

ISSUE:

There is disagreement between City and CCC staff about the definition of “existing structures” that are allowed permits for shoreline protection devices pursuant to Coastal Act Section 30235.

COASTAL LAND USE PLAN POLICY REFERENCES:

5.1-43, 5.1-44, 5.1-45, and 5.1-46

BACKGROUND:

Coastal Act Section 30235 states:

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

The Coastal Act does not explicitly define “existing structure” for the purposes of Section 30235. As discussed in the CCC’s Sea Level Rise Policy Guidance (August 12, 2015) and the Draft Residential Adaptation Policy Guidance Revisions and FAQ Responses, dated March 2018, the CCC has issued coastal development permits (CDPs) in the past with findings that interpret “existing structure” as that which exists legally at the time the permit is issued. Just as recently as 2006, the CCC argued in *Surfrider Foundation v. California Coastal Commission* that “existing structures” as it relates to Section 30235 means any pre- or post-Coastal Act structure currently in existence. Currently, however CCC staff interpretation of Coastal Act Section 30235 is that “existing structures” are those that existed prior to 1977.

Policies in Chapter 5.1 Coastal Hazards proposed *Coastal LUP* expressly prohibit shoreline protection for any new development (except coastal dependent uses) approved after the date of certification of the proposed *Coastal LUP* and for any existing secondary structures. Additionally, policies in Chapter 5.1 require that in order for shoreline protection devices to be approved for existing principle structures, it must be demonstrated that the existing principle structure cannot feasibly be moved landward to avoid the need for shoreline protection.

DISCUSSION:

The City has always been committed to limiting shoreline protection devices along its coast. For this reason, the City’s existing certified Coastal LUP has several policies that greatly exceed the mandates of Coastal Act Section 30235 and the result has been that the City of Santa Barbara has very few shoreline protection devices in its jurisdiction. These protective policies are carried forward in the Draft Coastal LUP. In addition, the proposed *Coastal LUP* includes policies that make it clear that any new development permitted after the date of certification of the proposed *Coastal LUP* shall not be allowed shoreline protection (unless it is supporting a coastal dependent use such as the Harbor).

While the City strongly agrees that the definition of “existing structures” pursuant to Coastal Act Section 30235 needs to be clarified, we believe this clarification is best accomplished through an amendment to the Coastal Act by the State legislature that would make interpretation of this

provision consistent throughout the State's coastal zone. Insertion of the CCC's current interpretation of the term "existing structures" as meaning structures that were in existence on January 1, 1977, into the policy language of individual LCP's raises significant legal concerns given that many local jurisdictions and the CCC themselves have previously issued CDPs with the presumption that "existing structure" meant any pre- or post-Coastal Act structure currently in existence.

Given these concerns, Jack Ainsworth, Executive Director of the Coastal Commission, in April 2018 agreed to a compromise with City staff to defer this issue until the conclusion of the SLR Adaptation Plan.