two or three inches, that you could probably build ten feet away and it wouldn't be a problem but we are going to be conservative and go to 25, which is the legal limit. And then as soon they get that house in and they have this up running of waves into that cliff base creating an undercutting or any kind of a change to the base of their bluff -- you have to look at this picture very

closely. You can see that immediately south of 125 Indio, where you have an undercutting of the base, that is when they come forward for a seawall. And then they come forward saying that is going to collapse and five or six feet is going to fall and then my house will truly be in danger.

But, Your Honor, isn't it a little difficult to imagine 121 Indio sitting there with an exposed gunite wall, two houses down a seawall coming in, the Florin Street viewpoint falling apart because of erosion. Are you going to tell me -- well, granted it's the central coast -- that anybody believed that the coast wasn't eroding here? Political decisions based on purchased science are not what the Coastal Act is about and that's why we

are here before you today. The administrative record is factually as good as we could get to show when the same geologist says oops, I made a mistake. Their action is against the geologist, not against the public's interest and the public's right to access this beach and have it in perpetuity.

THE COURT: Mr. Cardiff.

MR. CARDIFF: Your Honor, I would like to also address the question of -- of "existing" in other portions s of the Coastal Act. First of all, I think that if you took a good look at the statutes that, for example, Mr. Kaufmann and the Coastal Commission has cited, it's not quite as clear as they make it out to be.

And I think that -- that our citation specifically in our reply or response brief really points out all the different statutes that -- that appear to be -- at least if you were looking at it as "existing" meaning existing at that time. Sure

it might also say, you know, existing or future structures, which even shows even more clearly that "existing" meant existing at the time the Coastal Act was enacted.

Now, when it comes to -- if you can put on Coastal Act Section 30235, the full section. Sorry. Passed it by.

THE COURT: There it is.

MR. CARDIFF: 30235. Okay. I have looked at this so long

and quite frankly, I was -- I was confused by the last sentence of "existing marine structures" for a very long time. And I was wondering well, why is "existing marine structures" even in there, it doesn't even seem like it fits with everything else unless you look at the title: "Construction altering natural shoreline." And I believe -- and when I am looking at that, I go wow, "existing marine structures causing water stagnation contributing to pollution problems and fishkills to be phased out or upgraded where feasible." In other words, it is saying that those existing marine structures that cause water stagnation and pollution problems and fishkills are not entitled to construction altering natural shorelines.

That even -- that shows even to a greater extent that this is a grandfather clause. That last sentence is denying grandfather clause -- grandfather status to those structures that cause pollution, which makes total sense. They certainly weren't talking about phasing out future structures, were they? They were talking about phasing out those structures and not allowing them to have revetments, breakwaters, groins, harbor channels, seawalls or other such construction that alters natural shoreline. That is really what they are talking about.

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It's a denial of the grandfather status.

So in closing, first of all, we disagree that this is about the LCP, the LCP must comply with the Coastal Act, the default

definition of "existing" is the Coastal Act, Coastal Act Section 30235.

And finally, we do believe that the Coastal Commission's interpretation first of all, it has -- it has changed. It was required to be changed per the seawall condition. And the current interpretation which they have right now creates a conflict and it provides a very clear conflict. You can see the pictures. You see what's happening at Pismo Beach, you see what's happening at Pismo Beach. There is going to be another new development that comes down and asks for a seawall in very short order and there it is stacked up with red tiles right there on 117 Indio on the other side.

I do have one other question to address. What is before us today doesn't have anything to do with the integration of the seawall, it doesn't. And that would be a completely different issue. If the Coastal Commission had addressed that issue and said that the only way to protect the -- the street and 121 Indio is by protecting this new development, that's a completely separate issue than what we have today. The issue that we have today is 125 Indio, new development. Thank you.

THE COURT: Mr. Cardiff, thank you.

Ms. Reynolds, Mr. Kaufmann.

MS. REYNOLDS: The only thing I am going to address is the last point on existing marine structures, --

THE COURT: Yes.

MS. REYNOLDS: -- the explanation that we heard from Mr. Cardiff on the meaning of the second portion of 30235. And I am not sure I quite understood his interpretation of that section but I will tell you that existing marine structures can refer to something like a breakwater or a groin, that the marine structure sometimes causes water stagnation and in those instances where it does cause that water stagnation, the section is saying that it should be upgraded or phased out. So it pretty simply, you know, just refers to that marine structure that's not built correctly.

As to the other points, I feel that this side of the podium has addressed everything that was raised.

THE COURT: All right, counsel. I told you before I am going to take the matter under submission. What I would like you to do is this. I will write an opinion for you on this because that seems to be what you are looking for.

How long would it take for you to get to me the order that you think the Court should enter from your respective positions?

MR. KAUFMANN: When you say "order," Judge, do you mean just the form of the order?

THE COURT: No.

MR. KAUFMANN: You mean a written statement of decision?

THE COURT: You want a statement of decision, right. How

long will that take?

As I understand it, given the structure here, nothing is going to happen to stop the seawall so there really isn't a time limit on it.

MR. GONZALEZ: Your Honor, I think 30 days would be

appropriate.

THE COURT: Does that work for you?

MS. REYNOLDS: That is fine.

MR. KAUFMANN: Should we submit it jointly on this side?

THE COURT: I will let you do it however you wish.

MR. KAUFMANN: Okay.

THE COURT: If you want to submit a joint one, that is fine. If each one of you has -- if you want to submit a partial joint plus a separate part that relates specifically to the real party in interest, the Coastal Commission's individual points, that is fine.

Today is the 20th, right -- 19th. You want to have it submitted on the 19th of November? Does that work?

MR. KAUFMANN: (Nods head up and down.)

THE COURT: Okay. One caveat. When you submit it, please give me the disk that goes with it.

MS. REYNOLDS: The disk?

THE COURT: The disk, yes, either Word or Word Perfect, preferably Word.

So this matter will be deemed continued, then, to the 19th. I would like to have it submitted simultaneously. And when you file that with me on the 19th, it will be submitted as of that date, and then I will get an opinion out to you as soon as I can.

MR. GONZALEZ: Thank you for indulging us both in time and with argument.

THE COURT: No. Appreciate it.

Incidentally there is a -- we ran over an hour. There is

going to be a court reporter cost.

MR. KAUFMANN: Thank you, Your Honor.

MS. REYNOLDS: Thank you.

THE COURT: Thank you all very much.

MR. GONZALEZ: Thank you, Your Honor.

