Maeve Keppler

To: Leslea Meyernoff
Subject: RE: public comment

From: Bob Randall [mailto:...]
Sent: Thursday, April 21, 2011 7:37 AM
To: Tina Christiansen
Cc: Bill Gifford; Bill Glen; Bob Ellis; Bruce.Harris@wellsfargo.com; Chris Richardson; Eva Trieger; Karen Randall; Judi Stubbs; Kenneth Coblentz; Lois Summers; lyle shuey; Marilyn Jones; Dan Peters; Jann Pasler; Judy Gifford; Marty Schmidt; Seascapesur
Subject:

Greetings,

This City has fallen victim to Spotted Owl and Delta Smelt radical naturalist thinking. It must be true that some very small percentage of new beach sand originates from bluff erosion, but the major source of beach sand has always been the local rivers that feed into the Ocean. These rivers no longer have a free flowing course to the Ocean due to the construction of railways, roads, and dams. The people responsible for these entities are the ones responsible for and degradation of our Beach. SUE THEM! Do not come after the residents of this community who are merely protecting their property from falling into the ocean. The mitigation fee of $1000 per linear foot of seawall construction had to originate with some radical environmental thinking. If this City has been unjustly sued by them then fight the lawsuit; do not agree to settlements that treat the residents of this community unfairly. It is not fair to assume that a person living near the bluff has deep pockets. I do not. Let's bring the cost of these permits back to a reasonable amount that is fair to all.

Thank You,

Robert Randall
June 8, 2011

Honorable Mayor Lesa Heebner
and Members of the Solana Beach City Council
City of Solana Beach
635 S. Highway 101
Solana Beach, CA 92075

Re: Comments on Land Use Plan

Dear Mayor Heebner and Honorable City Council Members:

Thank you for the opportunity to comment on the current version of the Local Coastal Program — Land Use Plan and include these comments in the record. I would like to complement the City for persevering to complete the LUP. This has been a long, difficult, and sometimes tedious process.

I also want to communicate my endorsement of the comments submitted by Jon Corn in his letter to the City dated June 8, 2011. The points and suggested language changes raised therein should be fully incorporated in the LUP.

As a member of the Citizen’s Committee who helped draft substantial portions of the LUP, I have spent innumerable hours addressing the issues encompassed by the LCP. Considerable time was spent in discussions and negotiations with Jim Jaffee and Dwight Worden, who represented those within our community who oppose bluff retention devices (BRDs). Our Citizen’s Committee worked diligently to arrive at reasonable compromises for numerous divisive issues. The result of our efforts was a comprehensive plan that fairly treated the complex oceanfront issues that have been at the center of the debate in our City for decades.

A central component of the compromise was the expiration of BRD permits in the year 2081. This expiration date gave bluff top homeowners a sufficient time to amortize the expense of their BRDs, as well as have the ability to plan for the future. Most importantly, it brought about a high level of certainty to ease tensions, preserve property values and protect the public safety, while at the same time establishing a mechanism for the eventual return of the oceanfront
to a more natural state. Committee members agreed that it took us a long time to get into this unfortunate situation of homes and condos being built too close to the bluff edge, and therefore it is going to take a long time to get us out.

By eliminating the 2081 plan, and substituting a 20-year term for BRD permits, the current version of the LCP has upset this carefully considered balance. The 20-year sunset provision is not just unfair, it also represents bad public policy, it will be harmful to the welfare of the City, and it may not be legal given the wording of the Coastal Act. The sunset provision will create uncertainty, depress property values, diminish the City’s tax base, and could contribute to unsafe conditions on City beaches.

The 20-year sunset provision should be deleted. Our collective hope has always been that the LUP would put this issue to rest. Unfortunately, the 20-year sunset provision is a step backwards that will defeat the ambitious goals we have all tried so hard to achieve.

That being said, if the City will not delete the 20-year sunset provision from the LUP, a reasonable solution to the serious problems it creates is to include the BRD permit renewal provisions suggested in Mr. Corn’s letter as new Policies 4.52(D) and 4.53(E). These renewal provisions would help minimize the deleterious effects of the sunset provision because they would eliminate, to some degree, the uncertainty caused by the short permit life, while providing a mechanism for the City to acknowledge and address changing conditions along the coastline. These new provisions call for the BRD permit life to be extended provided the conditions which existed at the time of the initial permit still exist or have worsened, thereby justifying renewal of the permit. While I urge you to delete the sunset provision in its entirety, the suggested renewal provisions would be an acceptable compromise.

Additionally, it is disappointing that the City has deleted language in the most recent draft of the LUP which addresses the way in which net Land Lease/Recreation Mitigation Fees are to be determined. The California Coastal Commission (CCC) has deferred to the City in recent decisions to resolve the fee amount. The CCC has been requiring the interim fee of $1,000 per lineal foot until the City determines the final amount. The City is best suited to determine these fees since circumstances are unique in Solana Beach. The CCC readily admits it does not have the time or resources to address this fee issue.
The PMC study was a good start. While PMC’s analysis has flaws, it was an attempt to resolve the fee issue in an objective manner, unlike the often arbitrary and capricious approach used by the CCC to determine a Land Lease/Recreation Fee. I encourage the City to cross the finish line with respect to these fees, versus deferring to the CCC.

CCC staff encourages the City to determine the fee. “We support the City’s attempt to develop an evidence based approach to determining the Land Lease/Recreational Fee,...” (CCC staff comments to Draft LUP Policy 4544, B.4).

At a minimum, the City must restore the language in the LUP which the Citizen’s Committee worked hours to write, which addresses the way in which the fees are to be determined, regardless of which agency ultimately governs the process. The carefully considered compromise language provides for objective criteria to be examined and reviewed at public hearings to determine these fees. This language survived multiple drafts of the LUP and should continue to be included to resolve the mitigation fee issues by utilizing the stated fair and just formula and methodology.

Specifically, I strongly encourage the City to restore the following provisions from Chapter 4 of the LUP:

The LCP includes standards that will be used to determine the use of Bluff Retention Devices. Bluff Retention Devices shall provide for reasonable and feasible mitigation for their net impacts, such as the payment of Sand Mitigation Fees and Land Lease/Recreation Fees, as offset by any determined public benefits associated with such devices in accordance with Policy 4.80. These public benefits notwithstanding, since Bluff Retention Devices prevent early episodic bluff failures from occurring and effectively stop erosion of the bluff, the Sand Mitigation Fees and the Land Lease/Recreation Fees shall include a greater initial payment to compensate for the prevention of an episodic event which would potentially result in the immediate deposit of beach quality sand into the littoral cell and the potential for greater usable beach area. Any benefits associated with Bluff Retention Devices such as increased safety to the public and protecting City Facilities and City Infrastructure at no cost to the City or public, as well as other benefits, which may be offset against such fees after City Council determination as outlined in 4.80. Public and private safety risks inherent in unstable natural bluffs and risks associated with construction, maintenance, and removal of Bluff Retention Devices shall also be addressed.
The City will pursue garnering land lease fees, through the Land Lease/Recreation Fee, which heretofore were collected by the State Lands Commission for Bluff Retention Devices constructed on state lands. The City is in a better position to ensure that any such Land Lease/Recreation fees will be used to mitigate loss of use of this area by beach users and water recreation users for the area occupied by a Bluff Retention Device in the City.

The Bluff Property Owner shall pay for the cost of the Coastal Structure or Infill and pay to the City a Sand Mitigation Fee and Land Lease/Recreation Fee...subject to any offset for the Bluff Retention Device’s public benefits as documented in the City Council adopted fee studies. It is understood that these mitigation fees are in lieu of all other Sand Mitigation, Land Lease/Recreation Fees and any other mitigation, use or impact fees paid to or assessed by any government agency or district, including, without limitation, the Coastal Commission, the San Diego Association of Governments (SANDAG) and the State Lands Commission. In the event a government agency or district, other than the City, nevertheless requires a Bluff Property Owner to pay a fee related to the Bluff Retention Device, the Bluff Property Owner shall receive a credit for any such fees in the amount of each other agency’s and/or district’s fees against the Sand Mitigation and/or Land Lease/Recreation Fees levied under the LCP.

1. Upon issuance of a new permit or renewal permit for an existing Substantial Infill or Bluff Retention Device the City shall assess a Sand Mitigation Fee based on the Sand Cost then in effect. For new Substantial Infills and Bluff Retention Devices, thirty three percent (33%) of the total Sand Mitigation Fee shall be paid to the City at that time, (as mitigation for episodic events which might have occurred if the Bluff Retention Device had not prevented erosion of the bluff from occurring) and the remaining sixty seven percent (67%) of the Sand Mitigation Fee shall be amortized over the remaining yearly periods...and paid annually.

2. To encourage removal of Bluff Retention Devices, the Sand Mitigation Fee shall be paid only for the period the Bluff Retention Device is in place, and any prepaid, unamortized amount shall be refunded to the Bluff Property Owner.

3. Any time after the Bluff Retention Device is completed, and upon application of the Bluff Property Owner, an immediate credit shall be applied to the Sand Mitigation Fee, equal to the current value of the amount of any quantifiable natural deposit of sand that falls to the
beach from the bluff area landward of the Bluff Retention Device. The Bluff Property Owner shall bear the burden of proving, through photographs, documentation or other methods, that the bluff sand landward of the Bluff Retention Device that fell to the beach, and for which a credit is granted, was not expected to fall on the beach due to the Bluff Retention Device and therefore was included in the Bluff Property Owner’s Sand Mitigation Fee assessment. The amount of any such sand deposited on the beach shall be determined by a Licensed Geotechnical Engineer.

