

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4421  
(619) 767-2370



July 25, 2014

VIA E-MAIL

Mayor Kevin Faulconer  
City Councilmembers  
City of San Diego  
202 "C" Street, 11<sup>th</sup> Floor  
San Diego, CA, 92101

Re: Ocean Beach Community Plan Update Suggested Modifications

Dear Mayor Faulconer and City Councilmembers,

Thank you for the opportunity to review the Draft Ocean Beach Community Plan Update (OBPCU) and provide additional comments. Our office has worked extensively with City staff over the course of the last year and appreciates the collaboration and informative exchange we have had with City planners. Commission staff finds the draft plan to be a very thorough, comprehensive update that addresses many outstanding issues present in Ocean Beach planning, such as documenting the location of critical visual and physical access points to the ocean shoreline, bay and river channel; specifying the need to coordinate with SANDAG and MTS on improving public transportation; and establishing the need to utilize best available science to prepare for and adapt to climate change impacts. After productive discussions with City staff, many of this office's initial recommendations were resolved either with new information, clarifications or mutually agreed upon rewording of text and policy recommendations. Noteworthy resolution was achieved on many points including, but not limited to, recognition of the adopted Famosa Slough Enhancement Plan; implementation of the certified Environmentally Sensitive Lands (ESL) regulations through plan recommendations; reserving the ground floor of mixed use developments for commercial use; requirements for native, location-appropriate, drought-tolerant and non-invasive plantings; and green building design goals that facilitate bird safety and energy conservation.

However, there are seven suggested modifications that Commission staff would still recommend be incorporated in the draft OBCPU. These modifications address issues of statewide significance such as preferential resident parking programs, requiring mitigation for any loss of public access or lower-cost visitor-serving accommodations, as well as the issues associated with development in hazardous areas subject to bluff erosion and sea level rise impacts. As a general comment and introduction, a recurring point of debate between our offices arises over the need for greater specificity in the City's land use planning documents. We appreciate and understand how, under general planning

law, the City treats community plans as a policy document and includes regulatory provisions only in the municipal code. However, under the Coastal Act, and when the City is acting as the administrator of the Coastal Act, there are different standards. For land use plans or any future plan amendments, the standard of review is consistency with the Chapter 3 policies of the Coastal Act. For the adoption of zoning or implementation plan changes, the standard of review is consistency with the certified land use plan. Therefore, in evaluating any zoning provision or amendment, there needs to be sufficient specificity and standards established in the adopted land use plan. Absent such specificity, inadequate implementation plans could be adopted or result over time leading to coastal resource impacts.

The following paragraphs will address each of the unresolved issues. To hopefully assist in the examination of these issues, our comments will identify the draft specific introduction, goal or plan recommendation that Commission staff recommends be modified, as well as include references to City staff's matrix, entitled "City of San Diego Staff Response to Coastal Commission 6/27/14 memo" as revised by City staff after our meeting on July 15, 2014. In each of the seven suggested modifications, language to be added is underlined and language suggested to be deleted is ~~struck out~~.

First, on Page ME 14, Recommendation 3.5.4 addresses the potential implementation of parking management strategies (Item 5 on the matrix). Such parking management strategies could potentially include preferential resident parking programs which could have significant impacts on public street spaces that generally provide a key reservoir of beach parking. Section 30210 of the Coastal Act requires maximum access and recreational opportunities shall be provided for the public. Section 30213 of the Act states "lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided." Section 30252 of the Act specifies that the location and amount of new development should maintain and enhance public access to the coast by facilitating alternate transit or providing adequate parking facilities. Given that preferential parking programs for residents could have serious impacts on the availability of public parking supplies, the Commission has generally not been supportive of them. Therefore, Commission staff recommends the following modification be made to the draft recommendation; the revised language would require that such a proposal require a land use plan amendment which would ensure a more comprehensive review for any such proposal in order to address existing public parking facilities, availability of alternate transit and specific operational details. City staff's proposed language only provides for Commission staff review through the permitting process.

On p. ME 14, modify Recommendation 3.5.4 to read:

Implement parking management strategies along streets that serve the commercial and beach areas; however, preferential residential parking programs would require a Land Use Plan amendment. Refer to Section G of the General Plan's Mobility Element.

Turning to the Recreation Element, on Pages RE 4 and RE 15, City staff has agreed to support inclusion of a new Goal and Plan Recommendation (that would be numbered 6.3.12) that specify the need to preserve, protect and enhance both lower-cost visitor-serving overnight accommodations and public access in the community (Items 13 and 16 on the matrix). However, Commission staff had also recommended in both these new provisions that “mitigation be required for any loss of such facilities or public access”. Again in response to the Act’s mandate to support maximum access, Section 30213 provides that “lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.” Section 30221 of the Act provides that oceanfront land suitable for recreational use be protected for recreational use. Section 30222 of the Act states “the use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development...” In cases where new development would result in the loss of affordable overnight accommodations or public access, Commission staff recommends that mitigation be required to offset such impacts.

