May 24, 2001

CalBeach Advocates
PO Box 1085
Solana Beach, CA 92075

California Resources Agency
Attn: Brian Baird, Ocean Program Manager
1416 Ninth Street, Suite 1311
Sacramento, CA 98514

Re: Draft Policy On Coastal Erosion Planning And Response

Dear Mr. Baird:

Thank you for the opportunity to submit comments on the California Resources Agency Draft Policy on Coastal Erosion Planning and Response on behalf of CalBeach Advocates.

CALBEACH ADVOCATES

First, an introduction is in order. CalBeach Advocates is a recently formed California nonprofit public benefit corporation. It's specific purpose is to preserve, maintain, and restore the natural sandy beaches, coastal bluffs, and near shore environment of California's Pacific Ocean coastline through active involvement in land use and other public decision making.

Formed by Solana Beach citizen volunteers, CalBeach Advocates has been primarily involved in local coastal issues, including the approval of seawall construction by the City of Solana Beach, the California Coastal Commission, and the State Lands Commission. CalBeach Advocates was also instrumental in persuading the City of Solana Beach to commence preparation of an Environmental Impact Report to study the cumulative impacts of seawalls, mitigation measures, and alternatives. CalBeach Advocates is currently challenging in court the City's most recent seawall approval on the ground that an EIR was not completed in advance.

The leadership of CalBeach Advocates includes James Jaffee who has had years of experience in coastal related issues representing Surfrider Foundation and himself personally. The leadership also includes W. Scott Williams, a Solana Beach attorney with 25 years of experience dealing with environmental, land use, and local government legal issues, and Sheelagh Williams, who has been actively involved at the City and Coastal Commission levels on numerous seawall projects.

THE RESOURCES AGENCY SHOULD UPDATE ITS CURRENT POLICY

CalBeach very much supports updating the current policy to reflect the changed economic, legal, and environmental climate. Much has changed over the last 23 years. The rate of erosion has increased dramatically in some areas (especially north San Diego County). As a society, we have learned (or should have learned) many lessons. Our scientific knowledge has increased. Many now question whether the current policy of permitting shoreline protection devices to protect property against coastal erosion can be justified in light of the environmental and economic costs.

While CalBeach generally supports the Resource Agency's draft policy, we also support the specific changes and comments of the Surfrider Foundation and Center for Marine Conservation. CalBeach is primarily concerned with the policy's acceptance of hardened shoreline protection structures, even as a "last resort," since the policy does not also include a long term component to eliminate and eventually prohibit the structures.

No end is in sight to the current natural coastal erosion and retreat process. In fact, the rate of increase in sea levels and the rate of coastal erosion and retreat appear to be on the upswing. If the current policy stays in place, hardened shoreline protection structures will blanket the coast, lead to the narrowing and eventual disappearance of the beach, and prevent the formation through natural processes of new replacement beach. There will be wall and water, but no beach, absent increasingly expensive and potentially damaging artificial sand replenishment or offshore breakwaters, groins, or other such devices.

That is why CalBeach supports inclusion of additional policies to ensure that the current insanity of coastal armoring will at some point stop. In that regard, CalBeach has prepared a broad, general outline of a "planned or managed retreat" strategy. CalBeach does not contend that all issues are addressed by what we have prepared, or that this strategy would be appropriate everywhere, such as, for example, where essential public facilities like commercial ports or airports, power plants, or transportation facilities are concerned. CalBeach does submit, however, that the final California Resources Agency policy should include a long-term component that would result in restoration of the natural environment of the coastline to the betterment of all Californians.

A "PLANNED" OR "MANAGED" RETREAT STRATEGY

Background:

The long term goal should be restoration and maintenance of the natural sandy beach, near shore environment, and bluffs. This acknowledges the inevitability of coastal erosion in a geologic era marked by naturally caused shoreline retreat and rising sea levels. Natural bluff retreat due to erosion is environmentally beneficial because it contributes sand to the beach, results in maintaining beach width, and

sculpts the bluffs into visually attractive natural landforms. Natural bluff retreat is economically beneficial because, among other reasons, it increases the recreational value of the coastline and its attractiveness to visitors and reduces long term dependence on costly artificial sand replenishment projects and shoreline protective devices.