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State of California)
) ss.
County of San Francisco)

I, Christina T. Paxton, Official Court Reporter for the Superior Court of California, County of San Francisco, do hereby certify:

That I was present at the time of the above proceedings;

That I took down in machine shorthand notes all proceedings had and testimony given;

That I thereafter transcribed said shorthand notes with the aid of a computer;

That the above and foregoing is a full, true and correct transcription of said shorthand notes and a full, true and correct transcript of all proceedings had and testimony taken;

That I am not a party to the action or related to a party or counsel;

That I have no financial or other interest in the outcome of the action.

Dated: November 3, 2004.

Christina T. Paxton, C.S.R.
Certificate No. 1558

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DATE : NOVEMBER 3, 2004

TO : MR. TODD CARDIFF, ESQ.
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FOR : REPORTER'S TRANSCRIPT OF PROCEEDINGS

#503643 SURFRIDER FOUNDATION v. CA COASTAL COMMISSION

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The trial court decision in *Surfrider Foundation v. California Coastal Com*.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

SURFRIDER FOUNDATION, a California nonprofit public benefit corporation; Petitioner, vs. **CALIFORNIA COASTAL COMMISSION**; a California Public Agency; Respondent.	Case No. CPF 03503643 **STATEMENT OF DECISION DENYING WRIT OF MANDAMUS**
WALTER CAVANAGH, an individual; and **GARY GROSSMAN**, an individual; and DOES 1 through 5, inclusive; Real Parties in Interest.	Hearing Date: October 19, 2004 Dept.: 301 Time: 9:30 a.m. Action Filed: October 5, 2003 The Honorable James L. Warren

INTRODUCTION

Petitioner's First Amended Petition for Writ of Mandamus ("writ petition") came on regularly for hearing before this Court on October 19, 2004. Marco A. Gonzalez, Esq., and Todd T. Cardiff, Esq., of the Coast Law Group, appeared on behalf of Petitioner Surfrider Foundation. Alice Busching Reynolds, Deputy Attorney General, appeared on behalf of Respondent California Coastal Commission. Steven H. Kaufmann, Esq., of Richards, Watson & Gershon,

appeared on behalf of Real Parties in Interest Walter Cavanagh and Gary Grossman. The Pacific Legal Foundation, which attempted to file an amicus curiae brief in support of Real Parties and in opposition to the writ petition, did not appear at the hearing.[1] The Court, having reviewed and admitted into evidence the Administrative Record, the Requests for Judicial Notice having been granted, the briefs filed by the parties having been considered along with the oral argument of counsel, now issues its Statement of Decision DENYING the writ petition.

In this case, Petitioner challenges the Coastal Commission's decision to approve, with conditions, a combined retaining wall, seawall ("Seawall") and bluff restoration project to protect two residential structures at 121 and 125 Indio Drive and a City street end and vista point in the City of Pismo Beach. The Commission found the project to be consistent with the requirements of the Local Coastal Program ("LCP") adopted by the City of Pismo Beach, including the seawall and bluff protection policies set forth in LCP Policy S-6 and Section 17.078.060 of the City's LCP Implementation Plan. Petitioner asks this Court to construe Sections 30235 and 30253 of the Coastal Act (Pub. Resources Code § 30000 et seq.), and contends that Section 30235 permits seawalls only to protect structures that were "existing" as of the effective date of the Coastal Act, which was January 1, 1977. Petitioner does not challenge the right of the City of Pismo or Real Party Grossman to protect the City improvements or the Grossman residence, both of which pre-date the Coastal Act. Rather, Petitioner argues that the Commission erred in its decision because it approved a seawall to protect the Cavanagh residence, which was built more recently in 1998, obviously long after the effective date of the Coastal Act.

As discussed below, the Court concludes that the writ petition must be DENIED. The Court concludes that the reasonable interpretation of Section 30235 of the Coastal Act permits the Commission to authorize seawall protection for structures that are "existing" at the time the Commission makes its decision on an application for permit, not structures that were existing when the Act was passed almost 30 years ago.

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[1] The Pacific Legal Foundation's filing of its amicus brief shall be deemed a request to file the brief, (...continued)

PROCEDURAL AND FACTUAL BACKGROUND

Real Parties Grossman and Cavanagh own existing homes on a bluff overlooking the ocean in Pismo Beach. The Cavanagh residence, at 125 Indio Drive, is located between the Grossman residence downcoast at 121 Indio Drive and the City of Pismo Beach Florin Street cul-de-sac and vista point upcoast. (8 AR 1292; 10 AR 1679-1684.) The Grossman residence and City improvements were built prior to the effective date of the Coastal Act, January 1, 1977. The Cavanagh residence was approved by the City of Pismo in 1997, and was constructed in 1997-1998. (1 AR 50-66; 11 AR 2102.)

The blufftop in this location lies 40 feet above mean sea level and consists of poorly consolidated material that expert evidence demonstrates is susceptible to accelerating bluff retreat from combined high tide and storm wave events that erode the base and face of the bluff, as well as from groundwater discharge along the contact between the marine terrace and underlying bedrock. (8 AR 1267, 1295; 11 AR 2083.)

The City's 1997 approval of the Cavanagh residence included an evaluation of bluff erosion and a corresponding assessment of sufficient setback requirements to ensure that the project site would be stable given the estimated rate of bluff retreat. (11 AR 2084.) After considering all available scientific evidence, the City required that the structure be set back 25 feet from the bluff face. (11 AR 2084, 2132.) The City considered this distance to be sufficient based on evidence of a bluff retreat rate of two to three inches per year. (Id.) In light of the predicted bluff retreat rate, the City determined that the 25-foot setback would ensure the safety of the 125 Indio house for the estimated economic lifespan of the home. (11 AR 2086, 2102.) The City's decision was not appealed to the Coastal Commission.

The El Nino winter of 1997-1998 produced the wettest February on record since 1967. Nearly 22 inches of rain fell on Central California from late January through February 1998. (11 AR 2013.) As a result, this particular area subsequently experienced unanticipated and significant episodic bluff loss, some 5 feet of blufftop near the 121-125 Indio Drive property

(...continued)
which request is denied for failure to comply with this Court's procedures.

line. (7 AR 1171; 8 AR 1278.) Large tension cracks formed in the blufftop, and active new seacave formation at the bedrock-marine terrace interface, incising approximately 10 feet into the bluff, revealed bluff failure and continuing substantial bluff retreat. (8 AR 1282, 1292-1293, 1424-1427.)

