



October 7, 2019

Santa Cruz County Board of Supervisors  
701 Ocean Street, Room 500  
Santa Cruz, CA 95060

Re: Agenda Item 11 Santa Cruz County Local Coastal Program Update for Sea Level Rise and Coastal Hazards

Dear Santa Cruz County Supervisors,

The Surfrider Foundation is a non-profit, environmental organization dedicated to the protection and enjoyment of the world's oceans, waves and beaches for all people. The Surfrider Foundation Santa Cruz Chapter is dedicated to protecting all 29 miles of our beautiful coastline. Surfrider appreciates the opportunity to comment on the County's Local Coastal Program (LCP) update. We understand that this update is part of a multi-year process evaluate coastal hazards and develop a plan. Unfortunately, we feel this update disproportionality represents the interest of a vocal minority of beachfront and blufftop homeowners and does not adequately represent the interest of the public, especially the County's beach-going public and recreational users including surfers. The County inadequately involved those stakeholders and needs to re-evaluate the interests of its residents and visitors.

We suggest a number of modifications to the LCP update below in hope that the County will revisit a number of its policies and develop an update and plan that better protects our coast and natural coastal processes. We request the County emphasize avoiding shoreline protection devices in favor of evaluating soft armoring and living shoreline possibilities and otherwise adapting in a way that will protect public resources and recreation, rather than only safeguarding residential uses of our coast.

#### Timeline

The County intends to update the proposed policies by 2040 – approximately twenty years after adoption. This timeline is arbitrary and policy modifications may be necessary before the intended update. Instead, Surfrider recommends developing impact thresholds that will signal to the City when significant SLR impacts are occurring and an update needs to be under taken. We suggest incorporating triggers into the LUP itself and specifying that once a trigger occurs, or after 10 years elapse from the last LCP update, an LCP amendment will be initiated to take appropriate action to address the impacts. The scope and scale of any future LCP amendment would depend on the observed impacts, current conditions, best available science, and anticipated future impacts of SLR. Reassessments of the City's adaptation approach if/when increased SLR impacts are realized is needed to ensure ongoing consistency with the Coastal Act.

While we appreciate the County's vision to complete shoreline management plans between now and the 2040 timeline, those plans are non-binding and may not incorporate or account for potentially drastic impacts, especially in an extreme sea level rise scenario. They may not adequately address each scenario and they may not properly protect public resources. Therefore, we suggest that the County keep the door open for more frequent updates that will be subject to review by the Coastal Commission.

#### Overlay Zone

Surfrider suggests inclusion of coastal hazard overlay zones within the update. Currently, the County refers to and plans for impacts to beachfront and blufftop development. This is inadequate as there may be risks unaccounted for due to groundwater rise and impacts to development further inland from both sea level rise and groundwater intrusion. Overlay zones are an important mechanism to ensure property owners are aware of potential risks associated with SLR and fairly and properly noticed. Any overlay zone included in the update must include sea level rise projections based on best available science. The FEMA hazard zones are insufficient as they include only wave run-up and neglect to capture the changing hazard zone over the coming decades from sea level rise.

#### Mitigation

While we appreciate the inclusion of mitigation, the County must make it clear that mitigation may be used only in cases where shoreline armoring serves to protect existing structures – those built before the Coastal Act in January 1, 1977. New and redeveloped structures are not entitled to shoreline armoring and thus mitigation is not applicable. Mitigation, even when applied to shoreline armoring that protects existing structures, is woefully inadequate. Using the funds, as proposed by the County to help the Parks Department improve their parks will not restore what is actually lost by seawall impacts – lateral access, walkable beaches and surfable waves. Indeed, the County seems to indicate there would be a preference, but does not guarantee mitigation funds would go towards coastal parks and public access opportunities. Sand nourishment is not a long-term sea level rise solution. On an eroding coastline, with sea level rise, it represents only a temporary, likely inadequate and extremely costly adaptation solution. As such, it must be approached with caution and not seen as a panacea.

#### Seawalls and New/Existing Development

Surfrider is greatly concerned that the interest and rights of the beach-going public are not represented in the County's proposed policy updates. This update puts the rights of property owners clearly before the rights of the public trust. Beaches belong to all Californians and maintaining natural processes that preserve lateral access along our beaches, as prescribed in the Coastal Act, should be first and foremost the goal of sea level rise adaptation planning.

The County does not have the authority to set state tideland boundaries. Thus, when sea level rise in Santa Cruz County reaches seawalls, the public nuisance becomes access to State Public Trust

Tidelands - not County land. The State, Coastal Commission, or State Lands Commission has the ability to impose retreat or inverse condemnation of seawalls that impair the public trust.

Importantly, shoreline protection does not stop the formation of public trust land behind it had the shore protection not been present. Per "Climate Change and the Public Trust Doctrine: Using an Ancient Doctrine to Adapt to Rising Sea Levels in San Francisco Bay" and other cases were cited to support the assertion that shore protection does not stop the formation of public trust land behind it had the shore protection not been present.<sup>1</sup> As such, any plan must account for the landward migration of public trust land.