A Planned Retreat Approach:

The basic approach is to develop and implement policies and programs to ensure that present and future coastal development is consistent with the long term restoration and maintenance of the natural conditions, including eventual restoration of the natural flow of sand to and along the coastline, and with the reasonable economic expectations of private property owners.

Implementation:

Sand replenishment projects. These will widen the sandy beaches and slow down current high rates of erosion and thereby reduce the need for additional shoreline protective devices. They will also restore sandy beach recreational opportunities.

Bluff top development regulatory policies. Development has occurred too close to the edge of eroding bluffs. As a result, shoreline protection projects have been approved to protect the existing structures from erosion.

Adequate setback lines are therefore required to ensure that new approved development will not require shoreline protection within the useful economic life of the structure. A "no new development" line should be set no further seaward than the estimated bluff retreat line in, say, 50 years plus a margin of error. A second "planned retreat" setback line should be set no further seaward than the estimated bluff retreat line in, say, 100 years plus a margin of error. The setback lines should be revised periodically.

No new development (any development which substantially increases the useful economic life of the existing structure) should be allowed seaward of the "no new development" setback line. Independent expert reports should be required to establish that a greater setback is not required for new development landward of the "no new development" setback.

All new development should be conditioned on an enforceable waiver of any right to build shoreline protection structures. Impose other conditions as required to ensure that new development does not increase rate of bluff erosion, including drainage and landscaping conditions.

Shoreline protection projects. Shoreline protection projects should not be approved except to the extent necessary to protect existing structures, if required by law and if they are properly engineered, constructed, and maintained.

Shoreline protection projects should not be approved if there are other less environmentally damaging feasible alternatives, such as underpinning the structure, relocating the threatened portion, or removing the threatened portion even if the alternatives are more expensive.

The life of shoreline protection structures should be limited to the remaining useful economic life of the existing structure to be protected. Conditions must be imposed to require construction methods which make removal at end of permit life feasible. A bond or other security (such as letter of credit, lien contract, cash deposit) must be required to ensure removal at end of permit life.

Adequate sand loss mitigation fees or other mitigation must be imposed to compensate for the harm caused during the full permit life of the structure.

We believe the above strategy can be implemented under current law without causing a "taking" of private property. Building and zoning setbacks have long been recognized as legal land use regulations when necessary for public health, safety, and welfare purposes. Even the more recent U.S. Supreme Court decisions, which state that a property owner is entitled to a "reasonable economic use" of his or her private property, have exceptions where the use of the property would create public nuisances or has not been recognized as a "traditional" type property right.

No one has a vested property right to build too close to the edge of a crumbling coastal bluff or an eroding shoreline, when to do so could endanger the lives of the occupants or the public or eventually require the construction of shoreline protection devices which are located on publicly owned beach or coastal bluffs or, even if on private property, will ultimately lead to destruction of the public beach itself.

Existing Coastal Act policies are addressed by permitting temporary shoreline protection sufficient to protect existing structures for the balance of their useful life and by prohibiting new structures that would require protection within their useful life.

Although we believe the strategy could be implemented through appropriate regulatory actions without causing a "taking" of private property, that does not mean it would be unwise to also pursue public acquisition of private property in harm's way. In that manner, the public would enjoy greater public access to the beach, and many would perceive the result to be fairer to the private property owner. Therefore, another component of a planned retreat alternative could be public acquisition.

Staged public acquisition of property. The properties seaward of the planned retreat line could be acquired through negotiated purchase or eminent domain. As the planned retreat line moves landward, acquire additional properties.

Acquisition of the properties could be ranked priority depending on the imminence of property loss due to erosion. Depending on the economic resources

available, the priority would be the properties likely to have a near term need for shoreline protection, in order to avoid construction if possible. These properties would be expensive, but their fair market value would also reflect reductions for the avoided costs of shoreline protection.