Following the El Nino storms, Real Parties conducted new studies. (11 AR 2087-2088.) The new geological reports concluded that nearly four years after construction of the 125 Indio residence, the structure was in fact at risk from erosion. (11 AR 2087.) Real Parties submitted these reports with an application to the City for a seawall to protect both 121 and 125 Indio Drive, as well as the City street end and vista point from further erosion. On December 11, 2001, the City approved the construction of a continuous concrete seawall on and above the back beach, with a width on the beach of 5-10 feet and a visible height of 9-11 feet.[2] (3 AR 379-443.) Two Coastal Commissioners then appealed the City's decision to the Coastal Commission. (4 AR 562-567.) By this time, the distances between the top of the bluff and the nearest part of the Grossman and Cavanagh residences were only 13 feet and 19 feet, respectively, and the Florin Street cul-de-sac and vista point was only 8.5 feet from the bluff. (8 AR 1266.)

The project then underwent additional geotechnical review – a report, "Geotechnical Investigation Potential Seacliff Hazards," prepared by Cotton, Shires & Associates, Inc., (Jan. 2003) (8 AR 1258-1402), a "Coastal Hazard Study" prepared by Skelly Engineering (Feb. 2003) (8 AR 1420-1441), and a peer review by Earth Systems Pacific (Feb. 2003) (8 AR 1412-1419). Each expert concurred in the conclusion reached by Cotton Shires (at 8 AR 1266, 1303, 1314, 1325) that without seawall protection, the existing residences and the Florin Street street end and vista point would be in imminent danger from erosion. (8 AR 1418-19, 1423.)

Cotton Shires recommended an "integrated" seawall to protect both houses and the Florin Street cul-de-sac (designing the structure to "be integrated with (keyed into) existing adjacent protective structures at the foot of Florin Street and 121 Indio Drive to avoid flanking"). (8 AR

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[2] The Court notes that at the time of the application approximately the southeasterly two-thirds of the property at 121 Indio Drive was already protected by a pre-existing shotcrete-rebar seawall (8 AR 1265, 1276, 1287, 1292), and eight other residences along Indio Drive also were already protected by shoreline protective devices – (...continued)

1348.) Based on further geotechnical recommendations, Real Parties amended their permit application to redesign and scale back the seawall, so that instead of extending 5 to 10 feet on to the sandy beach, the "structure would consist of a minimized, approximately 18-inches thick, concrete-covered reinforced steel wall, with tie-backs." (9 AR 1462, 1483.)

In March and April 2003, the Coastal Commission's staff geologist, Mark Johnsson, visited the site and analyzed all of the geological reports prepared for these properties to determine whether the two residences were in danger from erosion. (10 AR 1835-1836, 1850-1851.) He concluded: ". . . [T]he analyses presented do, in my opinion, demonstrate that a sufficiently low factor of safety exists to indicate that the structures are at risk. Most convincing are the seismic analyses for both wedge-type or circular failure surfaces, which show that the pseudostatic factor of safety drops below 1.0 within the footprint of both 121 and 125 Indio Drive, as well as within the Florin Street cul-de-sac. The static analyses indicate a much higher factor of safety, although a small portion of the structures at 121 Indio Drive, as well as the Florin Street end, lie seaward of the 1.1 (or less) factor of safety line." (10 AR 1851.)

On July 17, 2004, the Commission's staff prepared a comprehensive staff report and recommendation on the project. (11 AR 2077-2121 (as revised at the hearing to reflect a revision to special conditions, the "adopted staff report").) The staff report systematically analyzed the project for its conformity with the provisions of the City of Pismo Beach Local Coastal Program, and reviewed the additional geotechnical evidence pointing to the unstable, hazardous condition of the site.

On August 6, 2003, after a public hearing, the Commission voted to approve the project, as amended, with a substantially revised and less intrusive seawall – an 18 inch wide, 15-20 feet high, contoured, bluff-colored, vertical seawall along the toe of the bluff, with native vegetation restoration of the upper bluff face and blufftop, and replacement of the large storm drain outfall that presently occupies the beach with a pipe that discharges through the seawall. (11 AR 1975-2036.) The Commission imposed five standard conditions and 15 detailed special conditions

(...continued)
rock revetments, bulkheads and seawalls. (8 AR 1292, 1422; 10 AR 1673, 1682.)

requiring water quality improvements (a requirement proposed and paid for by Real Parties), vista point improvements, beach sand supply, and an offer to dedicate a public beach access easement. (11 AR 2091-2100.)

In its 45-page decision, the Commission found the project, as conditioned, to be in conformity with the certified City LCP.[3] The Commission applied the City's LCP, including Policy S-6, which mandates that a seawall be permitted only when necessary "to protect existing principal structures . . . in danger from erosion." (11 AR 2100, 2102-2105.) The Commission noted that both residential structures were legally present at the site, and concluded that both were "existing" and, based on substantial expert evidence, in imminent danger of erosion. (11 AR 2100-2105.) The Commission analyzed alternatives to the seawall (id. at 2105-2106), and found that the project, as modified, is the superior alternative because, among other things, "it minimizes the footprint [of the seawall] on the sandy beach, is much less visually intrusive, and it addresses problems associated with the failed storm water outfall." (Id. at 2106.) The Commission further addressed and mitigated the potential impacts of the seawall on sand supply. (Id. at 2106-2111.) To ensure compliance with the City's certified LCP and the Coastal Act's public access and recreation policies (§§ 30210-30224), the Commission required Real Parties to pay a $10,000 fee for vista point improvements and beach sand replenishment, and required Real Party Grossman to offer to dedicate a beach access easement. (Id. at 1185-1186.) The Commission found, after a review of expert reports and an independent peer review:

> "This site presents some unique geologic conditions and facts that complicate the degree of threat evaluation. The materials exposed in the bluff are highly erodable, consisting almost entirely of nearly cohesionless sand. These erodable materials are subject to wave attack, as the marine terrace deposits make up the majority of the sea cliff. Because of this, there is little margin for error in determining risk in a no project, no revetment scenario. When all factors are considered together, and evaluated in the context of an extreme storm event, the Applicant's consulting geotechnical engineers and geologist have concluded that the existing residence is in danger of being undermined. The Commission's

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[3] Under the Commission's regulations, the staff report, with minor revisions to special conditions made at the hearing, became the decision of the Commission. (Tit. 14 Cal. Code Regs., § 13096(b) ("Unless other specified at the time of the vote, an action taken consistent with the staff recommendation shall be deemed to have been taken on the basis of, and to have adopted, the reasons, findings and conclusions set forth in the staff report.").)

> geologist has concluded that the evidence is borderline regarding whether the existing structure is 'in danger from erosion' at this time. But the fact that waves now routinely impact an area that consists of poorly consolidated marine terrace material indicates that, absent some form of shore protection, a clear danger from erosion would exist in the very near future. To err on the side of protecting life and property, it is prudent to conclude in this case that the existing structure[s] are in danger from erosion."
>
> "As such, the residences qualify as an existing structure in danger from erosion for purposes of section S-6 of the certified LCP." (11 AR 2104-2105; emphasis added.)