It is well established that when we meet rising seas with seawalls, we lose our beaches and the recreational opportunities they provide. Seawalls exacerbate erosion as reported in numerous peer-reviewed studies. Those impacts and research are catalogued in Stanford University's report *California Coastal Armoring Report: Managing Coastal Armoring and Climate Change Adaptation in the 21st Century*<sup>2</sup>

The potential impacts from sea level rise across that state are shocking. If we don't plan to adapt in a manner that preserves our natural coastline, relocating structures inland and allowing natural processes to occur, we will lose the very fabric of our state – our beautiful coast. Indeed, our coastal economy relies on healthy, thriving and natural coastlines. If the County moves forward with the plan as proposed, eventually, the waves at Pleasure Point will drown as the rising seas meet hard armoring and the bluffs are prevented from eroding as they otherwise naturally would. Santa Cruz County has a duty not only to their residents, but also to the beach-going public, including the thousands of surfers throughout the City and County who frequent Pleasure Point and other breaks adjacent to County land.

The County's proposed update would allow for all development, including new development, to rely on shoreline armoring and incorrectly defines existing development. The interpretations proposed by the County would be unprecedented - nowhere else is this allowed in the entire state of California. It goes against every interpretation and court ruling on the Coastal Act and is deeply, fundamentally flawed.

The County proposes to incentivize property owners to update their riprap seawalls to more low profile seawalls. This again, is woefully inadequate. In some cases, vertical seawalls are known to exacerbate beach erosion even further because of the acceleration and scouring effect. Indeed, the County has a responsibility to enact a long-term plan that aims to remove shoreline armoring, relocate structures within a coastal hazard zone and restore a natural coastline.

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<sup>1</sup> Golden Gate U. Env'tl. LJ 3, (2009): 243.

<sup>2</sup> Molly Loughney Melius and Margaret R. Caldwell, *California Coastal Armoring Report: Managing Coastal Armoring and Climate Change Adaptation in the 21st Century*, Environment and Natural Resources Law & Policy Program Working Paper (2015). <https://law.stanford.edu/wp-content/uploads/2015/07/CalCoastArmor-FULL-REPORT-6.17.15.pdf>

By failing to include retreat and relocation of structures as part of the plan to address sea level rise, the County abandons the Coastal Act's guiding policies and regulations. Under the high sea level rise scenario, beaches in the County will be lost if the back of the beach is fixed by sea walls. Low-lying areas will be continually flooded by storm and high-wave events. No amount of sand replenishment, sand retention devices, or even the complete restoration of natural sand supply through returning rivers to their undammed state will be able to prevent beach loss and flooding if the already narrow beaches are not allowed to move inland in response to rising tides.

Managed retreat raises legitimate questions about how and when to compensate private property owners, and how to manage the process of retreating. These questions will likely take years, possibly decades, to work out. By failing to include retreat as an option now, the County refuses to even start this imperative conversation. The residents are being set up for a future unplanned evacuation – i.e. “unmanaged” retreat – by ignoring this unfortunate but ultimately necessary adaptation option.

Recently, the California State of Appeals court decision in *Lindstrom v. Cal. Coastal Commission* 2019 made it clear that both the City of Del Mar's LCP and the Coastal Act prohibit the construction of shoreline protection for a new home. By extension, the appeal decision clarifies that a new home does not become ‘existing’ once it is legally permitted, thus reserving the definition of ‘existing development’ for structures that existed before the passage of the Coastal Act in 1977. Instead of failing to include a definition of existing development from the LCP, existing development should be defined per the original intent of the Coastal Act: as any structure that existed before the effective start date of the Coast Act, January 1, 1977. This definition is supported by the recent decision concerning the Lindstrom CDP as well as the Coastal Commission's 2015 Sea Level Rise Guidance document and the draft Residential Adaptation Guidance document.

Nowhere else does the Coastal Commission allow new development to rely on shoreline armoring – new or existing. . In addition to its legal responsibility under the Coastal Act, the beach is an important economic driver for the County, and could suffer serious economic consequences if the beaches and surf are lost to sea level rise. The County has an obligation to the users, visitors, and area consumers for their investment in visiting the community – as well as under the Coastal Act recreation and access policies. Instead of solely relying on shoreline protection devices, the County's shoreline management plans must also evaluate the possibilities for employing soft armoring and living shoreline techniques to protect the coastline. These are multi-benefit solutions that will help us adapt to sea level rise. These solutions offer hope for future generations that they will have beaches and surf to enjoy.

In conclusion we suggest the County modify their proposed updates to include the following:

- Modify the timeline to allow for more frequent LCP updates and define triggers for update, such as if an extreme sea level rise scenario is seen, new projection data becomes available, or impacts to the coast take place

- Include a coastal hazard overlay zone developed using projections and data by the state of California
- Clarify that mitigation fees are to be used for existing pre- Coastal Act development and must directly benefit public access to the coast
- Define existing development and redevelopment as described in this letter and in accordance with the Coastal Commission's 2015 Sea Level Rise Guidance document and draft Residential Adaptation Guidance document
- Do not allow new development or redevelopment to rely on existing or new shoreline armoring of any kind
- Include a requirement that shoreline management plans include evaluation of managed retreat and relocation of structures and identification of funding mechanisms in order to facilitate the process
- Include a requirement that soft armoring and living shoreline adaptation solutions be evaluated as part of the County's shoreline management plan

Surfrider cares deeply about the County's coast and hopes to move this plan forward in a manner that best represents the interest of the public and public resources.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Sackett". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Mandy Sackett  
California Policy Coordinator  
Surfrider Foundation