



Smart
Coast
California

Will the Casa Mira HOA
lawsuit change the existing
development definition?

SPEAKERS:

Steve Kaufmann, Nossaman
Don Schmitz, Schmitz & Associates

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Smart Coast California

Virtual Stakeholder Meeting

October 25, 2023 @ 10a

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POLICIES

WHAT WE STAND FOR

Standing for California's coastal communities as a united voice for sensible coastal management.

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TIERED RESPONSE

Tiered Response is a planning principle that institutes certain defined policies if, and only if, there are specific thresholds of sea level rise that are observed, measured and documented, as opposed to relying only upon projections. There are multiple options that can be incorporated into a tiered response policy including, but not limited to, beach nourishment, kelp forests, offshore reefs, groins, submerged breakwaters and community seawalls. These options should be adopted as preferred alternatives to managed retreat in areas that cannot accommodate relocation of developments and those that prohibit property owners from defending their homes, businesses and related infrastructure.

Steve Kaufmann, Esq. Nossaman, LLP

- More than four decades of experience representing the California Coastal Commission and landowners, developers, public entities and public utilities with matters before that agency.
- Expertise includes every aspect of California coastal regulation including coastal development permits, appeals, federal consistency certification review and appeals to the Secretary of Commerce, exemptions, local coastal programs, port master plans, public works plans, enforcement, and legislation, as well as related local entitlements and compliance with the California Environmental Quality Act (CEQA).
- Prior to entering private practice, Steve spent from 1977 to 1991 at the California Attorney General's office, representing the California Coastal Commission, as well as other state agencies, including the Santa Monica Mountains Conservancy, California State Lands Commission, and State Department of Fish and Wildlife.



STATUTORY SHORELINE PROTECTION FOR EXISTING STRUCTURES
COASTAL ACT SECTION 30235

Steven H. Kaufmann, Nossaman LLP

Coastal Act Section 30235 – “Existing Structures”

CCC’s Findings on City of Pacifica LUP Update (Feb. 2023):

“[T]he plain language of the Act is actually best understood as “anti-armoring,” where the Act’s resource protection policies essentially prohibit armoring as a general rule.”

Coastal Act Section 30235 – “Existing Structures”

Section 30235 (First Sentence):

Revetments, . . . seawalls . . . cliff retaining walls, and other such construction . . . 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.

CCC Position on “Existing Structures” (Since 2015)

“Existing Structures” means:

- Structures existing as of January 1, 1977 (effective date of the Coastal Act), and
- Structures built after January 1, 1977, with existing shoreline protection from previously issued Commission or local government CDP

CCC Position on “Existing Structures” (Since 2015)

“Existing structures” are not:

- Post-January 1, 1977 structure
- A pre-1977 structure with changes after 1-1-77, involving cumulatively, 50% or more increase in gross floor area
- A pre-1977 structure involving, after 1-1-77, cumulative alterations to 50% or more of the major structural elements of the structure (the exterior walls, the roof and floor structure, the foundation structure, where alterations are not additive between individual structural components)

CCC Position from 1977 to 2015

- For 28 years, the CCC interpreted “existing structure” to mean “existing at the time the application” is made
- Former CCC Chief Counsel, Ralph Faust (2003)

“... the Commission interpreted existing structure to mean [1] *whatever structure was there legally at the time that it was making its decision*, and so [2] *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 [3] *under Section 30235, those structures need to be protected where it was required, and that shoreline protective devices were approvable.*”

CCC Position From 1977 to 2015

- Position changed in 2015 when CCC staff issued the initial SLR Guidance
- Not everyone agrees with the CCC's changed view as to what Legislature intended in 1977 by "existing structure," including property owners, HOAs, and some cities rejecting LCPA suggested modifications
- No definitive appellate decision resolving the issue, but two trial courts have addressed it

Surfrider Foundation v. CCC (2005)



Cotton, Shires & Associates/Dall & Associates

Surfrider Foundation v. CCC (2005)

- CCC approved shoreline protection over 3 properties in danger from erosion in Pismo Beach.
- CCC's position -- "existing structure" under 30235 means "existing at the time the application is made"
- Trial court agreed, rejecting the argument that "existing" means existing as of 1-1-77
- On appeal, because the seawall was landward of the MHTL, the Court held standard of review was the certified LCP, not the Coastal Act, and didn't decide the issue