B. Land Lease/Recreation Fee to Mitigate for Passive Erosion Effects.

1. Upon issuance of the building permit for a new Substantial Infill or Coastal Structure, or upon the issuance of a renewal permit for an existing Substantial Infill or Coastal Structure, the City shall also determine the amount of the Land Lease/Recreation Fee based on the Land Lease Rate then in effect multiplied by the Land Lease Area. The Land Lease/Recreation Fee is the same as the so-called Recreation Fee since it gives the Bluff Property Owner use of the land area which otherwise might have been available for recreational use or access, albeit with uncertainty related to use of the beach in the immediate proximity to an unprotected bluff.

For new Substantial Infills and Coastal Structures, an initial payment equal to thirty three percent (33%) of the total amount of the Land Lease/Recreation Fee shall be paid to the City when the building permit is issued, as mitigation for episodic events, which might have occurred if the Bluff Retention Device had not prevented erosion of the bluff from occurring. The remaining sixty seven percent (67%) of the Land Lease/Recreation Fee shall be amortized over the remaining yearly periods...

At the Bluff Property Owner’s election, the Land Lease/Recreation Fee may be present valued, as reasonably determined by the City, and prepaid in full by the Bluff Property Owner at the time the initial payment is due or anytime thereafter.

2. The City’s initial and subsequent determinations of the Land Lease Rate shall be based upon expert opinions of consultants hired by the City. Any such experts shall evaluate comparable leased beach areas based upon vertical and lateral access, parking, climate, frequency of use, safety, distance from access points, surf quality, water and air temperature, location of area leased, sand quality, time available for use of beach, beach width, tides, ocean conditions, and any other relevant variables.
3. Every twenty years, the City shall review and, if warranted, revise the Land Lease Rate for newly issued permits.

4. To encourage removal of the Bluff Retention Device, the Land Lease Fee shall be paid only for the period the Bluff Retention Device is in place, and any prepaid, unamortized amount shall be refunded to the Bluff Property Owner.

C. Mitigation Offset Credit

1. The Sand Mitigation and Land Lease/Recreation Fees shall be offset over time by an amount determined by the City Council, after a public hearing to account for any proven quantified monetary public benefit flowing from the Bluff Retention Device that exceeds the quantified monetary private benefit (e.g., the increase in the value of the Bluff Property). Any such credit shall also be adjusted as referenced above in Policy 4.80 and shall not exceed the dollar amount of the total of the Sand Mitigation and Land Lease/Recreation Fee paid by the Bluff Property Owner.

2. The City, in a public hearing, shall establish the methodology for determination of the proven public and private benefits. At the public hearing, any interested party may testify and present credible evidence, expert or otherwise, to help develop this formula which shall take into consideration all relevant variables. Once this objective formula is established, it shall be incorporated into the Implementing Ordinances to allow for expeditious determination of the offset credit for future Bluff Retention Device applications. The formula shall be established by December 31, 2009, or within six months of the adoption of the Land Lease Rate, whichever is later. The formula is subject to periodic review based upon new factual and credible information.

3. To encourage removal of Bluff Retention Devices, any outstanding offset credit shall be refunded from the Shoreline District Account, if the Bluff Retention Device is removed before the offset credit is fully utilized, in accordance with Policy 4.86 or otherwise.
Once again, thank you for this opportunity. Please feel free to contact me with any questions.

Sincerely,

[Signature]

David J. Winkler

cc:    David Ott
       Tina Christensen
June 8, 2011

Via Email and U.S. Mail

Tina Christiansen, AIA,
Community Development Director
City of Solana Beach
635 S. Highway 101
Solana Beach, California 92075

Re: Revised Draft Local Coastal Program Land Use Plan

Dear Ms. Christiansen:

This office represents Norton and Gretchen Sloan, owners of the home located at 201 Pacific Avenue, which is located on the bluff a few houses north of Fletcher Cove. The Sloans appreciate the hard work the City has undergone to pursue Coastal Commission approval of its Local Coastal Program ("LCP"). However, the Sloans have the following concerns and comments with regard to some of the most recent revisions.

Proposed revisions do not allow adequate time to obtain approval of necessary shoreline protection structures. Shoreline protection structures can range from sea cave/notch infill plugs ("infill structure") to more substantial seawalls. The prior draft LCP provided for approval of an infill structure if it was shown that "a bluff failure is anticipated within four years." (Former Policy 4.5278.) With regard to more substantial seawall structures, a permit could be obtained based upon a showing that "a bluff failure is anticipated within two years." (Former Policy 4.5379.) Under current and revised Policies 4.52 and 4.53, a showing that "a bluff failure is imminent" is required for all shoreline protection structures. "Imminent" is defined as "reasonably foreseeable within the twelve months." (LCP, Chapter 8, Definitions.)

The Sloans submit that the stricter standards for issuance of a permit are counterproductive to the policies which encourage minimization of shoreline
protection structures. The prior standards allowed sufficient time to process and complete shoreline protection structures before anticipated failures occur. This is especially crucial with regard to the less impactful infill structures which are an effective way to avoid the more catastrophic failures and the need to construct larger seawalls. If landowners are required to wait until a failure is anticipated within the next 12 months to seek a permit, the likelihood of a failure prior to construction of the infill structure is far greater. As the City knows, the process to obtain approval and construct shoreline protection devices is not short, and can often take more than 12 months between the time an application is filed and final Coastal Commission approval. Thus, in many circumstances, landowners seeking to avoid the need to construct larger shoreline protection devices may find themselves in a position in which they start an application to construct an infill structure and have to revise the application to include a more extensive seawall structure because of a bluff failure that occurred during the permit processing period. Another likely result of the revisions would be that virtually all of the applications would be done on an emergency basis, a less desirable process for all involved. The Sloans ask that the Council retain the standards previously proposed for issuance of permits for shoreline protective devices.

It is not clear if the revised LCP allows reconstruction of homes that are destroyed by fire or other calamity. Existing nonconforming regulations allow a nonconforming residential structure to be reconstructed in the same building envelope if it is destroyed. The revised LCP regulations address limits on repairs, maintenance and demolition, but do not appear to address the question of what can be done if a home is destroyed as a result of a calamity, such as a fire. For example, Policy 4.16 requires a Coastal Development Permit for “[d]emolition and reconstruction that results in the demolition of more than 50% of exterior walls . . . .” The Sloans understand this to be a limitation on remodeling efforts, not reconstruction of a destroyed structure. The Sloans ask that the LCP be revised to confirm that a nonconforming residential structure destroyed by a fire or other calamity can be rebuilt within the same building envelope.

It is not clear if the revised LCP would allow expansions of nonconforming structures that comply with the new standards. Current nonconforming regulations provide that “refurbishment may not expand the existing building envelope or expand the usable floor area if the expansion increases a nonconformity of the principal residential structure . . . .” (Municipal Code § 17.16.040.) The revised LCP also allows improvements to nonconforming structures that comply with LCP policies. On the other hand, the revised revisions state in several areas that “non-conforming uses or structures may not be increased or expanded into additional locations or structures.” This could be confused to prohibit expansions of nonconforming structures that are in compliance with LCP policies.
The Sloans ask that the LCP be modified to clarify that expansions that do not increase nonconformities are permissible.

The revised LCP contains language regarding maintenance and repair of non-conforming structures that the Sloans believe unintentionally expands the scope of projects that would require a Coastal Development Permit. Specifically, Policy 5.464 confirms that repair and maintenance of bluff homes do not generally require Coastal Development Permits. It then lists several exceptions in which a permit would be required based upon a finding of “potential risk of substantial adverse environmental impact.” Generally, these exceptions are understandable, i.e., work on seawalls, etc. However, Section (3)(B) of this Policy also requires a Coastal Development Permit for work within 50 feet of the edge of coastal bluff that involves “the presence, whether temporary or permanent, of mechanized equipment or construction materials.” This provision effectively requires everything done within 50 feet of a coastal bluff to obtain a Coastal Development Permit, regardless of how innocuous or unimpactful. For example, replacement of a patio door involves some construction materials, and perhaps mechanized equipment. Nonetheless, no one would assert that it would create a risk of substantial adverse environmental impact. Our expectation is that the City does not intend to require such work to require a Coastal Development Permit. For this reason, the Sloans ask that the language found in Section (3)(B) be deleted or clarified to allow for general maintenance and repair of home areas within 50 feet of a coastal bluff without the need to obtain a Coastal Development Permit.

The Sloans appreciate the Council’s consideration of these comments.

Very truly yours,

WORDEN WILLIAMS, APC

D. Wayne Brechtel
dwb@wordenwilliams.com

DWB:lg

cc:  Client
June 8, 2011

Tina Christiansen
Community Development Director
City of Solana Beach
635 South Highway 101
Solana Beach, CA 92075

RE: City of Solana Beach Draft LCP LUP

Dear Ms. Christiansen,

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, through conservation, activism, research and education. The Surfrider Foundation has over 50,000 members and 60+ local chapters in the U.S., with affiliates in Australia, Japan, France, and Brazil. Please accept these comments on behalf of the San Diego Chapter of the Surfrider Foundation on the proposed Local Coastal Program for Solana Beach.

Our review of the LCP is based on a thorough understanding of the Coastal Act, the circumstances of the LCP development process and more importantly a balance of the local issues and beach use patterns within Solana Beach. We would hope the City will take our comments and incorporate our suggested revisions in whole as well as incorporating those from other interested members of the public who have demonstrated a proper grasp of the Coastal Act and the specific conditions within Solana Beach.

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

1. The Right of Public Access.
   a. We object to the use of land zoned for Public Parks being used for seawalls.
2. Proper Description of the Geologic and Marine conditions in Solana Beach.