At oral argument, the parties represented that the Coastal Commission has since issued a coastal development permit for the project, and that the seawall has been substantially completed to protect the existing residences and the City street and vista improvements.

ANALYSIS

A. The Failure to Name the City of Pismo Beach as a Necessary and Indispensable Party does not Bar the Action.

As a threshold procedural issue, Real Parties contend that the City's property rights are unavoidably intertwined with their seawall and bluff stabilization project, and that the City is therefore a necessary and indispensable party to this action. Real Parties-in-Interest argue that Petitioner's failure to name the City of Pismo Beach is fatal to Petitioner's action pursuant to Code of Civil Procedure section 389. The court disagrees that the City is an indispensable party, or that the action should be dismissed pursuant to section 389. Code of Civil Procedure section 389 states:

> (a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.
>
> (b) If a person as described in paragraph (1) or (2) of subdivision (a) cannot be made a

party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder.

Using the analysis outlined in *Deltakeeper v. Oakdale Irrigation Dist.*, 94 Cal. App. 4th 1092 (2001), the court finds complete relief can be afforded in the absence of the City of Pismo Beach, because the issue before the court is whether the permit complies with Coastal Act section 30235. The court, through its power of mandamus, has the ability to provide complete relief to the parties present. Further, the court finds that persons already parties will not incur inconsistent obligations by the absence of the City of Pismo Beach.

The real question is whether the absence of the City will, as a practical matter, impair or impede its ability to protect that interest. Both the applicants for the project were named in the lawsuit, and were highly motivated to uphold the seawall permit. The City is not an applicant to the project, and although the City received a benefit from the project, its interests were exactly the same as the named Real Parties-in-Interest. Therefore, it is unlikely that the City would have contributed anything outside of what was already present in the administrative record, and the City would have been relegated to arguing the same points as the other real parties-in-interest. *Deltakeeper*, *supra*, at 1107-08. As a practical matter the City's ability to protect its interest in this case has not been not impaired or impeded.

However, as in *Deltakeeper v. Oakdale Irrigation Dist.*, this court continues the analysis under section 389, notwithstanding that the City's interest can be adequately represented by the named Real Parties-in-Interest. The court finds that even if the City was impaired in its ability to protect its interest, the City is not an indispensable party.

Preliminarily, the court must be careful not to convert section 389 from a discretionary power or rule of fairness into a burdensome requirement that thwarts rather than accomplishes justice. *Bank of California v. Superior Court*, 16 Cal. 2d 516, 521 (1940). The first factor, "(1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties" is the same analysis done under section 389 (a)(2). *Deltakeeper*, 94 Cal. App. 4th at 1107. As the court noted above, the City's interests are adequately represented by the named Real Parties-in-Interest. Most importantly, however, Petitioner will not have any remedy if the court chooses to dismiss the case on the basis of section 389 due to the sixty-day statute of limitations. Such factor weighs heavily against dismissing the action. Thus, in weighing the factors outlined by section 389, equity and good conscience demand that the court allow the action to proceed, regardless of the absence of the City of Pismo Beach.

B. The Petition is not Misdirected to Coastal Act Section 30235.

Real Parties in Interest and the Commission also assert that the Court must deny the writ petition because it challenges Section 30235 of the Coastal Act, which Real Parties contend is not relevant here. Petitioner's argument raises the purely legal question of the interpretation of the term "existing" structure in Section 30235 of the Coastal Act, which Petitioner contends must mean "existing as of the effective date of the Coastal Act, January 1, 1977." Real Parties and the Commission argue that Section 30235 is inapplicable in this case because the City of Pismo Beach has a certified Local Coastal Program ("LCP") that the Commission acted upon on appeal from the City's decision on Real Parties' application for a coastal development permit and, following certification, the LCP governs this application, not the Coastal Act. As noted below, however, as a practical matter, the Court will be faced with a legal interpretation of the term "existing" no matter which statute is under consideration.

The applicable statutory framework is as follows: The Coastal Act requires each local government within the state's coastal zone to prepare a LCP containing a land use plan and implementing ordinances designed to promote the Act's objectives of protecting the coastline

and its resources and to maximize public access. (§§ 30001.5, 30512, 30513.) The precise content of each LCP is to be determined by the local government, in consultation with the Commission and with full public participation. (§ 30500(c).)

Of course, Local Governments may "adopt and enforce additional regulations, not in conflict with the act, imposing further conditions, restrictions or limitations with respect to any land or water use or other activity which might adversely affect the resources of the coastal zone." Pub. Res. Code § 30005. Thus, while an LCP can be more restrictive than the Coastal Act, it cannot be less restrictive. "The Coastal Act sets the minimum standards and policies with which local governments within the coastal zone must comply." *Yost v. Thomas*, 36 Cal. 3d 561, 572 (1984). The Coastal Act is the primary law from which the LCP arises.

Pismo Beach's LCP Policy S-6 essentially mirrors Public Resources Code section 30235, stating, in relevant part, "Shoreline protective devices such as seawalls...shall be permitted only when necessary to protect existing principal structures..." Thus, like the Coastal Act, it uses the term "existing" prior to "structures," without defining the term "existing." The LCP does not shed any light on the Coastal Commission's interpretation of section 30235, now or at the time of certification of the LCP. Because the LCP uses the same term as the Coastal Act, it must be presumed to have the same meaning. Clearly, it would not be proper for the LCP's definition of "existing" to be less restrictive on development than the Coastal Act. *Yost*, 36 Cal. 3d at 572. Further, in public hearing, the Coastal Commission clearly concentrated on the interpretation of Public Resources Code section 30235, not the interpretation of Pismo Beach's LCP Policy S-6. (11 AR 2017-36). The Commission's interpretation of section 30235 necessarily affects the proper interpretation of Pismo Beach's LCP.

C. The Commission's Finding that the 125 Indio Residence is "Existing" Within the Meaning of Section 30235 and 30253 was Reasonable and Within the Commission's Discretion.

The "touchstone" of statutory interpretation is legislative intent. (California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist. (1997) 14 Cal.4th 627, 632.) In evaluating the meaning of a statute, the aim should be the ascertainment of legislative intent so

that the purpose of the law may be effectuated. (Select Base Materials, Inc. v. Board of Equalization (1959) 51 Cal.2d 640, 645.) "In construing a statute, the court's first task is to look to the language of the statute itself. When the language is clear and there is no uncertainty as to the legislative intent, the court looks no further and simply enforces the statute according to its terms." (DuBois v. W.C.A.B. (1993) 5 Cal.4th 382, 387-88; citations omitted.)