Casa Mira Homeowners Assn v. CCC (2023)



Casa Mira Homeowners Assn v. CCC -- Redfin

Casa Mira Homeowners Assn v. CCC: Ruling (July. 2023)

- San Mateo Superior Court ruled “Existing Structure” in Section 30235 means “Presently Existing,” not “Existing as of 1-1-77”
- Commission has appealed
- Decision not expected for approximately a year and a half

Casa Mira Homeowners Assn v. CCC:

- “A natural and ordinary reading of the statute is that if a structure exists presently, and the existing structure is now in danger from erosion, a seawall or revetment shall be permit, (i.e., a permit shall be issued for its construction as long as the planned construction is also designed to eliminate or mitigate adverse impacts on shoreline sand supply.”
- “It is clear that the statute supports people protecting their existing structure from the danger of property damage due to subsequent erosion.”

Casa Mira Homeowners Assn v. CCC:

- “It is [the Commission’s] position that the Coastal Act should be interpreted such as all sea-side homes and buildings constructed after 1976, if endangered by erosion, should be allowed to fall into the sea and be destroyed, in complete deference to creation of beach sand by erosion of beach cliffs.”
- “This is an unreasonable interpretation of the Coastal Act”
- Commission cannot just add words “prior to the Coastal Act” to Section 30235
- Court harmonized Sections 30235 and 30253 – 30235 applies to “existing structures and 30253 applies to “new development”

California Constitution, Article I, 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.”*

Section 30235 – “Existing” in Context

“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.”

“Existing” in Coastal Act Policies

- Providing additional berthing space in “**existing**” harbors (Sec. 30224);
- Maintaining “**existing**” depths in “existing” navigational channels (Sec. 30233(a)(2));
- Allowing maintenance of “**existing**” intake lines (Sec. 30233(a)(5));
- Limiting diking, filling and dredging of “**existing**” estuaries and wetlands (Sec. 30233(c));
- Restricting reduction of “**existing**” boating harbor space (Sec. 30234)
- Limiting conversion of agricultural lands where viability of “**existing**” agricultural use is severely limited (Sec. 30241, 30241.5)

“Existing” in More Coastal Act Policies

- Restricting land divisions outside **“existing”** developed areas (Sec. 30250(a));
- Siting new hazardous industrial development away from **“existing”** development (Sec. 30250(b));
- Locating visitor-serving development in **“existing”** developed areas (Sec. 30250(c));
- Favoring certain types of uses where **“existing”** public facilities are located (Sec. 30254); and
- Encouraging multicompany use of **“existing”** tanker facilities (Sec. 30261).

“Existing” in Other Coastal Act Provisions

- Sec. 30705(b) – “**existing** water depths”
- Sec. 30711(a)(3) – “**existing** water quality”
- Sec. 30610(g)(1) – “**existing** zoning requirements”
- Sec. 30812(g) – “**existing** administrative methods for resolving a violation”

Coastal Act Sections Qualifying “Existing” or Limiting the Term to January 1, 1977

- Sec. 30610.6 – section’s application to any “legal lot **existing . . . on the effective date of this section [January 1, 1981]**”
- Sec. 30614 – refers to “permit conditions **existing as of January 1, 2002**”
- Sec. 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

Harmonizing 30235 and 30253

- Section 30253: “**New development** shall . . . assure stability and structural integrity, and neither create nor contribute to erosion . . . or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.”
- Sec. 30235 applies to structures “existing” at the time of the application for shoreline protection
- Sec. 30253 applies to wholly “new development,” where the erosion rate and bluff stability factor of safety are considered

Unsuccessful Bills to Amend “Existing” in 30235

- 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”