The LCP inadequately describes the prevailing and historic conditions.
   a. The LCP fails to describe the “wave cut platform” as an important geologic feature of the shoreline.
   b. The LCP fails to describe historical cliff erosion predating sand deficits.
   c. The LCP fails to properly characterize sand deficits and misleads the public on the contribution of sand in maintaining the shoreline in a static position.

3. Land Lease and Recreation Fees

   a. Land Lease and Recreation Fees should be used to fund beach access projects in Solana Beach to offset the adverse impacts as identified in the MEIR on Public Access as well as for the taking of Public Property for a Private use.
   b. The City should impose rent and comparable mitigation for the private use and taking of public property.
   c. The City must not wait for the State to enter into negotiations for the leasing of City owned or controlled land.

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

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

5. The City must recognize adverse impacts of seawalls to aesthetics, surf breaks and shoreline access as identified in its MEIR and incorporate this language into the LCP.

6. We understand that City owned bluffs and beaches or the City’s Easements in Land Zoned Open Space Recreation are being used for
private seawalls in Solana Beach and reject this practice and urge its rejection as an LCP policy.

7. There is no policy to bring Seawalls permitted after the lawsuit settlement of Surfrider Foundation and CALBEACH Advocates v. City of Solana Beach (Case No's.: GIN038824 and GIN041711) into compliance. Surfrider’s understanding of the intent of the settlement assumed that an LCP would be passed in a timely manner and it would include measures to address these interim approvals.

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

Private property rights, reserved to the individual by constitutional provision, are subordinate to the rights of society. It is a fundamental axiom in the law that one’s use of private property is subject to restraint to avoid societal detriment. (See People v. Byers (1979) 90 Cal.App.3d 140, 147-148.) The LCP fails to adequately consider the impacts of sea level rise on an armored shoreline, and the ensuing harm to public access and enjoyment. The shoreline is a constitutionally and statutorily designated area owned by the State in trust for all the people of the State. The right of privacy does not extend to exclusion of the public from access to public trust lands. Courts have liberally construed the purposes of public trusts “to
the end of benefiting all the people of the state.” (Colberg, Inc. v. State of California Ex Rel. Dept. Pub. Wks. (1967) 67 Cal.2d 408, 417; see also Miramar Co. v. City of Santa Barbara, 23 Cal.2d 170.) Therefore, the LCP must comprehensively address the issue of planned retreat in the context of insuring present and future rights of the public to access and enjoy the shoreline.

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

“The shoreline of Solana beach includes 1.7 miles of narrow beach, backed with 75+ foot high seaciffs that are nearly completely built out with houses and condominiums. The vast majority of the bluff face is either owned by the City or burdened with public easements and is zoned for Open Spaced Recreation. There is no requirement for the City to permit BRD’s on its property. Nothing in the Coastal Act explicitly requires granting permits for BRD’s on publicly owned land. In order to grant such use, the City or other controlling public entity must grant permission to an applicant.

For many years, the City of Solana Beach has recognized the problematic issue of managing a continually eroding shoreline. Seaciff erosion is a natural process occurring throughout San Diego County generally and in Solana Beach specifically; which in the last several decades may be accelerating due to a combination of factors including rising sea level, lack of sand replenishment due to upland residential and commercial developments, harbor and jetty projects, seawalls, rip-rap, revetments and other shoreline armoring devices; and the damming of, and mining in, coastal rivers and streams that formerly carried to the ocean much greater amounts of sediment than are currently being delivered. However according to numerous studies, nourishment projects have compensated for the loss of sand due to damming and seawalls. In addition, sea level rise is predicted to accelerate at an increased rate due to the impacts of climate change. When BRD’s are constructed on a eroding shoreline, they fix the
beach and will lead to beach narrowing in an environment of rising sea level and absence of compensating sand accretion. These factors indicate the need to develop a comprehensive approach to plan for future changes to the shoreline.

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

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

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

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

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

2.1. **Wave Cut Platform Descriptions**

It is suggested to add language to properly describe the geologic setting consistent with the MEIR in Sections 1.0 Introduction and 2.0 Public Access and Recreation. Suggested language follows:
“A series of wave-cut platforms exist off the coast of Solana Beach. A wave-cut platform is formed by the process of cliff erosion via sea level rise acting on the cliff. The beach area is on the modern wave-cut platform. The wave-cut platform has been forming for centuries during the present trend of sea level rise and sea cliff erosion.”

From Page 3-7 of the MEIR:

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

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

2.2. Historical Evidence of Erosion in Solana Beach
Photographs showing seacaves and notches in Solana Beach in the 1920’s are shown in
Figure 1. Figure 2 shows notches and ocean front bluff faces devoid of vegetation as compared to adjacent areas where vegetation is evident. Lack of vegetation indicates active erosion. Also evident is wave run-up directly to the base of the bluffs and lack of a wide sandy beach.

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

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

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1 In addition, see [www.californiacoastline.org](http://www.californiacoastline.org) for aerial photographs of Solana Beach which demonstrate that numerous seacaves and notches existed in 1972.
sandy beach. Photo from Solana Beach Civic and Historical Society website.

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

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

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

The Introduction of Chapter 2 states,

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

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

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<td><strong>Total:</strong></td>
<td><strong>343,000</strong></td>
<td><strong>644,000</strong></td>
<td><strong>466,000</strong></td>
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Table 2. Long-term changes to the sediment budget include reduced sediment from rivers and seacIFFs and the addition of sediment from beach nourishment. Beach nourishment was a larger source of sediment during the 1950s-1970s.

Figure 4 Data from Proceedings of Coastal Zone 07, Portland, Oregon, July 22 to 26, 2007, “VARIABILITY OF SEDIMENT SUPPLY TO THE OCEANSIDE LITTORAL CELL”, Carla Chenault Grandy, Gary B. Griggs, University of California, Santa Cruz, Earth and Planetary Science Department and Institute of Marine Sciences. This data shows that natural sand volume to the Oceanside Littoral Cell has been exceeded by nourishment projects.
The LCP should include this information as it is the most recent and relevant information on the subject. The observed beach narrowing is likely caused by the long term sea level rise and natural condition of erosion and sea cliff retreat. Before the cliff collapses episodically, the beach will narrow until the cliff retreats. Long term cliff retreat rates are a function of sea level rise and the density of bluff material among other factors.

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

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

3. Land Lease/Recreation Fees

3.1. Uses of Land Lease/Recreation Fees

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

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

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

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

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

Thus, wherever the Land Lease/Recreation Fees are identified it should specify that such fees may only be used for acquisition of Bluff Properties or other similar public access improvements. It should also be specified that the Shoreline District Account described in Policies 4.39 and 4.74 these fees should be used for this purpose and only this purpose.
3.3. The City must not wait for the State to enter into negotiations for the leasing of City owned or controlled land.

The Introduction of Section 4 states,

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

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

Further, there is no requirement to let private property owners use City Land. In fact precedent to NOT use public land for private seawalls clearly exists. There is no law which requires a private or public property owner to act to prevent a natural process from harming adjacent properties. (Schooler v. Cal., 85 Cal. App. 4th 1004 (2000).) BRD’s are located on publicly owned or controlled land in Solana Beach. As a condition of approval of a BRD, it should be noted that the City waived no rights in public interest in the land. Therefore, the City maintains the ability to remove such uses. In fact, Del Mar removed seawalls located on their
property and charged all associated expenses with such removal to the property owner. *(Scott v. City of Del Mar, 58 Cal. App. 4th 1296 (1997).)*

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

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

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

"Policy 4.68: To acquire Bluff Properties as the City deems appropriate utilizing its First Rights to Offer, First Rights of Refusal, and Option Rights, and other legally available methods to acquire additional sites to expand and enhance the City park and recreation system, as an alternative to allowing Bluff Retention Devices and to maintain and, when feasible, provide new or improved beach access. Notice shall be provided to the Bluff Property Owner in advance of the public hearing. Any discretionary permit issued by the City to a Bluff Property Owner shall be recorded against the subject Bluff Property and shall include the following conditions:

A. If a Bluff Property Owner desires to sell a Bluff Property, the Bluff Property Owner shall notify the City of his, her or its intent to sell. From the date of said notice, the City shall have a sixty Day First Right to Offer, which expires automatically after the 60th Day, to purchase and enter into an agreement to purchase the Bluff Property for the List Price. The City is obligated to inform the Bluff Property Owner, as soon as possible within said 60 day period, regarding the City's intent to acquire or not acquire the Bluff Property. Unless the Bluff Property Owner and City agree to other terms, the purchase agreement shall provide for a cash-closing within ninety days after receipt by the
City of the notice to sell, subject only to the City's review of title, a current survey and an inspection of the Bluff Home and Bluff Property. If the City elects not to purchase for the original List Price and the List Price is subsequently reduced by the Bluff Property Owner, the City shall be granted a renewed First Right to Offer on the same terms as stated above, for a period of ten Days after notification by the Bluff Property Owner to the City of the reduced List Price. First Right to Offer

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

C. Option Right to Purchase

The City shall have the option to enter into a contract to purchase a Bluff Property by July 1, 2081 and at every twenty-year anniversary after that date for the Agreed Value ("Option Right to Purchase"). The acquisition terms shall be all-cash, to close by September 1, 2081 (or each twenty-year anniversary thereafter) if the Option Right to Purchase is exercised. To the extent allowed by law, and at the Bluff Property Owner's option,
any such purchase shall be deemed to be under threat of condemnation. To exercise its Option Right to Purchase, the City shall Notice the Bluff Property Owner of its intent to purchase at least one year in advance of exercising the Option Right to Purchase to provide sufficient time to determine the Agreed Value, and then sign the contract by July 1, 2081, or upon each twenty-year anniversary after that date. If the City fails to timely issue the Notice of intent or sign the purchase contract, the Option Right shall terminate automatically.