Petitioner argues that the language of Section 30235 is ambiguous. (Petr. Opening Brief at 9:5-6.) However, the Court has reviewed Section 30235, and finds that, in context, the language in question is not ambiguous: Section 30235 states: ". . . [S]eawalls . . . shall be permitted when required . . . to protect existing structures . . . in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. . . ." (Emphasis added.) The Section draws a reasonable distinction between structures merely proposed by an applicant (for which seawall protection is not mandated), and those that are "existing" and require protection because they are in danger from erosion. By its terms, Section 30235 applies only to the latter.

The record before the Court demonstrates that this reading of Section 30235 conforms to the Commission's long-standing administrative construction of the section. Although the Court exercises independent review over questions of law (see e.g., Crocker National Bank v. City and County of San Francisco (1989) 49 Cal.3d 881, 888), "courts must give great weight and respect to an administrative agency's interpretation of a statute governing its powers and responsibilities." (Mason v. Retirement Board of the City and County of San Francisco (2003) 11 Cal.App.4th 1221, 1228.) "Consistent administrative construction of a statute, especially when it originates with an agency that is charged with putting the statutory machinery into effect, is accorded great weight." (Id.; see also Yamaha Corp. of America v. State Board of Equalization (1998) 19 Cal.4th 1, 12 (explaining that evidence that an agency's statutory construction has been consistent weighs in favor of affording deference to the agency's interpretation).)

In this case, the Commission authorized the seawall at issue, finding that the residences at both 121 and 125 Indio Drive were existing structures because they were legally there at the time

the Commission was making its decision. As the Commission's Chief Counsel explained in testimony at the administrative hearing, this determination is consistent with the long-standing practice of the Commission. (11 AR 2018-2019.)

Petitioner cites other portions of the Chief Counsel's testimony, claiming that the Commission has "vacillated" in its interpretation of "existing structure." (Petr. Opening Brief at pp. 15:2-16:6.) Although the cited testimony does refer to a change in interpretation, the context of this statement and the ultimate Commission vote, adopting a finding that the Cavanagh house is "existing," shows that the purported "change" was the Commission's more recent practice of incorporating a "no future seawall" condition in permits for new bluff-top development, not a change in the interpretation of "existing structure." (11 AR 2018-2019.) As the Commission's Chairman explained: "It really doesn't speak to any different interpretation of the word 'existing.' It simply speaks to the new process that the Commission adopted about that time, in terms of how we treat seawalls." (11 AR 2026; see also Chief Counsel's response: "Yes, that is correct.".) Indeed, the Court notes that there would have been no need for a "no future seawall" condition if the Commission simply had agreed with Petitioner's interpretation. Equally important, Petitioner provided no evidence of any Commission decision that included a finding that a post-Coastal Act structure, built pursuant to a coastal development permit issued under either the Coastal Act or a local coastal program, is *not* an existing structure.

In the absence of any evidence that the Commission has strayed from its consistent interpretation of "existing structure" as meaning any structure legally present at the time its decision is made, the Court concludes that the Commission's interpretation is entitled to great weight and applies the standard set forth in Mason v. Retirement Board of the City and County of San Francisco, supra.

To advance its argument, Petitioner would, in effect, re-write Section 30235 to provide its applicability only to "structures existing as of January 1, 1977. . . ." The Surfrider Foundation argues that section 30235 is a grandfather clause intended to protect solely those structures built prior the enactment of the Coastal Act. In other words, the term "existing structure" means those

structures existing at the time the Coastal Act was enacted. All other structures are "new development" within the meaning of Public Resources Code section 30253, and "shall...[not] in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." Petitioner argues the Coastal Commission's interpretation creates a conflict between Public Resources Code sections 30235 and 30253. As will be shown, Petitioners interpretation of "existing" structures does not fit with the statutory construction of the Coastal Act.

The legislative intent of Section 30235 can be discerned from review of the Coastal Act as a whole. A statute must be read "with reference to the entire scheme of which it is a part so that the whole may be harmonized and retain effectiveness." (People v. Pieters (1991) 52 Cal.3d 894, 899; see also Calatayud v. State of California (1998) 18 Cal.4th 1057, 1064.) "[I]t is a well-established rule of construction that when a word or phrase has been given a particular scope or meaning in one part or portion of a law it shall be given the same scope and meaning in other parts or portions of the law." (Stillwell v. State Bar of California (1946) 29 Cal.2d 119, 123.)

While Petitioner focuses exclusively on the seawall policy in Section 30235, there are numerous other policy provisions in the Coastal Act, enacted at the same time, which similarly use the word "existing" to refer to existing conditions such as "existing water depths" (§ 30705(b)), "existing water quality" (§ 30711(a)(3)), "existing zoning requirements" (§ 30610(g)(1)), "existing administrative methods for resolving a violation [of the Coastal Act]" (30812(g)), and "diking, dredging, or filling in existing estuaries and wetlands." (§ 30233(c)). (See also Pub. Resources Code §§ 30233(a)(2), 30233(a)(5), 30234, 30236,30250(a).) Nowhere in any of these provisions is there any indication that the Legislature intended to limit the Commission's review to water depths, water quality, zoning requirements, administrative methods, or estuaries and wetlands only that existed as of January 1, 1977.

In addition, Section 30235 itself refers to phasing out of "[e]xisting marine structures." As noted, the Section provides:

"Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls,

and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible." (§ 30235; emphasis added.)

The underscored portion of Section 30235, which pertains to "existing marine structures," was already in the legislative bill that gave rise to the Coastal Act at the time the word "existing" was added to the portion of the policy addressing seawalls. (Real Parties' RJN, Exh. 3.) The Court concludes that it would not have been rational for the Legislature to discourage only those "existing marine structures" constructed as of the effective date of the Coastal Act. The evil sought to be remedied – when such structures cause water stagnation that contributes to pollution problems and fishkills – would pertain equally to more recently approved and constructed "marine structures." Nothing in the legislative record presented to the Court suggests that the addition of the term "existing" in the case of seawalls was intended to have some different meaning from the identical word used elsewhere in the Section, or to apply the policy to "existing marine structures" as of January 1, 1977, but not to "existing marine structures" approved and constructed between January 1, 1977 and 2004. The Legislature certainly could have defined "existing" by date if it wished; however, it did not. When viewed in light of the aforementioned Coastal Act provisions, including Section 30235 itself, it is reasonable to interpret the term "existing structure" to refer to currently existing structures, rather than structures existing as of the effective date of the Coastal Act, January 1, 1977.