For properties that will be threatened by erosion in the mid to long term, acquire the future ownership right to the properties on a discounted present value basis. (A change in eminent domain law could be required to permit the acquisition of future interests.) The future ownership right would be, say, 50 years off for properties located between the planned retreat and no new development setback lines. The future ownership right would be the remaining useful economic life of the existing structure for properties located seaward of the no new development line, but no more than 50 years.

SUMMARY

To CalBeach Advocates, the most important policy change that the Resources Agency must make is to develop a long term strategy to restore the natural conditions and manage and plan coastal development to accommodate the inevitable result - - shoreline erosion and retreat. It took 130 years of railroad, highway, harbor, and dam construction, river sand-mining, and general urbanization to create the various problems we face now. The current response - - the armoring of our shoreline - - is shortsighted and will have devastating long term impacts. Now is the time to develop a long term strategy to address the issues in a meaningful way so that we do not rob generations to come of their rightful legacy.

Respectfully submitted,

Matt Wilbur

CalBeach Advocates

PRESS RELEASE

SOLANA BEACH ENVIRONMENTAL GROUP TAKES CITY TO COURT OVER SEAWALLS

CalBeach Advocates, a Solana Beach based environmental action organization, has filed a legal action against Solana Beach over seawall construction in the City. The lawsuit was filed January 25th in the Superior Court in Vista.

W. Scott Williams issued the following statement on behalf of the organization:

"The legal action was prompted by the City Council's December 19th decision to approve another seawall on the City's public beach without preparing an environmental impact report. CalBeach Advocates believes that the continued construction of seawalls along our coast, without adequate environmental review and consideration of alternatives, will cause severe long-term impacts to the bluffs and beaches. Together with our coastal lagoons, our public beaches are the most precious natural resources we have. Unless action is taken now to preserve and restore them, they may suffer the proverbial "death by a thousand cuts."

"It's not just that seawalls are visual blight on the public's coastal landscape. Coastal experts say that seawalls can cause a myriad of problems. They say that seawalls placed on a shoreline like ours, which is undergoing long term erosion and retreat, can cause a gradual narrowing and the eventual disappearance of the beach through a process known as "passive erosion." They also say that seawalls can increase sand loss immediately by what has been called "active erosion," and can even cause neighboring bluffs to erode more quickly. Millions of taxpayer dollars are needed already to put sand on our depleted beaches. It makes no sense to put seawalls on the beach if they just make it harder to keep to sand there.

"Many say that seawalls are needed for public safety on the beach. But that logic means that all of our coastal bluffs must eventually be covered top to bottom with concrete, since they are all eroding. Seawalls themselves can and eventually will fail as well, as witnessed a few weeks ago in Ocean Beach. What we really need is a wider sandy beach so that people can stay away from the bluffs, not one further narrowed by seawalls. We also need better public education and warnings so that the public can avoid the risks inherent in a natural environment.

"But what we don't need is to march blindly through another environmental "point of no return." That's why, years after we built the dams, highways, railroads, and harbors that interfered with the flow of sand to and along our coastline, our sandy beaches are now almost all gone.

"Solana Beach promised almost 8 years ago when its seawall regulations were being considered that it would conduct adequate environmental review when actual projects were proposed. Since then there have been 14 projects approved, but the City

has issued emergency exemptions for most and piecemeal environmental review for the rest. Never has the City studied and disclosed the cumulative and long term effects in a certified environmental impact report.

"While the City has finally authorized staff to hire a consultant to prepare an environmental impact report, it still insists that all its actions have complied with the law and has not stopped processing seawall permits pending completion of the report. After the City's most recent action approving yet another emergency exemption for a seawall, CalBeach Advocates decided there was no other choice but to take the City to court."

CalBeach Advocates is a new nonprofit corporation formed to preserve, maintain, and restore the natural sandy beaches, coastal bluffs, and nearshore environment through active involvement in public decisions.

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