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

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

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

Additionally Policy 4.39 should include these aspects,

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

Previous drafts of the LCP include additional supporting clauses to support acquisition. These should be incorporated into the present LCP.
5. The City must recognize adverse impacts of seawalls to aesthetics, surf breaks and shoreline access as identified in its MEIR and incorporate this language into the LCP.

6. We understand that City owned bluffs and beaches or the City's Easements in Land Zoned Open Space Recreation are being used for private seawalls in Solana Beach and reject this practice and urge its rejection as an LCP policy.

7. There is no policy to bring Seawalls permitted after the lawsuit settlement of Surfrider Foundation and CALBEACH Advocates v. City of Solana Beach (Case No's.: GIN038824 and GIN041711) into compliance. Surfrider's understanding of the intent of the settlement assumed that an LCP would be passed in a timely manner and it would include measures to address these interim approvals.

CONCLUSION

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

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

We would hope this will streamline the review process and keep cost of gaining LUP certification under control.
We are also including petitions in support of the spirit of these comments. Many of the signatures on these petitions were collected at Fiesta Del Sol. There are well over 100 signatures in the attached.

Sincerely,

[Signature]

Jim Jaffee  
San Diego Chapter of the Surfrider Foundation
We, the undersigned support the Surfrider Foundation and CalBeach Advocates in making certain the Draft Local Coastal Plan in Solana Beach contains the following:

- The City must recognize adverse impacts of seawalls to aesthetics, surf breaks and shoreline access.

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

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- We resent the use of land zoned for Public Parks being used for seawalls.

- We understand that City owned bluffs and beaches or the City’s Easements in Land Zoned Open Space Recreation are being used for private seawalls in Solana Beach and reject this practice and urge its rejection as an LCP policy.

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<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Signature</th>
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<tbody>
<tr>
<td>Mike Huber</td>
<td>2120 Vista Ola Lane, San Diego</td>
<td></td>
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<tr>
<td>Donna Schramm</td>
<td>180 S. Holly Ave, La Jolla</td>
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<td>et al.</td>
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<tr>
<td>Robert Z.</td>
<td>92024</td>
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<tr>
<td>Emily</td>
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<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Bob Johnson</td>
<td>123 Main St, Solana Beach, CA 92054</td>
<td></td>
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<tr>
<td>John Doe</td>
<td>456 Beach Blvd, Solana Beach, CA 92054</td>
<td></td>
</tr>
<tr>
<td>Jane Smith</td>
<td>789 Ocean Dr, Solana Beach, CA 92054</td>
<td></td>
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<tr>
<td>Michael Lee</td>
<td>101 Seaside Ave, Solana Beach, CA 92054</td>
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<tr>
<td>Sheryl Martin</td>
<td>13200 L Avenida De Las Posas</td>
<td></td>
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<td>Ryan Quirk</td>
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<td>Mark Allen</td>
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San Diego County Chapter of the Surfrider Foundation
www.surfridersd.org
Solana Beach Seawall Petition

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<td>Colleen Moore</td>
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<tr>
<td>Sue Cramer</td>
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<td>Eddie Rower</td>
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<tr>
<td>Dave Johnson</td>
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<tr>
<td>Francine Bar</td>
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<tr>
<td>Agnes Cooledge</td>
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<td>Joe Reed</td>
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<tr>
<td>Julie Rafe</td>
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<tr>
<td>Jerry Horn</td>
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<td>Jonathan Moore</td>
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<tr>
<td>Jan Farman</td>
<td>1923 Palm Ave, SD 92056</td>
<td></td>
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<tr>
<td>David Rosler</td>
<td>2932 Sycamore Ln, 92054</td>
<td></td>
</tr>
<tr>
<td>Cindy Riddell</td>
<td>9727 J St, 92057</td>
<td></td>
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<tr>
<td>Leigh M.</td>
<td>1763 San Vicente Dr, 92075</td>
<td></td>
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<tr>
<td>Tish</td>
<td>2710 Shadow Dr, CA 92075</td>
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<td>Dr. Roy</td>
<td>1763 San Vicente Dr, CA 92075</td>
<td></td>
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<tr>
<td>Lynn Ricci</td>
<td>1818 Bond Ave, SD 92131</td>
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<tr>
<td>Mary Toomey</td>
<td>1587 Clement Dr, San Diego, CA 92103</td>
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<td>Lynn Ricci</td>
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<td>Bill L.</td>
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<td>Peter S.</td>
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San Diego County Chapter of the Surfrider Foundation
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We, the undersigned support the Surfrider Foundation and CalBeach Advocates to offset the impacts of past and anticipated seawall projects and ask that Land Lease/Recreation Fees and Offset Credits for seawalls consider our voice.

- We believe that public land should never be used for private purposes—including the construction of seawalls or any other Bluff Retention Device—and that no permit granting such use should be issued.
- In the event public land, including the bluff faces and beaches in Solana Beach, is legislated to be used for private purposes, we believe a lease and recreation impact fee must be charged.
- Any adverse impacts of seawalls on public enjoyment of the beach and ocean must be mitigated.
- Seawalls must not be permanently placed on public property and beaches.
- The presence of seawalls already impacting beach access should also be taken into consideration in the determination of lease fees.
- Visual impacts and other impacts should be factored into mitigation fees.
- Public property used for seawalls must not be transferred to private property owners.
- Seawalls placed on public beach must be removed in the future.
- There is no public benefit from seawalls. Seawalls can not provide enhanced safety as seawalls can never render an unstable eroding shoreline safe. Therefore we denounce the principle of giving public benefit credits on seawall impact fees.

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Been on Solana's Beach in the last 3 months (Y/N)</th>
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<tbody>
<tr>
<td>Ted Decky</td>
<td>1234 Dr.</td>
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<td>Fred Jenkins</td>
<td>567 St.</td>
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<tr>
<td>Liam Clarke</td>
<td>890 Ave.</td>
<td>Yes</td>
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<tr>
<td>John Foster</td>
<td>1234 St.</td>
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<tr>
<td>Matt Boswell</td>
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<td>Susie Clark</td>
<td>Ave.</td>
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San Diego County Chapter of the Surfrider Foundation
www.surfridersd.org
We, the undersigned support the Surfrider Foundation and CalBeach Advocates to offset the impacts of past and anticipated seawall projects and ask that Land Lease/Recreation Fees and Offset Credits for seawalls consider our voice.
- We believe that public land should never be used for private purposes—including the construction of seawalls or any other Bluff Retention Device—and that no permit granting such use should be issued.
- In the event public land, including the bluff faces and beaches in Solana Beach, is legislated to be used for private purposes, we believe a lease and recreation impact fee must be charged.
- Any adverse impacts of seawalls on public enjoyment of the beach and ocean must be mitigated.
- Seawalls must not be permanently placed on public property and beaches.
- The presence of seawalls already impacting beach access should also be taken into consideration in the determination of lease fees.
- Visual impacts and other impacts should be factored into mitigation fees.
- Public property used for seawalls must not be transferred to private property owners.
- Seawalls placed on public beach must be removed in the future.
- There is no public benefit from seawalls. Seawalls can not provide enhanced safety as seawalls can never render an unstable eroding shoreline safe. Therefore we denounce the principle of giving public benefit credits on seawall impact fees.

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Been on Solana’s Beach in the last 3 months (Y/N)</th>
<th>Signature</th>
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<tbody>
<tr>
<td>John Smith</td>
<td>123 Main St.</td>
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<tr>
<td>Jane Doe</td>
<td>456 Beach Rd.</td>
<td>Yes</td>
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<tr>
<td>Michael Johnson</td>
<td>789 Wave Dr.</td>
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<td>Susan Lee</td>
<td>101 Ocean Ave.</td>
<td>Yes</td>
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<tr>
<td>Patricia Brown</td>
<td>202 Shore St.</td>
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San Diego County Chapter of the Surfrider Foundation
www.surfridersd.org
June 8, 2011

David Ott, City Manager
Tina Christensen, Community Development Director
City of Solana Beach
635 S. Highway 101
Solana Beach, CA 92075

Re: Comments and Suggested Revisions
Solana Beach Local Coastal Program – Land Use Plan
Submitted by the BBC, COOSSA and Numerous Solana Beach HOAs

Dear Mr. Ott and Ms. Christensen:

This firm represents the Beach and Bluff Conservancy (“BBC”), the Condominium Organization of South Sierra Avenue (“COOSSA”), and the following condominium homeowner’s associations: Del Mar Beach Club, Solana Beach & Tennis Club, Surfsong, Seascape Chateau, Seascape Sur, Del Mar Shores Terrace, Las Brisas, and Seascape Shores (collectively, “Bluff Property Owners”). These organizations include approximately 1,400 City residents whose residential properties account for a substantial portion of the City’s property tax base.

Thank you for the opportunity to comment on the current version of the City’s Land Use Plan (LUP) portion of its Local Coastal Program (LCP). Our goal is to help the City formulate a final LCP that best serves the City’s citizens, improves safety and recreation opportunities along the City’s beaches, and strikes a fair and reasonable balance between environmental protection and private property rights. We hope you find our comments useful, rather than divisive, and that they will help you mold the LCP into a balanced and enforceable City planning and development guide that will serve current and future generations of City residents and visitors for many years. Our comments are limited to those that we believe have a material impact. Others were excluded in an effort to expedite completion and certification of the LCP.
While our comments are set forth in a “redline to LUP text format” below, our primary objection to the LUP is that it proposes to limit coastal development permits (CDP) for notch infills and coastal structures to just 20 years, a mere blink of time relative to the huge expense and importance of the undertaking. We believe this sunset provision is an illegal limitation – being forced upon the City by the Coastal Commission (CCC) – that violates the Coastal Act (Act), it imposes a harsh and unfair penalty on bluff property owners, and it is bad policy for the City. We respectfully request that this unsupported limitation be removed in its entirety from both Policy 4.52 and Policy 4.53 (as shown in redline below).