The Court notes further that, unlike Section 30235, other provisions of the Coastal Act specifically include a date to clarify the term "existing" to mean "as of the effective date of the Coastal Act, January 1, 1977" or some other date. Section 30610.6, refers to existing legal lots, but specifically limits the application of the section to any "legal lot existing . . . on the effective date of this section." Similarly, in Section 30614, the Act refers to "coastal development permit conditions existing as of January 1, 2002." Thus, when the Legislature intended to limit the term

"existing" to a certain point in time, it did so specifically.[4]

Petitioner cites a handful of other Coastal Act sections that also use the term "existing," and contends that the term is "clearly use[d] . . . to mean 'existing at the time of enactment.'" (Petr. Reply to Respondent's Opposition at p. 6 (citing Pub. Resources Code §§ 30001(d), 30004(b), 30007, and 30103.5).) But, the code sections cited are not analogous to Section 30235. Unlike Section 30235, three of the provisions cited by Petitioner (§§ 30001(d), 30004(b) and 30007) are legislative findings and declarations in Chapter 1 of the Coastal Act, which reflected the then present thinking of the Legislature. In contrast, Section 30235, like the code sections cited above using the term "existing" to mean present conditions, is a policy statement in Chapter 3 of the Act intended to provide direct requirements applicable to administrative decisions on an on-going basis. In two of the sections cited by Petitioner, the Legislature expressly distinguished between "existing" and "future" developments or laws. (§ 30001(d) ("existing developed uses, and future developments"); § 30007 ("existing law or any law hereafter enacted").) Section 30103.5(b) does not clearly refer to the effective date of the Coastal Act. That section was enacted as an amendment to the Coastal Act in 1978; there is no indication that use of the term "existing" was meant to refer back to January 1, 1977, a year before Section 30103.5 was enacted. Lastly, Section 30004 refers to coordinating activities of any "existing [state] agency." However, nothing in the section suggests it was intended to limit its provisions only to agencies whose jurisdiction might overlap as of the effective date of the Coastal Act. (See e.g., § 30419, which the Legislature added in 1984 to deal with the overlapping jurisdiction of the Commission and the Department of Boating and Waterways.)

Petitioner further contends that, without limiting the term "existing" to pre-Coastal Act structures, Sections 30235 and 30253 are conflicting. The Court concludes, however, that the plain language of these sections shows that there is no conflict and they are easily harmonized.

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[4] Other provisions of the Coastal Act cite the effective date of the Act, showing that the Legislature added specific language when it intended to refer to that date. (See e.g., Pub. Resource Code § 30600(a) ("on or after January 1, 1977, any person wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal development permit"); § 30608 (no person who has obtained a vested right for development "prior to the effective date of" the Coastal Act is required to obtain approval of the development under the Coastal Act.)

Section 30253 is directed at new development and instructs the Commission to take all reasonable measures to ensure that such development will not require a shoreline protective device. In carrying out this policy, the record shows that the Commission typically reviews new development proposed for coastal bluffs to determine if it has been adequately designed to prevent the need for any shoreline protective device for the lifetime of the project. As Section 30253 states, an application for development on the shoreline must show that the new development will not "in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs."[5] In implementing this policy, the Commission may require that a development be reduced in size or set back farther from the bluff to reduce the likelihood that a seawall might be necessary to preserve the structure in the future. Indeed, the record shows that in certain instances, the Commission has even imposed a "no future seawall" condition to forewarn property owners that a seawall will not be permitted at a later date. (11 AR 2019.)

Nevertheless, the coast is a dynamic environment, and in spite of best efforts, the Coastal Act also recognizes that seawalls may sometimes be necessary and permitted. To this end, Section 30235 specifically authorizes the approval of new seawalls and similar protective devices, but only where these devices are necessary to ensure safety of "existing structures" (meaning, structures existing at the time the application for seawall is considered by the Commission) and only when such structures are "in danger of erosion" and certain other criteria are met. In sum, the two provisions are harmonious because Section 30253 governs the design and siting of new development so that, based on all bluff retreat rate predictions, it will not require a seawall, while the other provision, Section 30235, recognizes that even the best of intentions can go awry, and it mandates the Commission to approve seawalls to protect "existing structures in danger from erosion."

The Court also finds, contrary to Petitioner's claim, that the Commission's interpretation of the term "existing" in Section 30235 does not render it a meaningless, surplus term. (See Petr.

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[5] The Court notes that LCP Policy S-6, which is applicable here, is worded somewhat differently: (...continued)

Opening Brief at p.12:22-24.) With the term "existing," Section 30235 prevents a permit applicant from requesting a seawall as a component of an application for a new blufftop structure. If "existing" is omitted from Section 30235, an applicant could ask the Commission to approve seawalls for any *proposed* structures that meet the additional requirements of the Section. In other words, an applicant could request a seawall as part of an application for a new development project when erosion of the development site could not otherwise be prevented. Thus, the term "existing," meaning existing at the time seawall approval is being sought, is essential to limit seawall approval to protection of structures existing at the time of the approval, thereby harmonizing Sections 30235 and 30253.[6] The Court concludes that this is a reasonable construction of Section 30235, and that the Commission did not err in concluding that the residences at 121 and 125 Indio are "existing" under that provision.

CONCLUSION

For all the reasons set forth herein, Petitioner's First Amended Petition for Writ of Mandamus is denied, along with its request for attorney's fees and costs.

Dated: 2/16/05

HONORABLE JAMES L. WARREN
Judge of the Superior Court

(...continued)
"Design and construction of protective devices shall minimize alteration of natural landforms." (Emphasis added.)

[6] The Court notes that Petitioner's argument is directed principally to seawalls that are proposed to protect existing *private* residential structures. (Petr. Opening Brief at pp. 17:19-20.) However, the word "structure" in Section 30235 is broad and unqualified. The seawall protection mandated by Section 30235 extends to all sorts of "existing structures," including existing oceanside roads and highways, oceanfront parking lots, permanent lifeguard facilities, beachfront recreational complexes and visitor-serving uses, coastal vista points, and public accessways on blufftops. As noted, the California coast is not static, and nothing in the Coastal Act or its legislative history remotely suggests that the Legislature intended to foreclose protection where such "existing structures" are threatened by imminent erosion. Even the Coastal Plan, which the Commission submitted to the Legislature under the 1972 Coastal Act (Pub. Resources Code § 30002), explained that shoreline structures should be permitted as necessary to "protect existing buildings and public facilities." (11 AR 1937; emphasis added.)