Coastal Act v. LCPs Certified Before 2015

- 30235 – applicable only if “existing structure” is within original CCC permit jurisdiction (i.e., seaward of MHTL) or an uncertified area
- Certified LCP -- if “existing structure” is landward of the MHTL, the standard of review is consistency with the LCP
- Most LCPs have the same or similar language
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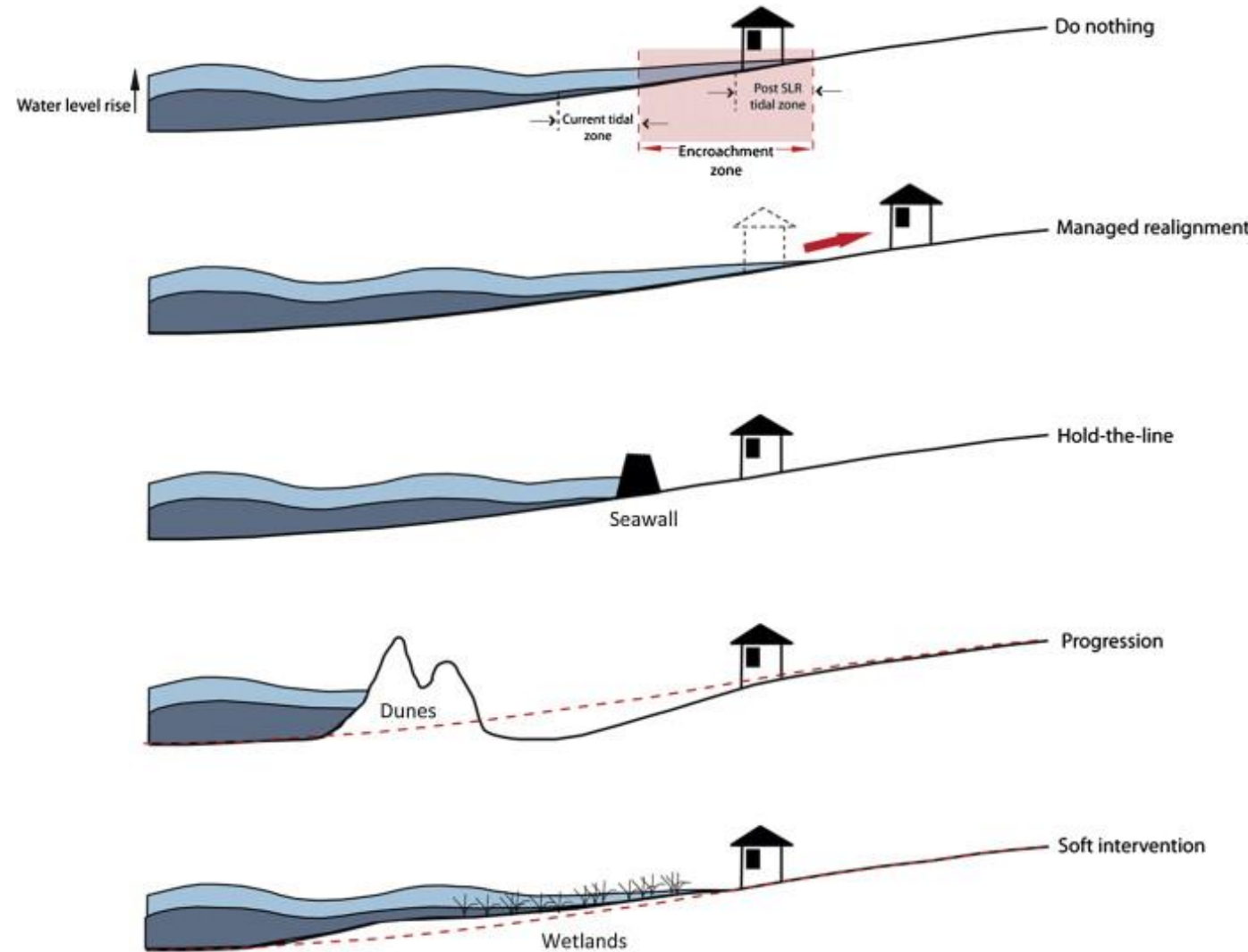
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Managed Retreat

"Moving structures away from hazardous coastal areas. This can happen over the short term in areas with high near-term vulnerabilities, but more often, it is something that would occur over longer period of time."

- CA Coastal Commission



Managed Retreat

- Components of managed retreat may include:
 - coastal planning;
 - relocation and buy-back and buy-out programs;
 - regulating types of development allowed;
 - designating no-build areas;
 - habitat restoration;
 - replacement of built environment with green space.