For some time, the Commission has been adopting conditions for beach sand mitigation fees, public access and recreation fees, in-lieu fees for moderate or high cost overnight accommodations and mitigation for the loss of affordable motel/hotel rooms. In response to Commission staff’s recommended changes, City staff stated a concern about equal protection between the City’s coastal planning segments, asserting that it would be inappropriate to adopt such a provision solely for Ocean Beach. While Commission staff agrees that the issue of mitigation for loss of public access and affordable accommodations should be addressed on a city-wide basis, the requirement for such mitigation needs to be added to community plan updates as they are adopted in order to establish the policy mandate for such mitigation. Therefore, the following two revisions should be made to the plan update.

On p. RE 4, please add the following Goal:

Preserve, protect, and enhance lower-cost visitor serving recreational facilities and overnight accommodations. Require mitigation for any loss of such facilities.

On p. RE 15, please add the following as Recommendation 6.3.12:

Preserve, protect, and enhance public access within the community. Require mitigation for any loss of public access. Maximize retention of existing on-street public parking for protection of the public beach parking reservoir.

Although City staff and the community have developed good provisions to address sea level rise and the City has committed to the adoption of a Citywide Climate Adaptation Plan, the draft plan update lacks specific policy language that would effectively restrict shoreline armoring and the loss of public beach access by adopting restrictions on bluff-top and shoreline development and shoreline protective devices. This is a statewide issue arising in many city planning policy documents such as the recently certified Solana

July 25, 2014

Page 4

Beach Land Use Plan, exacerbated by current and projected climate change and sea level rise impacts. The four remaining suggested modifications relate to draft provisions in the Conservation Element; they address the need to limit the construction of coastal protective devices; establish necessary setbacks for new development and redevelopment that consider the economic life of structures and sea level rise in those setback determinations; require a waiver of future shoreline protection for new development or redevelopment, as well as site and design such work without reliance on existing or future shoreline protection; tie shoreline protective devices, when approved, to the life of the structure they are protecting; and include mitigation for such devices and require periodic reassessment to consider the need for additional mitigation or changed conditions.

In addition to Sections 30210 and 30221, cited above, the suggested modifications are predicated on the following Coastal Act provisions:

Section 30235

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. [...]

Section 30253

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1)

It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby, or, (3) Agriculture would be adversely affected. [...]

Shoreline armoring contributes to the loss of public beaches as the sea level rises and beaches are no longer able to retreat landward. Siting new development in locations that will not require a seawall in the future and limiting the retention of existing seawalls or the construction of new seawalls, when feasible, will help to ensure maximum public access to the coast.

In approving shoreline armoring requests, the Commission has acknowledged that coastal protective devices have significant adverse impacts on the beach environment, which are ongoing for the life of the device, and cannot be fully mitigated through a one-time sand mitigation payment. In addition, the Commission has acknowledged that impacts can change over time or become more significant as the area of beach available for public access continues to erode. Given the significant impacts that existing and new seawalls can have on coastal resources, especially public access, recreation and sand supply, it must be a high priority for the Commission and the City to ensure that all existing and new seawalls adequately mitigate for their impacts to sand supply, public access and recreation and any other impacts on coastal resources so long as the seawalls exist and still serve the function of protecting the existing structure it was designed to protect. It is important the full risks and costs of developing in hazardous locations, including impacts (costs) to public coastal resources, be borne by the development itself.

With regard to the assumption of risk and an acknowledgement that any right to future shoreline protection is waived in association with new proposals for development or redevelopment in hazardous areas, Commission staff recommends that the plan update be modified. Commission staff acknowledges that the currently certified LCP only requires execution of an assumption or risk/waiver when an applicant seeks to reduce the otherwise required 40 ft. setback along the shoreline as codified in the ESL regulations. However, given the changing conditions and sea level rise, Commission staff believes that an assumption of risk and waiver of future shoreline protection must be obtained in association with development along the shoreline.

Section 30235 only authorizes shoreline protection devices when necessary to protect an existing structure in danger of erosion if specified criteria are met, and shoreline protective devices are no longer authorized by Section 30235 after the existing structures they protect are redeveloped, no longer present, or no longer require armoring. Accordingly, one reason to limit the length of a shoreline protective device's development authorization is to ensure that the armoring being authorized by Section 30235 is only being authorized as long as it is required to protect a legally authorized existing structure.