In the alternative, if the City is unwilling or unable to resist the CCC staff’s influence on the 20-year sunset provision, an automatic renewal process must be established as a Tier 1 – Administrative CDP, provided certain reasonable, objective criteria are satisfied. Policies 4.52(E) and Policy 4.53(D) need to be added to the LUP if CDPs are limited to 20 years, or any timeframe for that matter. With this addition, or better yet deletion of the sunset provision in its entirety, our primary objection to the Sand Mitigation Fee (SMF) will also be resolved given it is inappropriate to charge this fee based on the theoretical permanent “removal” of sand from the system when the actual impact is merely delaying very gradual sand deposits during the 20-year permit period. If the 20-year sunset provision is not deleted and the renewal provisions are not added, then we believe the City must completely revamp the SMF so that it properly accounts for the actual impact of the BRD.

A. The CCC Cannot Deny Certification Because The City Refuses the 20-year Sunset Provision; The City Controls This Issue

As the City considers the proper course with regard to the CCC’s sunset provision, the City is respectfully reminded that the Act clearly provides that it is the City, not the CCC (and certainly not the CCC staff) that has the State legislative mandate to write the City’s LCP and determine the City’s local planning policies. With regard to LCP certification, the CCC’s role is at best secondary to the City’s and it is legally limited to merely ensuring that the LCP ultimately complies with the relevant portions of the Act. The City is respectfully referred to the following language:

(a) The commission’s review of a land use plan shall be limited to its administrative determination that the land use plan submitted by the local government does, or does not, conform with the requirements of Chapter
3 (commencing with Section 30200). In making this review, the commission is not authorized by any provision of this division to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan.

(b) The commission shall require conformance with the policies and requirements of Chapter 3 (commencing with Section 30200) only to the extent necessary to achieve the basic state goals specified in Section 30001.5.

Public Resources Code (PRC) § 30512.2 (emphasis added).

Since there is literally NOTHING in the Act that supports the notion of a bluff retention device (BRD) sunset provision, the CCC cannot reject the LUP because it lacks one. As the language above makes clear, the CCC’s role in the LUP certification process is to administratively determine whether the LUP does or does not comply with the basic tenets of Chapter 3. Since Chapter 3 does not provide for any limitation in the duration of a CDP for BRDs, the CCC may not deny certification simply because the LUP does not contain one. Therefore, the City must reject the CCC staff’s suggestion regarding 20-year permits and it should delete this from Policies 4.52 and 4.53.

B. The Sunset Provision is Illegal, Harsh and Unfair

The Act mandates the issuance of CDPs for BRDs when the conditions set forth in PRC § 30235 are established. The Act does not allow for any limitation on the duration of the permit, and doing so constitutes a regulatory taking. The United States Supreme Court stated in Nollan v. California Coastal Commission (1987) 483 U.S. 825, that the power to impose a permit condition derives from the power to deny the permit. If the City has no discretion to deny the permit, it cannot impose conditions on that permit, such as the 20-year sunset provision, unless such conditions are specifically authorized by statute. It follows then, that if the City or the CCC is obligated to approve a BRD under PRC §30235, then they each lack the power to impose the proposed 20-year limit, or other conditions not expressly enumerated therein.

In addition, the 20-year limit unfairly and harshly treats a bluff property owner who makes the huge investment to construct and maintain a BRD by taking away any certainty it will be there to protect property and improve safety after 20 years. This uncertainty will severely depress bluff property market value (especially in the second half of the permit lifespan), erode
the City’s tax base, discourage bluff top property owners from improving their homes, and create or contribute to unsafe beach conditions.

The City’s *unprotected* bluffs are extremely dangerous and bluff failures are a common occurrence, sometimes with fatal results. Sadly, Solana Beach essentially has no beach, and without large-scale regional beach replenishment this will remain the case, and get worse, with or without BRDs. BRDs are often maligned as the cause of beach degradation, but the truth is that BRDs make the beach safer and increase the area of useable beach. Moreover, their absence will not improve current beach conditions; it will only make them worse. Privately funded BRDs provide a *substantial* public benefit and, therefore, should be encouraged, not discouraged with unfair and oppressive permit conditions.

Nevertheless, the CCC continues to blame BRDs for the current state of the City’s once sandy beaches. However, as the City well knows the actual cause of current – and worsening – beach conditions are *sand starvation caused by human development activities and erosion control policies within the upland watershed*. All significant sand resources have been cut off and absent large-scale and continual sand replenishment efforts, beach erosion in the City will continue, and perhaps accelerate. BRDs have nothing to do with this unfortunate process, which is now irreversible.¹ Discouraging BRD installations, and removing existing ones, will not change the condition of the City’s beaches, and such would be bad policy. The only solution is to artificially and continuously replace the sand on a regional basis that the watershed used to deliver naturally.

The side-by-side satellite images below well illustrate this point. The image on the left depicts upland-to-coastal sand flow in a natural environmental that has not suffered the ravages of human “improvements.” The image on the right is Solana Beach, which is dominated by rooftops, landscaping, parking lots, and roads. Moreover, the 2 sand-producing coastal watersheds are dammed by multiple transportation corridors and, in the case of the San Dieguito River Valley, there is also the massive racetrack and fairground installation. Needless to say, upland sand flow to the coast has very little chance of penetrating this gauntlet of human developments.

¹ Bluff erosion provides less than 3% of the sand needed to maintain a healthy beach (Flick & Elwany, July 2006).
The balance of our LUP comments are set forth below. The black text is actual language from the LUP. The red text and red lines represent our suggested revisions. The blue, italicized text sets forth our explanation for the proposed change.

**CHAPTER 1**

1. Page 2, Para. 1: In the last several decades, erosion has been greatly accelerated by the lack of sand replenishment due to the damming of, and mining in, coastal rivers, that formerly carried to the ocean much greater amounts of sediment than are currently being delivered, along with the intensive development of the upland watershed throughout the coastal zone.

   *Explanation: The changes provide a more complete explanation of the reasons for coastal erosion.*

2. Page 2 – 3, Para. 4: These interrelated factors have impaired recreational opportunities and pose potential significant threats to public safety, and to publicly and privately owned buildings, infrastructure and property in Solana Beach.

   *Explanation: In this context, the threat is not “potential;” it is very real.*

**CHAPTER 2**

1. Page 8, No. 2, Bullet 6: Coordinating with the CCC to implement public recreation impact mitigation measures by coordinating with other public agencies and private associations to ensure that access is not unreasonably impeded beyond that which may result from bluff retention devices outlined in the MEIR, given existing beach conditions.
Explanation: The suggested language prevents the City from finding itself resurrecting the old “Finding 5” problem that led to the expensive Surfrider litigation.

2. Page 10, Para. 5: Bluff retention devices limit sudden episodic deposits of bluff sand, soils and rock from falling on the beach.... At the same time, bluff retention devices will have a narrowing effect on beach width because they inhibit passive erosion on actively eroding beaches.

Explanation: BRDs will not inhibit passive erosion to any substantial degree unless the beach is already actively eroding. The suggested language clarifies this fact.

3. Page 11, Para. 1: With or without bluff retention devices, there will eventually be a loss of lateral access along the beach absent significant and regional sand replenishment and retention efforts.

Explanation: BRDs should not be blamed for the loss of lateral access along the beach. The suggested language will prevent the continued spread of this false position.

4. Policy 2.60: No new private beach stairways shall be constructed. Existing permitted or private beach stairways constructed prior to the Coastal Act adoption of the LCP may be maintained in good condition with a CDP, but shall not be expanded in size or function. Routine repair and maintenance shall not include the replacement of the stairway or any significant portion of the stairway except in the event of a disaster as that term is defined in PRC 30610(d).

Explanation: The suggested language simply squares the policy with the law.

5. Policy 2.65: The City should work with local surfing clubs and other interested parties to identify, inventory, and design....

Explanation: This change simply ensures that the identification process is open to anyone that would like to participate.

CHAPTER 4

1. Page 1, Para. 3: Beach sand is a product of the weathering of the land. The primary natural source for the region's beaches is sediment carried from inland areas by rivers and streams. Coastal bluff erosion is another source of beach sand. In Solana Beach, however, the beach quality sand contained within coastal bluffs has historically been and continues to be a de minimus source of beach sand. Offshore sand supplies (relic or ancient beaches) may be a natural source of beach sand, but these resources examined ... ***.

Explanation: The suggested additional language was the conclusion of the July 2006 Flick and Elwaney Report commissioned by the City. The LCP is to be as complete as possible to avoid future misunderstandings and continued public debate.

2. Page 10, Para 1: Section 30235 of the Coastal Act allows mandates the construction approval of bluff retention devices “when required to serve coastal-dependent uses or to protect where existing structures or public beaches in danger are threatened
from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply."

Explanation: The suggested changes provide for an accurate description of Public Resources Code 30235. As written, the sentence is inaccurate.