SOURCE: Penn State University: Coastal Processes, Hazards, and Society



Main Beach: Erosion Hazard Zones



County of Santa Cruz Vulnerability Map

Legend

- Coastal Access
- Coastal Armoring

Erosion Hazard Zones

- 2030 (0.3 ft SLR) with armoring
- 2060 (2.4 ft SLR)
- 2100 (5.2 ft SLR)

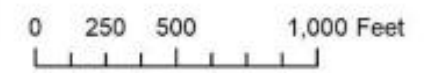
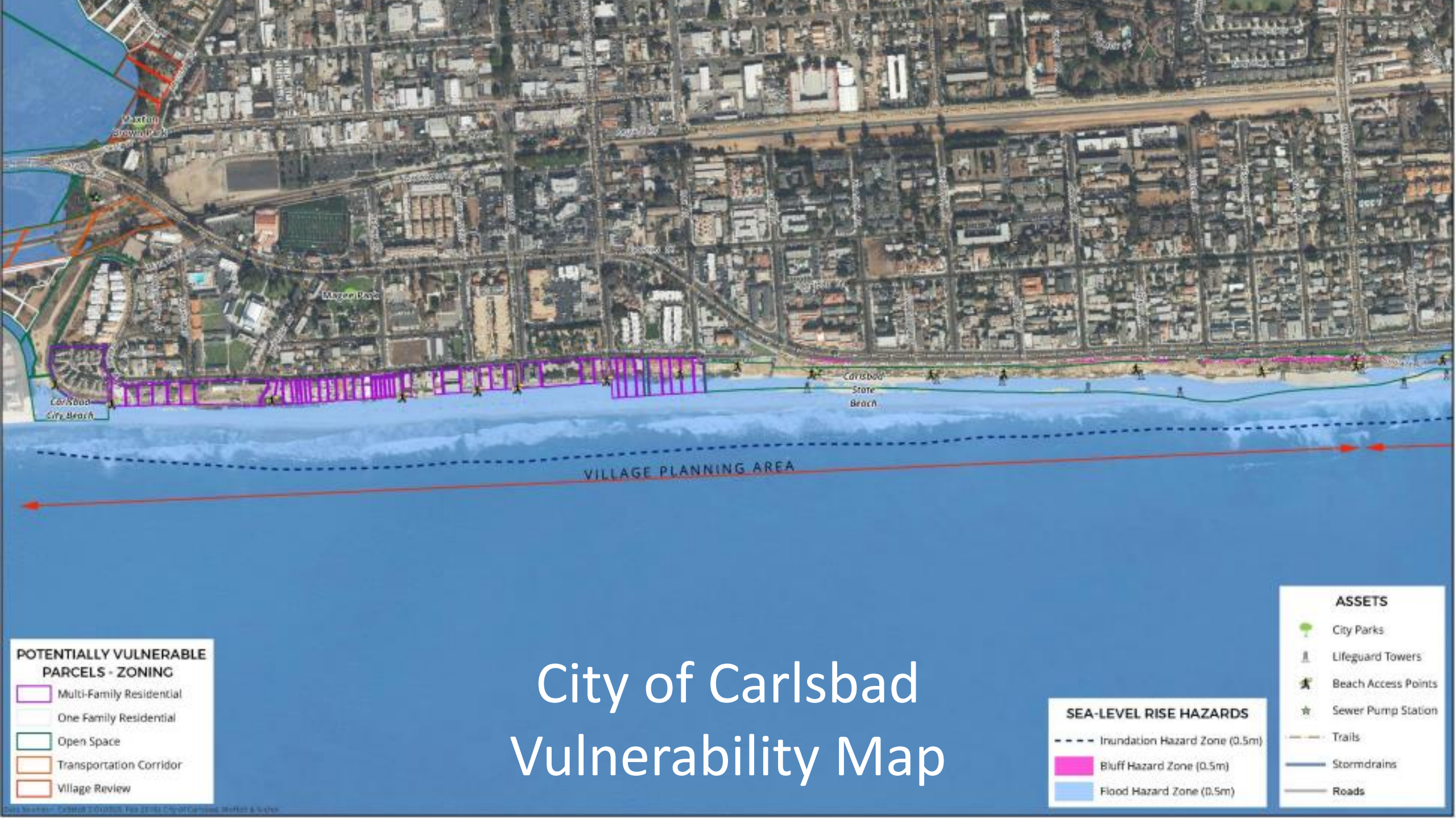


Figure 16. Coastal erosion hazard zones at Main and Cowell Beaches for time horizons 2030 (.3 ft SLR), 2060 (2.4 ft SLR), and 2100 (5.2 ft SLR). Existing armoring is accounted for (restricting erosion) through 2030 but assumed to fail to restrict erosion past that time horizon.