Another reason to limit the authorization of shoreline protective devices is to ensure that the Commission and City can properly implement Coastal Act Section 30253 together with Section 30235. If a landowner is seeking new development on a blufftop lot,



July 25, 2014

Page 6

Section 30253 requires that such development be sited and designed such that it will not require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. Sections 30235 and 30253 prohibit such armoring devices for new development and require new development to be sited and designed so that it does not require the construction of such armoring devices. These sections do not permit landowners to rely on such armoring devices when siting new structures on bluff tops and/or along shorelines. If a shoreline protective device exists in front of a lot, but is no longer required to protect the existing structure it was authorized to protect, it cannot accommodate future redevelopment of the site in the same location relying on the provisions of Section 30235. Otherwise, if a new structure is able to rely on shoreline armoring which is no longer required to protect an existing structure, then the new structure can be sited without a sufficient setback, perpetuating an unending construction/redevelopment cycle that prevents proper siting and design of new development, as required by Section 30253. By limiting the length of development authorization of a new shoreline protective device to the existing structure it is required to protect, Section 30253 can be properly administered. As more up-to-date and projection data on sea level rise becomes available, policy makers must evolve their adaptive management strategies accordingly. These recommendations are current policy strategies that the Commission is continuously working to address in local government land use plan updates statewide.

Based on the above analysis, Commission staff would recommend the following modifications be made:

On p. CE 7, modify Recommendation 7.1.2 (Item 22 on the matrix) to read:

Prohibit coastal bluff development, on or beyond the bluff face, except for ~~coastal protective devices~~, public stairways and ramps that provide access to and from the bluff top to the beach and coastal protective devices only when properly permitted to protect existing development and as consistent with other provisions of the Land Use Plan. Require new development to be independently safe without shoreline ~~improvements~~ armoring.

On p. CE 9, modify Recommendation 7.3.1 (Item 27 on the matrix) to read:

Setback new development and redevelopment on property containing a coastal bluff a sufficient distance so the structure is safe from geologic and other hazards for its economic life, typically defined as 75 years for primary structures, at least 40 feet from the bluff edge. This setback may be reduced to not less than 25 feet if evidence is provided that indicates the site is stable enough to support the development for its economic life and without requiring construction of shoreline protective devices. Do not allow a bluff edge setback less than 40 feet if erosion control measures or shoreline protective devices exist on the sites which are necessary to protect the existing principal structure in danger from erosion and do not assume retention of such structures when calculating bluff setback

requirements. Incorporate sea level rise projections into calculations for determining the bluff edge setback.

The City recommends using the term “life span” rather than “economic life.” However, with the added explanation that economic life is typically defined as 75 years for primary structures, as recently used in the Solana Beach certified Land Use Plan and the term is used in the City’s ESL regulations, Commission staff hopes that the City’s concerns with the term “economic life” are resolved.

On p. CE 9, add the following as Recommendation 7.3.6 (Item 29 on the matrix) to read:

Require a waiver of rights to future shoreline protection for any new shoreline development or redevelopment. Site and design development and redevelopment so they do not rely on existing or future shoreline protective devices.

On p. CE 9, add the following as Recommendation 7.3.7 (tem 30 on the matrix) to read:

Tie shoreline protective devices to the life of the structure they are protecting and remove such devices when the structure it is authorized to protect is demolished or redeveloped. Include mitigation for shoreline armoring, if allowed, for impacts to shoreline sand supply and public access and recreation. Require periodic assessment of the need for additional mitigation and of changed conditions.

Aside from these suggested modifications, Commission staff would also like to comment on two additional issues. First, staff has considered the issue related to the granting of variances for floor area ratio (FAR) exceptions along West Point Loma Boulevard. While the Commission and staff found no substantial issue, on appeal, due to the absence of any technical inconsistency with the City’s LCP, the mixed development character present in the immediate area, and the absence of any public view encroachment, there is some potential for such variances to have public view impacts as development proceeds seaward or further downcoast in the affected neighborhood. The Commission will continue to review such developments on a case-by-case basis. Therefore, should the City want to add specifics to the OBCPU on community character and urban design or reinforce the scenic resource provisions to regulate build-out in this area of Ocean Beach, it is certainly within the City’s prerogative.

Second, the draft plan appropriately addresses and maps the existing sensitive lands in the community such as bluff areas, beaches, open spaces, and Multi-Habitat Planning Area (MHPA). However, there is no mention of environmentally sensitive habitat areas (ESHA) in the draft plan, and under Section 30240 of the Coastal Act, there are specific provisions for protecting ESHA. Land use plans and especially comprehensive updates should identify ESHA within each planning area and adopt policies for protecting them, consistent with Section 30240, both as currently identified and providing for future determinations to be made as resources and conditions change over time. Commission staff needs to consider this issue further and wants to reserve the opportunity to address it in the future.

July 25, 2014  
Page 8

Again, Commission staff appreciates the opportunity to provide the above suggested modifications as well as the tremendous coordination work done with City staff. Please feel free to contact me at the above phone number with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brittney Laver', with a stylized flourish at the end.

Brittney Laver  
Coastal Planner

(G:\Brittney\OBCEPU\OBCEPU July 25 2014 letter to City Council.docx)