3. Page 12, Bullet 1: *** If left uncorrected the sea cave/undercut will eventually lead to block failures of the lower sandstone, exposure of the clean sand lens and landward bluff retreat considerable instability of the upper bluff. ***

Explanation: Block failures don’t always lead to “landward bluff retreat” and if they do it is in small increments over considerable time. The primary point of these sentences is to describe the principal and direct consequences of failing to address lower bluff undercutting, and why these consequences should be addressed with notch infills. We don’t construct notch infills to address “landward bluff retreat.” We do so to prevent the destabilization of the upper bluff. Ending this sentence as suggested above is consistent with the primary purpose of this section.

4. Page 12, Bullet 2: This retention system is an all-encompassing bluff repair used when bluff failures have caused or likely will cause exposure of the clean sand lens and/or significant erosion of the mid and upper bluff. ***

Explanation: The suggested changes emphasize that this system can be used to prevent an emergency and improve safety before there is a catastrophic bluff failure.

5. Page 13, Bullet 1: *** The repair is much like the upper bluff repair (Preferred Solution #2) and including can address lateral migration of upper bluff erosion from adjacent properties with return walls that run perpendicular to the beach, and would involve benching and placing erodible concrete between the clean sand lens and the bluff face to assure that the clean sand erosion does not undermine the stability of the upper bluff and bluff top principal structure. ***

Explanation: This preferred solution should allow for return walls when needed to insulate a protected upper bluff from a failing, unprotected adjacent upper bluff (e.g., 241 and 325 Pacific). This was likely an inadvertent omission as return walls are already contemplated as being approved as “Tier I” administrative review (See Policy 4.40).

6. Page 14, Para 3: The City will coordinate with the CCC and other state regulatory entities in developing a uniform statewide Public Recreation/Land Lease Fee.

Explanation: In several places throughout the LUP, the term “Public Recreation/Land Lease Fee” was not changed to its new moniker “Public Recreation Fee.” For example, it appears in several places in Appendix A. The suggested referenced here should be made as needed where the “/Land Lease” still appears.

7. Policy 4.2: All development that requires a CDP is subject to written findings by the City’s decision-making body that it is consistent with all applicable LUP policies and LIP provisions of the City’s certified LCP.
Explanation: This change is needed because not all LUP policies apply to all types of development.

8. **Policy 4.16:** Existing, lawfully established structures built prior to the adopted date of the LUP that do not conform to the provisions of the LCP may be maintained. Additions and improvements to such structures may **shall** be permitted provided that such additions or improvements themselves comply with the current policies and standards of the LCP and any other application City ordinances. However, should such additions or improvements result in an Extensive Remodel, then Demolition and reconstruction that results in the demolition of more than 50 percent of the exterior walls of a non-conforming structure is not permitted unless the entire structure is **shall be** brought into conformance with the policies and standards of the LCP.

Explanation: Change 1, Additions and improvements that comply with all City ordinances must be approved. Thus, changing “may” to “shall” removes the notion that such an request would be a wholly discretionary approval. Change 2, since “Extensive Remodel” is a defined term it is better form to simply use the term itself, versus using the words that comprise only a portion of the defined term.

9. **Policy 4.19:** ***With the exception of structures rebuilt subsequent to disasters,*** No newly constructed improvements on bluff property shall be allowed to be protected by a bluff retention device where one does not already exist. Notwithstanding the foregoing, the bluff property owner retains the right to protect principal structures, or portions thereof, that existed prior to the construction of the new improvements remodel. This policy shall apply to maintenance, repairs, additions, improvements, and structures destroyed by disasters.

Explanation: Change 1, PRC 30610 allows structures destroyed by disasters to be rebuilt in the same approximate location and up to 110% of the size of the original structure without a CDP. This law essentially allows the homeowner to restore her structure to the pre-disaster status quo. It follows, therefore, that the rebuilt structure would have the same rights to a BRD that the original structure enjoyed. Change 2, the last sentence is confusing and not needed in light of the above.

10. **Policy 4.20:** Notwithstanding the above, bluff property owners shall have the right to repair and maintain a legal non-conforming bluff home **top structures provided such repairs and/or maintenance do not constitute it is not determined to be an extensive Extensive remodelRemodel.** This policy as defined in Chapter 8 shall apply to maintenance, repairs, additions, improvements and to structures destroyed by disasters.

Explanation: Change 1, the right to repair and maintain extends beyond just the bluff home, but to all legally non-conforming structures. Change 2, this last sentence is confusing and unnecessary so it should be deleted.

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

Explanation: New accessory structures should be removed if there is significant danger from erosion, but there shouldn't be an automatic, inflexible removal rule just because the structure is within 10 feet from the bluff edge. This should be decided on a case by case with engineering input based on the totality of the circumstances at hand.

12. Policy 4.27: ***. This data shall be used to establish the GSL as the estimated location on the bluff property that would demonstrate a minimum factor of safety against sliding of 1.5 (sliding) or 1.2 (pseudostatic, k=0.15 or determined through analysis by the geotechnical engineer) for the economic life of the home as of the date of the development application as determined by a quantitative slope stability analysis using shear strength parameters derived from relatively undeformed samples collected at the site.***

Explanation: Up until the early 2000s, the Uniform Building Code covered all development throughout the United States, recently replaced by the International Building Code (IBC), with the State of California providing minor modifications to the IBC, creating the California Building Code or CBC.

These three building codes require that all engineered structures, including manufactured slopes and, by extension, existing slopes supporting new structures, are to have minimum factors of safety of 1.5. No code has ever specified that the factor of safety minimum must exist for the entire economic lifespan of the structure in question. This is nothing more than a concept developed by a CCC staffer and, to our knowledge, is not a generally engineering principal outside of the CCC.

Specific to this question, the City of Solana Beach retained Attorney Michael Colantuono to address, among other things, the required bluff-top setback lines then being proposed by Coastal Staff. This work was, in part, performed to respond to comments on the City’s MEIR, wherein Coastal Staff wanted to include this more restrictive interpretation of bluff-top setbacks. Mr. Colantuono gave a fairly strong position, stating that this combined setback likely would constitute a taking and something that the City could not defend itself against in any subsequent litigation. Colantuono minced no words, recommending that the City not adopt this overly restrictive setback, explaining that the current setback requirements essentially mandated that buildings be set back landward of the estimated bluff-top erosion alignment that would exist in 75 years, or a minimum of 40 feet, whichever number was greater.
Please recall that the mechanism of erosion, and hence bluff retreat, essentially results in a translation of the existing sea cliff profile landward at some annualized erosion rate. This is very different than the numerical calculations of slope stability, which for the Solana Beach coastal bluffs, results in a circular hypothetical failure geometry that toes out on the face of the sea cliff at the geologic contact between the Torrey Sandstone and the Bay Point Formation, and then intersecting the building pad surface anywhere from 30 to 50 feet landward of the top-of-bluff, depending upon the steepness of the upper sloping portion of the terrace deposits. Thus, Colantuono reasonably argued that it is this landward translation of the profile that should be used as the basis for a bluff-top setback or, as appropriate, a minimum of 40 feet; a number that was arbitrarily chosen by the Coastal Commission at the end of the economic lifespan of a structure. It is unreasonable to calculate the 1.5 factor of safety line at the end of the economic lifespan of a structure, which would be another 30 to 50 feet landward of the annualized retreat of the profile at the end of the 75-year period. Such a policy is overly conservative, not a recognized engineering principle, and is simply unnecessary from a design point of view.

13. [Old] Policy 4.36 (Deleted, Should Be Restored): Other than to reconstruct a Bluff Home that was previously entitled to a Bluff Retention Device and replaced subsequent to a disaster pursuant to LUP Policy, no new foundation footings shall be permitted in the Geologic Setback Area.

   Explanation: This is merely a recital of PRC 30610 (g)(1). This policy should be preserved so that future homeowners will not be unfairly subjected to having to prove to future City planners that the law allows them to rebuild subsequent to a disaster without a CDP. Given the substantial setback requirements, this language also conforms with current City policy which would allow homes to cantilever into the GSA as long as the foundation footings themselves are landward of the GSL.

14. Policy 4.40, Tier 1 – Administrative CDPs: *** Tier 1 projects would include, but are not limited to, such things as drainage modifications, removal, relocation, or code compliant minor interior remodeling or landward additions to bluff homes and at grade accessory structures at grade with the bluff home; repair and maintenance of, and renewal permits for, bluff retention devices including installation of a return wall; ***

   Explanation: Change 1, since many bluff properties are sloped to the street, it might not be possible for accessory structures to be “at grade” with the bluff home yet they are not a principal structure and therefore require only administrative review. The change makes this clear. Change 2 would be unnecessary if the sunset provision related to the life of the BRD is deleted as requested. If it is not deleted, this modification helps to rectify the unfairness of a sunset provision, especially one as short as 20 years.
15. Policy 4.42: Provide for reasonable and feasible mitigation for the net impacts of all bluff retention devices which consists of the payment of Sand Mitigation Fees to the City and Public Recreation Fees to the CCC.

Explanation: CEQA, and fairness, dictate that mitigation fees be based on net, not gross, impacts. It is undisputed that BRDs provide public benefits in the form of safer more useable beaches and protection of public infrastructure as written in the MEIR and stated by Mr. Colantuono. These public benefits should be monetized and mitigation fees should be adjusted accordingly as we provided in the Citizen’s Committee compromise LUP document.

16. Policy 4.49: *** Applicants who seek permits, or renewal permits, for to install a preferred bluff retention solution, can do so on a streamlined basis, relying on previously approved standards and designs, and shall receive expedited processing from the City. As technology develops, the City will consider other preferred bluff retention devices that meet the goals and policies of the LCP, as an amendment to the LUP or within the LIP.