City of Carlsbad Vulnerability Map

POTENTIALLY VULNERABLE PARCELS - ZONING

- Multi-Family Residential
- One Family Residential
- Open Space
- Transportation Corridor
- Village Review

SEA-LEVEL RISE HAZARDS

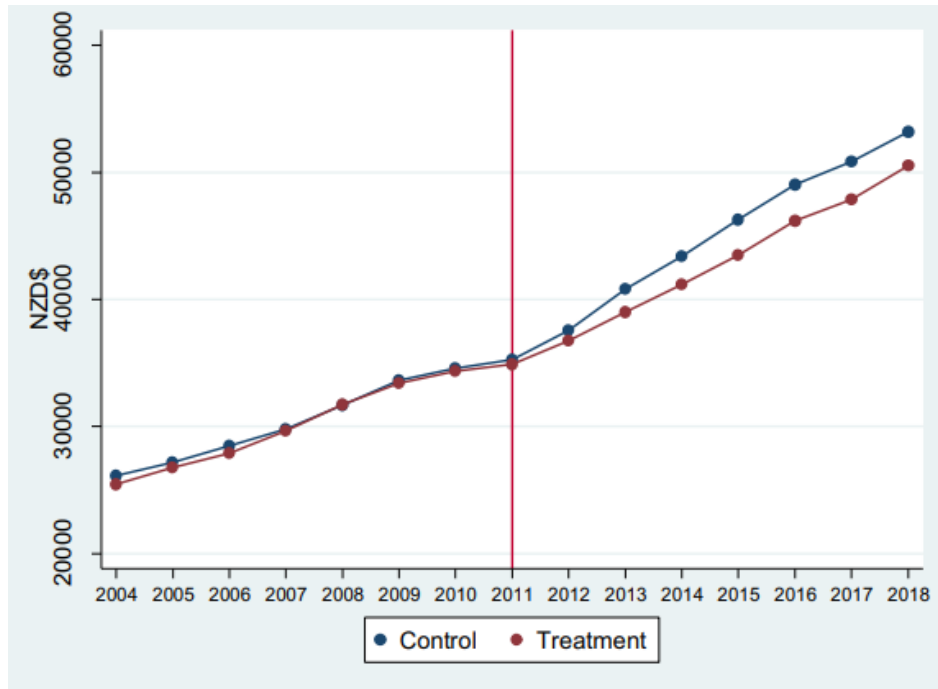
- Inundation Hazard Zone (0.5m)
- Bluff Hazard Zone (0.5m)
- Flood Hazard Zone (0.5m)

ASSETS

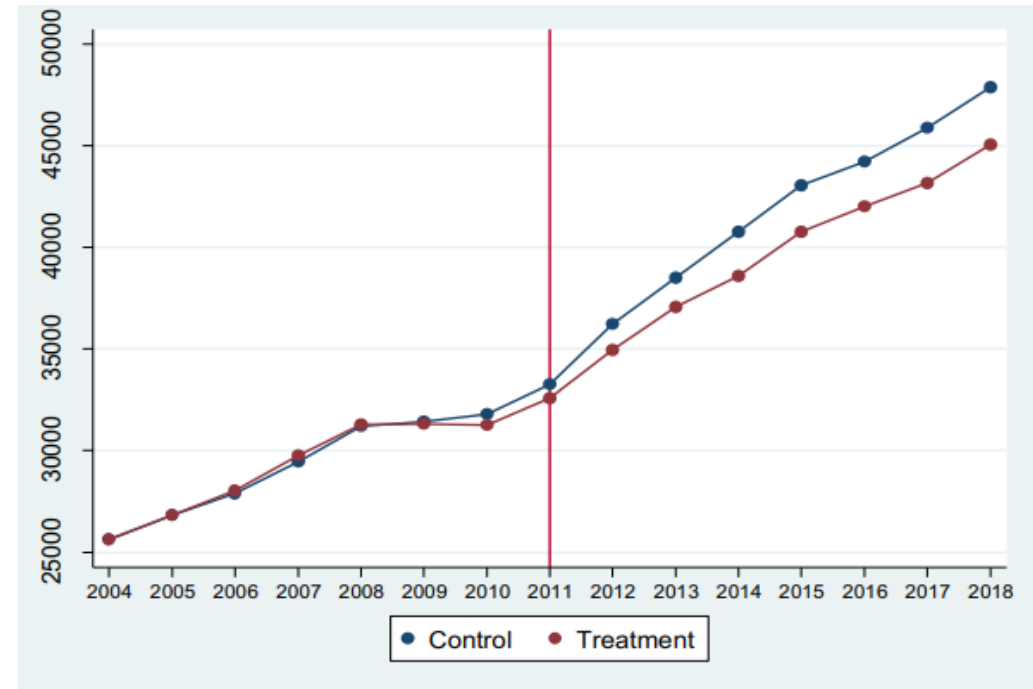
- City Parks
- ⚠ Lifeguard Towers
- 🚶 Beach Access Points
- ★ Sewer Pump Station
- Trails
- Stormdrains
- Roads