Assembly Bills 2943 (2002 Wiggins) and 1129 (2017 Stone) and the Legislative Record relating to both Bills

AMENDED IN SENATE AUGUST 26, 2002

AMENDED IN SENATE JUNE 5, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL No. 2943

Introduced by Assembly Member Wiggins

February 25, 2002

An act to amend Section 30235 of the Public Resources Code, relating to the California Coastal Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 2943, as amended, Wiggins. California Coastal Commission: local government: construction.

Existing law requires any person wishing to perform or undertake any development in the coastal zone to obtain a coastal development permit from the California Coastal Commission or from a local government. Existing law requires revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes to 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.

~~This bill would instead authorize that construction to be permitted.~~

This bill would provide that seawalls, cliff retaining walls, seacave fills, and other construction permitted for the purpose of protecting an existing structure, as defined, shall only be permitted if designed to eliminate or mitigate adverse impacts on natural shoreline processes

and only for so long as the structure has a useful economic life, but in no event any later than January 1, 2051.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 30235 of the Public Resources Code is amended to read:

30235. *(a)* Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other ~~such~~ construction that alters natural shoreline processes ~~may~~ *shall* be permitted when required to serve coastal-dependent uses or to protect ~~existing structures or~~ public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

(b) Seawalls, cliff retaining walls, seacave fills, and other construction that alters natural shoreline processes shall be permitted to protect an existing structure in danger from erosion only when designed to eliminate or mitigate adverse impacts on natural shoreline processes while that structure has a remaining useful economic life. A seawall, cliff retaining wall, seacave fill, or other construction permitted pursuant to this subdivision shall not be permitted on and after January 1, 2051.

(c) For the purposes of this section, the following terms have the following meaning:

(1) "Existing structure" means a structure that has obtained a vested right as of January 1, 1977, the effective date of the California Coastal Act of 1976.

(2) "Vested right" means that substantial construction was performed and that substantial expenditures were incurred in good faith reliance on either a building permit or final discretionary approval, whichever is applicable.

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COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 2943
AUTHOR : Wiggins
TOPIC : California Coastal Commission: local government: construction.

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY
2002
Nov. 30 Died on Senate inactive file.
Aug. 30 To inactive file on motion of Senator Chesbro.
Aug. 27 Read second time. To third reading.
Aug. 26 Read third time, amended. To second reading.
Aug. 7 Read second time. To third reading.
Aug. 6 From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
July 1 In committee: Hearing postponed by committee.
June 18 In committee: Hearing postponed by committee.
June 11 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 6. Noes 3.).
June 5 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on REV. & TAX.
May 9 Referred to Com. on N.R. & W.
May 2 In Senate. Read first time. To Com. on RLS. for assignment.
May 2 Read third time, passed, and to Senate. (Ayes 58. Noes 7. Page 5858.)
Apr. 29 Read second time. To third reading.
Apr. 25 From committee: Do pass. (Ayes 23. Noes 0.) (April 24).
Apr. 9 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 10. Noes 0.) (April 8).
Apr. 2 In committee: Hearing postponed by committee.
Mar. 14 Referred to Com. on NAT. RES.
Feb. 26 From printer. May be heard in committee March 28.
Feb. 25 Joint Rule 54 (a) suspended. Assembly Rule 49(a) suspended. Read first time. To print.

AB-1129 Coastal resources: structures: beach access and protection. (2017-2018)

Date Published: 04/26/2017 09:00 PM

AMENDED IN ASSEMBLY APRIL 26, 2017

AMENDED IN ASSEMBLY MARCH 09, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL NO. 1129

Introduced by Assembly Member Mark Stone

February 17, 2017

An act to amend Sections 30235, 30624, and 30821 of the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 1129, as amended, Mark Stone. Coastal resources: structures: beach access and protection.

Existing law, the California Coastal Act of 1976, provides for planning and regulation of development in the coastal zone, as defined. The act specifies planning and management policies for the location of new residential, commercial, and industrial development in the coastal zone.

The act requires the permitting of revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes 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.

This bill would also require that the permitted construction of those structures be consistent with the policies of the act, including policies regarding protection of public access, shoreline ecology, natural landforms, and other impacts on coastal resources, and would define the term "existing structure" for the purposes of those provisions.

The act requires any person wishing to perform or undertake any development in the coastal zone, as defined, to obtain a coastal development permit, but exempts from those requirements specified emergency projects undertaken, carried out, or approved by a public agency, as prescribed.

This bill would specify that any emergency permit issued under those provisions is a temporary authorization intended to allow the minimum amount of temporary development necessary to address the identified emergency, and minimize any potential harm or adverse coastal impacts related to addressing the emergency. The bill would specify that any subsequent development that is carried out that is beyond the scope of the

emergency permit shall require a coastal development permit and is not subject to emergency authorization granted under those provisions.

The act imposes specified civil penalties on a person, including a landowner, who is in violation of the public access provisions of the act for each violation of the act.

This bill would additionally impose those civil penalties on a person, including a landowner, who has *placed or caused to be placed* an unpermitted shoreline protection structure ~~on his or her property located in~~ *within* the coastal zone.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) California beaches provide recreation opportunities for residents across the state, as well as visitors from around the world.

(2) The coastal economy is based upon the maintenance of precious natural areas, beaches, parks, and urban areas as tourist destinations, and their economic benefit to the state depends on protection of their scenic and recreational value.

(3) As climate change occurs, much of the coast is under threat due to sea level rise and amplified coastal erosion.

(4) The economic and environmental health of human and natural coastal communities depends on their resilience and their ability to survive and rebound from adverse effects.

(5) In response to erosion and storm events, Californians have built seawalls, revetments, and other armoring structures along more than 10 percent of California's coast.

(6) Coastal armoring structures placed on eroding beaches prevent coastal ecosystems from migrating inland and cut off sand supply by preventing natural erosion processes. The placement of these structures on coastal lands also causes beaches to narrow and eventually disappear, diminishing coastal habitat.

(7) Coastal armoring limits beach access, impedes coastal recreation, and causes increased erosion to neighboring properties.

(8) A variety of alternatives to coastal armoring exist that use natural features and processes to protect property. While these nature-based alternatives have been shown to cost less or about the same as armoring, they also have the additional benefit of restoring and enhancing the natural character of the coast and ensuring coastal beach access for the public.

(b) It is therefore the intent of the Legislature to provide clear direction and enhanced authority to the California Coastal Commission to maximize the use of natural infrastructure to protect the state's coastline, while minimizing the use of coastal armoring and its related negative impacts.