Applications for all bluff retention devices where any portion of which will be sited seaward of the MHTL, as shown on the most recent MHTL Survey, shall be submitted first to the City for approval and then to the CCC, which has original jurisdiction for the portion of the bluff retention device that will be sited seaward of the MHTL. Such developments shall be subject to this LCP. For beachfront development that will be subject to wave action periodically is completely seaward of the MHTL, unless the State Lands Commission determines that there is no evidence that the proposed development will encroach on tidelands or other public trust interests. The City shall reject the application on the grounds that it is within the original permit jurisdiction of the CCC and shall direct the applicant to file his or her application with the submitted directly to the CCC.

Explanation: Change 1 is needed so that the standards applied to original BRD permit applications also apply to renewal permits. Change 2 is needed to clarify that the jurisdictional question should be made with reference to the MHTL Survey then in effect. Change 3, is needed to rectify a typo (i.e., incomplete sentence), to clarify the import of these two sentences, and to correct the notion that the State Lands Commission should be, or needs to be, asked to determine jurisdiction prior to the submittal of any specific application.

17. Policy 4.52: A Seacave/Notch Infll shall be approved only if all the findings set forth below can be made and the stated criteria will be satisfied. The permit shall be valid for a period of 20 years commencing with the completion of construction.

Explanation: Change 1, the word "only" here is confusing and its deletion does not change the meaning of the sentence. Change 2, the addition of "will be" makes this consistent with Policy 4.56. Change 3, the sunset provision should be deleted for the reasons set forth in the beginning of this letter.
a. Based upon the advice and recommendation of a licensed Geotechnical or Civil Engineer, the City makes the findings set forth below:

i. A slope stability analysis demonstrates a factor of safety of less than 1.5 (static) and, that a bluff failure is imminent that would threaten a bluff home, city facility, city infrastructure, or other principal structure, or pose an undue risk to the public safety.

Explanation: The added language tracks PRC § 36235 which provides that BRDs must be approved to protect existing structures, to protect public beaches, and to serve coastal dependent uses.

ii. No changes.

iii. No changes.

iv. No changes.

b. No changes.

c. The Bluff Property Owner shall arrange for and pay the costs of

i. The licensed Geotechnical or Civil Engineer; and

ii. The Seacave/Notch Infill;

iii. Appropriate Mitigation fees as provided for in the LCP;

iv. All necessary repairs, maintenance, and if needed removal.

Explanation: These changes are grammatical and intended to clarify.

d. Only to the extent the City finds that the Seacave/Notch Infill encroaches on the public beach or up on the bluff face such that coastal resources are adversely impacted, then the City shall impose a Sand Mitigation Fee upon the bluff property owner.

e. [PROPOSED NEW SUBPARAGRAPH – NOT NEEDED IF THE 20-YEAR SUNSET PROVISION IS DELETED AS REQUESTED]. At least 12 months prior to the expiration of the CDP authorizing the Seacave/Notch Infill, the then current bluff property owner shall apply to the City for a renewal permit. The City shall process this permit as a Tier 1 – Administrative Coastal Development Permit (See Policy 4.40). The City shall expeditiously issue a 20-year renewal CDP for the Seacave/Notch Infill as long as the applicant demonstrates that the conditions supporting the issuance of the original CDP still exist. The City shall impose all applicable mitigation fees for the renewal period only, as set forth in the LCP, taking into account mitigation fees paid to date. There shall be a rebuttable presumption in favor of approval of the renewal CDP. If the renewal CDP is not issued, then the applicant shall be entitled to a refund of any “unearned” mitigation fees (i.e., fees paid for future impacts that did not materialize by the expiration date of the original or renewal CDP).
Explanation: If there is to be a sunset provision, this renewal provision doesn’t make it legal, but it makes it tolerable because it will greatly reduce uncertainty and somewhat reduce the impacts to market value that the sunset provision would otherwise impose on affected bluff top properties.

18. Policy 4.53: Coastal structures shall be approved by the City only if all the following applicable findings can be made and the stated criteria will be satisfied. The permit shall be valid for a period of 20 years commencing with the completion of construction.

Explanation: See comments to Policy 4.52 above.

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

i. A slope stability analysis demonstrates a factor of safety of less than 1.5 (static) and, that a bluff failure is imminent that would threaten a bluff home, city facility, city infrastructure, or other principal structure, or pose an undue risk to the public safety.

Explanation: See comments to Policy 4.52 above.

ii. The coastal structure is more likely than not to preclude the need for a larger coastal structure.

Bullet Point No. 5:

- Removal and relocation of all, or portions, of the affected bluff home, city facilities, or city infrastructure, taking into account reasonable architectural standards and impacts to market value.

Explanation: Removal and relocation of a bluff home or portions of it should not be required where doing so would result in a dysfunctional floorplan or significantly reduce the market value of the house. Doing so could constitute a regulatory taking. Accordingly, reasonable architectural standards and impacts to market value must taken into account when considering the removal/relocation alternative.

iii. No changes.

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

Explanation: Reference to the MEIR or other CEQA/NEPA document makes this section consistent with other policies within this LUP (e.g., Policy 4.52(A)(4)), and it makes good sense because it provides a reasonable reference point. The deleted language is found elsewhere in the LUP and because it is duplicative, it is not needed here.

b. No changes

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

Explanation: The deed and/or permit restrictions are always in writing and constitute contractual agreements between the bluff property owner and the enforcing governmental agency/public. If the restriction is enforceable, the document speaks for itself and, as a form of contract, cannot be expanded to conform with the LCP.

d. [PROPOSED NEW SUBPARAGRAPH – NOT NEEDED IF THE 20-YEAR SUNSET PROVISION IS DELETED AS REQUESTED]. At least 12 months prior to the expiration of the CDP authorizing the Coastal Structure, the then current bluff property owner shall apply to the City for a renewal permit. The City shall process this permit as a Tier 1 – Administrative Coastal Development Permit (See Policy 4.40). The City shall issue a 20-year renewal CDP as long as the applicant demonstrates that the conditions supporting the issuance of the original CDP still exist. The City shall impose all applicable mitigation fees for the renewal period only, as set forth in the LCP, taking into account mitigation fees paid to date. There shall be a rebuttable presumption in favor of approval of the renewal CDP. If the renewal CDP is not issued, then the applicant shall be entitled to a refund of any “unearned” mitigation fees (i.e., fees paid for future impacts that did not materialize by the expiration date of the original or renewal CDP).

Explanation: See comments to Policy 4.52 above.

19. Policy 4.54: The bluff property owner shall pay for the cost of the coastal structure or Infill and pay to the City a Sand Mitigation Fee and a Public Recreation Fee if assessed by the CCC. These mitigation fees are not intended to be duplicative and are intended to provide mitigation for all potential impacts to coastal resources from shoreline protective devices. It is anticipated that fees assessed as required by the LCP will be in conjunction with, and not duplicative with, the mitigation fees.
typically assessed by the CCC and CSLC for impacts to coastal resources from shoreline protective devices. Therefore, if the bluff property owner is assessed fees by governmental agencies other than the City or CCC (e.g., CSLC), the bluff property owner shall receive a dollar-for-dollar credit for such fees against the Sand Mitigation Fee and/or Public Recreation Fee.

Explanation: Generally speaking, it is only fair that the bluff top homeowner who builds a BRD be subject to a finite set of potential mitigation fees. The Citizen's Committee agreed on this. The nature of California local governments and governmental agencies (e.g., CCC) is to add new fees and new conditions with each new project approval. The suggested language provides a backstop against such practices, which are oftentimes abusive, depress the economy, and cause industry to leave the state for other jurisdictions. More specifically, the Land Lease Fee charged by the State Lands Commission to the bluff top homeowner duplicates the Public Recreation Fee. If the homeowner is “renting” the space, it should theoretically be hers to use exclusively, and she should not also be required to reimburse the public for theoretically using recreation space while she holds an exclusive leasehold interest in that same space. Furthermore, the BRD increases the amount of safe area in which the public can recreate.

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

Explanation: In the case of BRDs, the Sand Mitigation Fee (SMF) is illegal in the context of a BRD approval mandated by PRC §30235. It is black letter law that the authority to impose a condition derives from the authority to deny a permit. If the government may not deny the permit in the first place, then it may not impose a condition on that permit unless such a condition is expressly enumerated in the authorizing statute. (Nollan v. California Coastal Commission (1987) 483 U.S. 825). Under PRC §30235, the only condition that may be imposed is a requirement that BRDs be designed to minimize sand impacts. No other fees are authorized. This position, notwithstanding, we recognize that the SMF is not likely to go away anytime soon. However, with respect to bluff sand, the impact of a coastal structure is not necessarily the permanent removal of sand from the
coastal system. Instead, the impact is merely the delay of gradual sand deposits. Thus, a SMF that requires the bluff property owner to pay an upfront in-lieu fee that represents the complete removal of the sand from the system is not in line with the actual impact.

The unfairness of this fee is underscored if the life of the BRD is limited by a 20-year sunset provision. In the context of a 20-year BRD, the impact on bluff sand is not the permanent removal of sand from the system, but the impact of delaying the gradual deposit of such sand to the beach for the 20-year permit period. Thus, it will be important for the City to revise Appendix A so that the SMF addresses the actual impact, not the impact presupposed by the CCC’s formula. To be fair, whatever form the SMF takes, should also factor in the gradual nature of bluff sand deposits and not charge a fee based the idea of a full immediate impact. That is, if the deposit is one that occurs slowly over the 20-year period, the resulting fee cannot be an in lieu fee that demands a 100% upfront payment.

All of this being said, the proposed SMF may be acceptable if the 20-year sunset provision is removed or the renewal provisions suggested as new policies 4.52(E) and 4.53(D) are approved.