Managed retreat programs could have adverse effects on personal income

Average wages and salaries



Average total income



SOURCE: Hoang, T., Noy, I. (2021). *Income Consequences of Managed Retreat*

Sea-level rise impact by county (1 of 2)

County	# of homes subject to SLR Risk	# of people affected	Potential property value loss (in 2021 dollar)	Potential property tax Loss
Alameda County	7,061	19,136	\$7,888,018,181	\$61,526,542
Contra Costa	317	977	\$192,857,235	\$1,639,286
Del Norte	1	2	\$244,440	\$1,784
Humboldt	571	1,297	\$227,018,875	\$1,521,026
Los Angeles	4,737	8,538	\$5,660,363,144	\$40,754,615
Marin	7,228	16,874	\$10,505,319,567	\$80,890,961
Mendocino County	1	2	\$1,093,202	\$7,543
Monterey	8	30	\$7,415,833	\$52,652
Napa	138	351	\$116,033,531	\$789,028
Orange	6,694	13,293	\$11,577,614,829	\$79,885,542

Note: Above calculations/analyses calculated based on impact of sea-level rise of 4 feet

SOURCE: UCLA, Union of Concerned Scientists, and American Community Survey, C.A.R. calculations

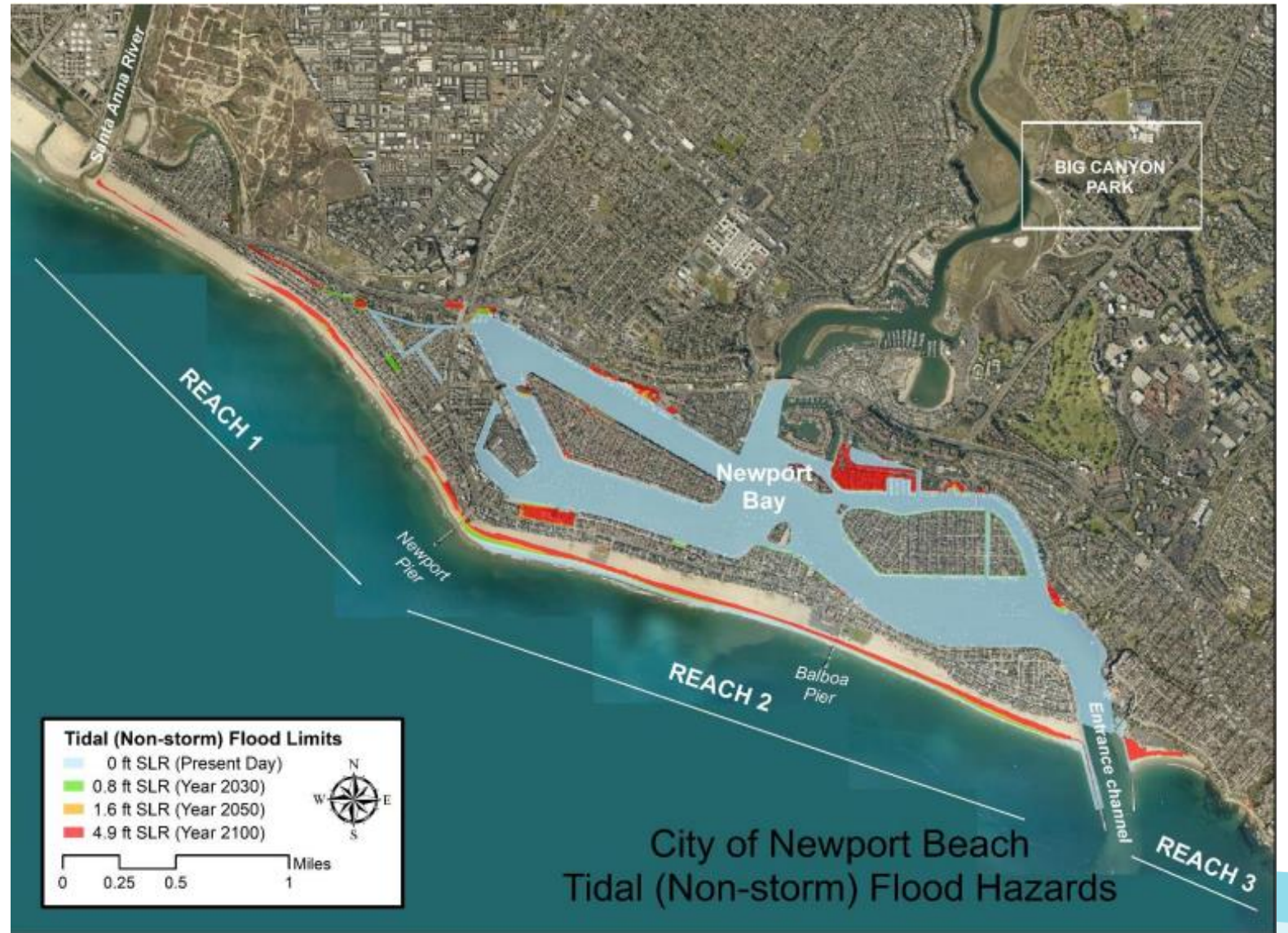
Sea-level rise impact by county (2 of 2)