SEC. 2. Section 30235 of the Public Resources Code is amended to read:

30235. (a) 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 an existing structure or public beach in danger from erosion and when that construction is (1) designed to eliminate or mitigate adverse impacts on local shoreline sand supply, and (2) consistent with the policies of this division, including policies pertaining to protection of public access, shoreline ecology, natural landforms, and other impacts on coastal resources. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

(b) For purposes of this section, and consistent with existing practice, "existing structure" means a structure that is legally authorized and in existence as of January 1, 1977.

SEC. 3. Section 30624 of the Public Resources Code is amended to read:

30624. (a) The commission shall provide, by regulation, for the issuance of coastal development permits by the executive director of the commission or, where the coastal development permit authority has been delegated to a local government pursuant to Section 30600.5, by an appropriate local official designated by resolution of the local government without compliance with the procedures specified in this chapter in cases of emergency, other than an emergency provided for under Section 30611, and for the following nonemergency developments: improvements to any existing structure; any single-family dwelling; any development of four dwelling units or less within any incorporated area that does not require demolition; any other developments not in excess of one hundred thousand dollars ($100,000) other than any division of land; and any development specifically authorized as a principal permitted use and proposed in an area for which the land use portion of the applicable local coastal program has been certified. That permit for nonemergency development shall not be effective until after reasonable public notice and adequate time for the review of the issuance has been provided.

(b) If one-third of the appointed members of the commission so request at the first meeting following the issuance of that permit by the executive director, that issuance shall not be effective, and, instead, the application shall be processed in accordance with the commission's procedures for permits and pursuant to the provisions of this chapter.

(c) Any permit issued by a local official pursuant to the provisions of this section shall be scheduled on the agenda of the governing body of the local agency at its first scheduled meeting after that permit has been issued. If, at that meeting, one-third of the members of that governing body so request, the permit issued by the local official shall not go into effect and the application for a coastal development permit shall be processed by the local government pursuant to Section 30600.5.

(d) No monetary limitations shall be required for emergencies covered by the provisions of this section.

(e) (1) An emergency permit issued under this section is a temporary authorization intended to allow the minimum amount of temporary development necessary to address the identified emergency, and minimize any potential harm or adverse coastal impacts related to addressing the emergency. Any subsequent development that is carried out that is beyond the scope of the emergency permit shall require a coastal development permit and is not subject to the emergency authorization granted under this section. Any development in the coastal zone that is covered under an emergency authorization granted pursuant to this section shall be removed at the end of the term of the permit unless authorized by a subsequent coastal development permit or a determination that no permit is needed, and any area affected by the development shall be restored to its prior condition.

(2) Any violation of paragraph (1) shall constitute a knowing and intentional violation of this division, subject to any penalties provided in Article 2 (commencing with Section 30820) of Chapter 9.

SEC. 4. Section 30821 of the Public Resources Code is amended to read:

30821. (a) In addition to any other penalties imposed pursuant to this division, a person, including a landowner, who is in violation of the public access provisions of this division, or who has *placed or caused to be placed* an unpermitted shoreline protection structure, such as a seawall, revetment, retaining wall, or other like structure, ~~on his or her property located in~~ *within* the coastal zone, is subject to an administrative civil penalty that may be imposed by the commission in an amount not to exceed 75 percent of the amount of the maximum penalty authorized pursuant to subdivision (b) of Section 30820 for each violation. The administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.

(b) All penalties imposed pursuant to subdivision (a) shall be imposed by majority vote of the commissioners present in a duly noticed public hearing in compliance with the requirements of Section 30810, 30811, or 30812.

(c) In determining the amount of civil liability, the commission shall take into account the factors set forth in subdivision (c) of Section 30820.

(d) A person shall not be subject to both monetary civil liability imposed under this section and monetary civil liability imposed by the superior court for the same act or failure to act. If a person who is assessed a penalty under this section fails to pay the administrative penalty, otherwise fails to comply with a restoration or cease and desist order issued by the commission in connection with the penalty action, or challenges any of these actions by the commission in a court of law, the commission may maintain an action or otherwise engage in judicial proceedings to enforce those requirements and the court may grant any relief as provided under this chapter.

(e) If a person fails to pay a penalty imposed by the commission pursuant to this section, the commission may record a lien on the property in the amount of the penalty assessed by the commission. This lien shall have the force, effect, and priority of a judgment lien.

(f) In enacting this section, it is the intent of the Legislature to ensure that unintentional, minor violations of this division that only cause de minimis harm will not lead to the imposition of administrative penalties if the violator has acted expeditiously to correct the violation.

(g) "Person," for the purpose of this section, does not include a local government, a special district, or an agency thereof, when acting in a legislative or adjudicative capacity.

(h) Administrative penalties pursuant to subdivision (a) shall not be assessed if the property owner corrects the violation consistent with this division within 30 days of receiving written notification from the commission regarding the violation, and if the alleged violator can correct the violation without undertaking additional development that requires a permit under this division. This 30-day timeframe for corrective action does not apply to previous violations of permit conditions incurred by a property owner.

(i) The commission shall prepare and submit, pursuant to Section 9795 of the Government Code, a report to the Legislature by January 15, 2019, that includes all of the following:

(1) The number of new violations reported annually to the commission from January 1, 2015, to December 31, 2018, inclusive.

(2) The number of violations resolved from January 1, 2015, to December 31, 2018, inclusive.

(3) The number of administrative penalties issued pursuant to this section, the dollar amount of the penalties, and a description of the violations from January 1, 2015, to December 31, 2018, inclusive.

(j) Revenues derived pursuant to this section shall be deposited into the Violation Remediation Account of the Coastal Conservancy Fund and expended pursuant to Section 30823.

California LEGISLATIVE INFORMATION

AB-1129 Coastal resources: structures: beach access and protection. (2017-2018)

Date	Action
02/01/18	Died on inactive file.
06/01/17	Ordered to inactive file at the request of Assembly Member Mark Stone.
05/18/17	Read second time. Ordered to third reading.
05/17/17	From committee: Do pass. (Ayes 9. Noes 7.) (May 17).
04/27/17	Re-referred to Com. on APPR.
04/26/17	From committee chair, with author's amendments: Amend, and re-refer to Com. on APPR. Read second time and amended.
04/18/17	From committee: Do pass and re-refer to Com. on APPR. (Ayes 7. Noes 3.) (April 17). Re-referred to Com. on APPR.
03/13/17	Re-referred to Com. on NAT. RES.
03/09/17	From committee chair, with author's amendments: Amend, and re-refer to Com. on NAT. RES. Read second time and amended.
03/09/17	Referred to Com. on NAT. RES.
02/19/17	From printer. May be heard in committee March 21.
02/17/17	Read first time. To print.