20. Policy 4.56 – An upper bluff system shall be approved only if all the following applicable findings can be made and the stated criteria will be satisfied.

   Explanation: See Policy 4.52 above.

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

      i. A slope stability analysis accepted by the City demonstrates a factor of safety of less than 1.5 (static) and that a bluff failure is imminent that would threaten a bluff home, city facility, city infrastructure, or other principal structure, or pose an undue risk to the public safety.

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

   Explanation: these changes simply combine 1 and 2 and make it more consistent with the way that Policies 4.52 and 4.53 are constructed.

21. Policy 4.58 – To achieve a well maintained, aesthetically pleasing, and safer shoreline, coordination among property owners regarding maintenance, and repair of all bluff retention devices is strongly encouraged. This may also result in cost savings through the realization of economies of scale to achieve these goals by coordination through an assessing entity, such as geologic hazard abatement district. All bluff retention devices existing as of the date of certification of the LCP, to the extent they do not conform to the requirements of the LCP, shall be deemed non-conforming. Although a bluff property owner may elect to conform his/her/its
bluff property or bluff retention device to the LCP at any time. All bluff properties with non-conforming bluff retention devices shall only be required to comply with the provisions hereunder governing acquisition rights and the repair, and maintenance, and removal of a bluff retention devices as a condition of the issuance of a future discretionary Coastal Development Permit that relates to existing or new bluff retention devices. Additionally, no existing bluff retention device shall require structure modification for the sole purpose of facilitating removal at a later date; however, if the City finds that an existing bluff retention device is structurally unsound, is unsafe, or is materially jeopardizing contiguous private or public property for which there is no other adequate and feasible solution, then the City may require reconstruction of the bluff retention device or the construction of a new bluff retention device that adequately protects contiguous properties and the public safety.

Explanation: Change 1, the CCC favors GHADs and sees them as perhaps the best means for bringing about regional sand replenishment. Change 2, acquisition rights and removal should be deleted for consistency with the balance of the LUP (i.e., with the removal of the 2081 Compromise, these two concepts are no longer part of the LUP). Change 3, existing BRD conformance with the LCP should not be required for discretionary CDPs that are unrelated to the BRD itself. Change 4, this language will help the City and its responsible bluff top property owners protect themselves from bluff top property owners who refuse to rectify unsafe conditions through responsible bluff management. In addition, a GHAD would handle these situations very effectively.

22. Policy 4.62 – All new bluff property development shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion for the projected economic life and has a minimum geologic stability factor of 1.5 at the time of construction. For purposes of this Policy, stable is defined as a demonstrated minimum factor of safety against sliding of 1.5 (static) or 1.2 (pseudostatic, k=0.15) as determined by a quantitative slope stability analysis using shear strength parameters derived from relatively undeformed samples collected at the site. In no case shall the setback be less than 40 feet, and only if it can be demonstrated that the structure will remain stable, as defined above, at such a location for its economic life. Existing principal bluff top structures may be maintained or remodeled as long as such work does not increase the floor area ratio for the property or result in a significant increase in loads on the existing foundation, within 25 feet of the top edge of a coastal bluff, based upon an engineering-geology report prepared by a duly licensed engineering professional showing that: (1) the site is stable enough to support the development with the proposed bluff edge setback, and (2) that the development can be designed so that it will neither be subject to nor contribute to significant bluff instability for its economic life. This requirement shall apply to the principal structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios, and walkways that do not require structural foundations may extend into the setback area to a minimum
distance of five feet from the bluff edge. All new development including, but limited to principal structures, additions, and ancillary structures, shall be specifically designed and constructed such that they could be removed in the event of endangerment. Ancillary structures shall be removed or relocated landward when threatened by erosion. Slope stability analyses and erosion rate estimates shall be performed by a licensed Geotechnical Engineer or certified Engineering Geologist.

Explanation: Changes 1 and 2, see the explanation under Policy 4.27 above. Change 3, bluff property owners must be allowed to maintain and repair their property under all circumstances. The City cannot unduly burden the right to maintain, which does not require a CDP as a point of fact, with conditions that could potentially make it impossible for owners to undertake such tasks. In addition, remodels that do not increase the degree of non-conformity must also be permitted in accordance with law. Change 4, the last deleted sentenced is struck through because it is unnecessary and confusing.

23. Policy 4.64 – Existing All bluff retention devices, including bluff retention devices existing prior to the adoption of the LCP, shall be promptly repaired and maintained by the bluff property owner as necessary to promote visual quality and public safety. which are not considered preferred bluff retention devices and do not conform to the provisions of the LCP, including the structural or aesthetic requirements may be repaired and maintained to the extent that such repairs and/or maintenance conform to the provisions of the LCP.

Explanation: The suggested changes are clarifying and ensure that BRDs will be properly maintained, but not subject to unnecessary and costly changes.

24. Policy 5.46 – Existing, lawfully established bluff homes located on bluff property and built prior to the adopted date of the LUP that do not conform to the provisions of the LCP may be maintained, and repaired. Additions and improvements to such structures may be permitted provided that such additions or improvements themselves comply with the current policies and standards of the LCP. Extensive remodels to non-conforming bluff homes shall not be Demolition and reconstruction that results in the demolition of more than 50 percent of the exterior walls of a non-conforming structure is not permitted unless the entire structure is brought into conformance with the policies and standards of the LCP. Non-conforming uses or structures may not be increased or expanded into additional locations or structures.

Explanation: These changes result in conformity with the balance of the LCP.

25. Chapter 8 – Definitions – Coastal Dependent Development or Use means any development or use which requires a site on, or adjacent to, the sea to be able to function occur at all (e.g., public beach use).

Explanation: The suggested changes more accurately describe the meaning of this phrase. It is important because it one of the 3 criteria that mandates the approval of a BRD. The word “function” implies that the coastal dependent use must be of a machine origin. However, the term is broader than this. An earlier version of the Act used the
term “coastal dependent structures.” If this early language had become law then perhaps the current definition would be accurate. However, an amendment to the Act changed “coastal dependent structures” to coastal dependent use resulting in a far broader application of the phrase. Since safe use of the beach, especially in a crowded urban environment, is coastal dependent, it follows that public beach use is a coastal dependent use within the meaning of PRC §30235.

26. Chapter 8 – Definitions – Imminent – means an occurrence that is reasonably foreseeable within 12-24 months from the time the determination of imminence is made that an application for a Bluff Retention Device is submitted to the City or Commission.

Explanation: this change will lead to smaller BRDs, a central policy of the LCP, and one of the primary goals of the Citizen’s Committee’s LUP. If you shorten the imminence to 12 months, larger BRDs will likely be needed.

27. Chapter 8 – Definitions – Passive Erosion is the process whereby the placement of coastal structures at the base of a bluff fixes the back boundary of the beach which may causing cause the width of the beach to decrease over time. This process occurs solely solely where the shoreline on the beach is experiencing a net retreat as a result of natural or man-made conditions, a net sea level rise, or natural-sealife retreat.

Explanation: The suggested language provides a more accurate description of passive erosion, as it may occur in the City. Studies by Flick and others have shown that beach width does not necessarily decrease if there is a BRD in place (GTE). In point of the fact, the widest, most reliably accessible beach area in the City is the beach in front of the Del Mar Beach Club which is protected by what may be the oldest BRD on City beaches. What these studies and this example tell us is that beach width is determined by the broader dynamics within the littoral cell, and the disruption caused by mankind’s destruction of nature’s sediment delivery systems.

28. Chapter 8 – Definitions - Principal Structure: add language that protects reasonable access around the structure. “Principal Structure means any bluff home, Marine Safety Center, Fletcher Cove Community Center or other significant bluff top building or infrastructure, such as a condominium clubhouse, and reasonable access to the perimeter of any such structure for fire safety, maintenance, etc.

Explanation: For fire and health safety and maintenance, bluff property owners should be able to protect their principal structures along with a reasonable safe margin of land around them. A margin of 5 or 10 feet should suffice.

29. Chapter 8 – Definitions2 – Sand Cost is means the cost of one $7.66 per cubic yard of sand for projects commenced before December 31, 2012. Thereafter, the Sand Cost shall increase yearly by 3% or Consumer Price Index, whichever is less, unless the
applicant can demonstrate that a different amount is fair and reasonable given the totality of the circumstances assuming a minimum of 100,000 cubic yards of Beach Quality Sand is purchased and delivered to the beach.

Explanation: The CCC has been unfairly imposing a per cubic yard sand cost based on an unrealistic delivery method (i.e., trucking) which results in an artificially high sand cost. The sand cost should never exceed the actual cost per cubic yard of sand incurred by SANDAG or other governmental agency in the conduct of regional sand replenishment activities through offshore dredging. SANDAG’s sand cost for RBSB II is $7.66 per cubic yard. Historically, the CCC has autocratically imposed a sand cost that varies from $15 to $25 per cubic yard. This amount is unjustified and punitive. This change needs to be made in Chapter 8 and in Appendix A.

30. Chapter 8 – Definitions – Upper Bluff System means a system or device that complies with the specific design, aesthetic, and structural specifications, which the City has adopted that is designed to retain a portion of a bluff located above areas subject to marine erosion.

Explanation: these changes make the definition of a UBS consistent with the definitions of notch infills and coastal structures. A UBS does not, by definition, need to be a preferred solution. Most probably it will be, but the definition of a UBS should not be so limited.

Thank you for the opportunity to submit these comments. Please ensure this letter is included in the public record. If you require any further clarification or explanation, please do not hesitate to contact me.

Sincerely yours,

[Signature]

Jon Corn