County	# of homes subject to SLR Risk	# of people affected	Potential property value loss (in 2021 dollar)	Potential property tax Loss
San Diego	2,976	5,745	\$3,495,118,582	\$25,514,366
San Francisco	1,778	3,089	\$2,439,291,565	\$15,611,466
San Luis Obispo	7	16	\$5,103,250	\$36,233
San Mateo	26,781	67,996	\$40,588,785,440	\$263,827,105
Santa Barbara	257	566	\$230,845,975	\$1,523,583
Santa Clara	6,057	19,208	\$14,963,146,212	\$109,230,967
Santa Cruz County	388	1,310	\$312,515,063	\$2,062,599
Solano	1,256	3,515	\$688,902,350	\$5,648,999
Sonoma	21	14	\$30,864,000	\$216,048
Ventura	314	828	\$209,815,312	\$1,531,652

Note: Above calculations/analyses calculated based on impact of sea-level rise of 4 feet

SOURCE: UCLA, Union of Concerned Scientists, American Community Survey, C.A.R. calculations

City of Newport Beach Vulnerability Map



Back of the napkin calculation...

Value of Oceanfront Homes

\$1 Billion per mile

Newport Beach: Steve Rosansky – SCCa 2023 Annual Policy Summit



EXISTING DEVELOPMENTS Coastal Act 30235

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County of Santa Cruz



Favorable Definition of Existing Development

“Existing structures, including but not limited to structures that existed prior to implementation of the Coastal Act in 1978, include...”

- (County of Santa Cruz Coastal Bluffs and Beaches – Information and Review of Policy Intent (Exhibit B of Public Safety Element Amendments), page 27

City of Santa Cruz:

Unfavorable Definition of Existing Development

"For purposes of this policy, 'existing principal structures' means shoreline structures that were legally authorized prior to January 1, 1977."

City of Santa Cruz Local Coastal Program 2021 Amendment, Public Review Draft, Policy 3-F7, page III F-17

City of Santa Cruz
Local Coastal Program

2021 Amendment

PUBLIC REVIEW DRAFT

November 2021



Sawtooth Development



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Find articles related to sea level rise, coastline policies, and interesting local news.

CURRENT LCP/SLR EFFORTS

Efforts of local municipalities within California and status of SLR/LCP process.

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SOLUTIONS TO MANAGED RETREAT

Read our scientific reports and existing alternatives to managed retreat.

PARTNERS

We have accomplished a lot, but there's much more to be done to protect property rights.
Please contribute today?

