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February 14, 2014

California Coastal Commission
C/o Sea-Level Rise Work Group
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Sir or Madam:

On behalf of the California Association of Port Authorities (CAPA), we value the opportunity to review and provide comments on the recently-released Draft Sea-Level Rise Policy Guidance document. We look forward to working with you and respectfully request that the California Coastal Commission consider these comments as the Sea-Level Rise Policy Guidance document is further considered.

CAPA is comprised of the state's eleven publicly-owned, commercial ports and is dedicated to maintaining a vigorous and vital port industry in California. The Association, which has been in existence since 1940, is committed to promoting the interests of California's ports, maintaining the state's leading role in the maritime industry, and leading the way in innovative and cutting edge environmentally-friendly port operations.

I. Clarity is needed with regard to Coastal Act provisions and sea-level rise in a Port Master Plan.

As recognized by the California Coastal Act (Coastal Act), ports are unique and vital assets to the State and nation. "The ports of the State of California . . . constitute one of the state's primary economic and coastal resources and are an essential element of the national maritime industry." (Coastal Act Section 30701(a).) The State Legislature recognized the imperative nature of ports when it adopted Chapter 8 of the Coastal Act, which governs, with limited exceptions, the ports of California. (Coastal Act Section 30702.) Pursuant to Chapter 8, ports are encouraged to modernize and construct necessary facilities within their boundaries. (Coastal Act Section 30701(b).) To that end, the policies of Chapter 8 are designed to facilitate port related development while balancing socioeconomic and environmental factors. (See e.g., Coastal Act Sections 30705, 30706, 30707, 30708.) In contrast, Chapter 3 of the Coastal Act, which governs the coastal zone outside of ports (i.e., Local Coastal Programs) and appealable developments within ports, focuses on the preservation of coastal access, recreational opportunities and biological resources in the face development.

The Sea-Level Rise Policy states that it is intended as “guidance, not regulations” and it “does not govern the planning and regulatory actions that the Commission or local governments may take under the Coastal Act” (Sea-Level Rise Policy, p. 12.) Yet, it also states that the Sea-Level Rise Policy “guidance is rooted in certain fundamental principles, many of which derive directly from the requirements of the Coastal Act. In this respect, the principles are not new, but rather generally reflect the policies and practices of the Commission since its inception in addressing coastal hazards and other resource and development policies of the Act.” (Sea-Level Rise Policy, p. 5.) Coastal Act policies are then enumerated and described. (Sea-Level Rise Policy, pp. 5-6.) These two statements seem contradictory.¹ Is it the Coastal Commission’s position that addressing sea-level rise is already required by the Coastal Act? If so, is the Sea-Level Rise Policy intended to be a suggested roadmap for addressing sea-level rise? Will the Coastal Commission in the future require such amendments to Local Coastal Programs and Port Master Plans? As suggested by some Coastal Commissioners at recent hearings, will the Sea-Level Rise Policy be used by the Coastal Commission when reviewing amendments to plans or Coastal Development Permits? CAPA would appreciate some clarification on these points.

If it is the Coastal Commission’s position that sea-level rise must be addressed in Port Master Plans, the Sea-Level Rise Policy fails to cite to a Chapter 8 policy requiring such consideration. The only Chapter 8 policy cited to in the Sea-Level Rise Policy is Section 30711, Preparation and Contents of Port Master Plan, for the principle of maximization of agency coordination and public participation. (Sea-Level Rise Policy, p. 6.) While CAPA agrees that agency coordination and public participation are vital to the success of any public process, that Section of Chapter 8 fails to grant a port or the Coastal Commission the authority to require an amendment to a Master Plan to address sea-level rise.² Clarification on this point is needed.

II. The one-size-fits-all approach in the Policy Guidance conflicts with the Coastal Act’s regulatory structure for ports.

As discussed in Section I of this letter, the regulatory mandates of the Coastal Act are different for ports as compared to cities or counties. Yet, the Sea-Level Rise Policy treats Port Master Plans and Local Coastal Programs the same, undermining the Coastal Act’s regulatory structure and the discrete authority granted to ports under the Coastal Act. For instance, the Sea-Level Rise Policy does not limit sea-level rise adaptation measures designed to address Chapter 3 policies – like development standards, access or recreation – to cities, counties or appealable development within ports. This approach seems to indicate that these measures should also be incorporated into Port Master Plans, which is contrary to the requirements of the Coastal Act.

¹ If the Sea-Level Rise Policy is going to be treated as a regulation, then it should be processed and approved pursuant to the Administrative Procedure Act.

² For example, Section 30253 of Chapter 3, cited in the Sea-Level Rise Policy as authority to minimize coastal hazards through planning and development standards, requires that development minimize risks to life and property in areas of high geological, flood and fire hazards, neither create nor contribute significant erosion, geological instability or destruction of the site or surrounding area or in any way require construction of protective devices that would alter natural landforms along bluffs or cliffs, etc. While sea-level rise arguably may fall within the scope of that Section, a similar policy is not found in Chapter 8.

CAPA suggests that if the Coastal Act grants independent authority to regulate potential sea-level rise impacts in Port Master Plans, the Coastal Commission develop and adopt separate policy guidance for ports.³ Alternatively, the Sea-Level Rise Policy should clearly identify the guidance intended for ports. The policy should also address the unique nature of “mixed-use” ports where non-coastal dependent uses (i.e., appealable development) are often located adjacent to port facilities, as well as situations where the portions of a port is “built out” and routinely undergoes redevelopment on currently developed parcels. Addressing such circumstances may avoid unintended consequences as well. For example, the Sea-Level Rise Policy suggests shoreline protection should be prohibited for non-coastal dependent uses. There could be a pattern of development where a non-coastal dependent use is located adjacent to a coastal dependent use and because no shoreline protection is allowed for the non-coastal dependent use erosion is accelerated. Consequently, the coastal dependent use would be severely threatened by the erosion.

III. Additional adaptation measures that address design of development should be included in the Sea-Level Rise Policy.

After identifying areas that may be impacted by sea-level rise, the Sea-Level Rise Policy includes “adaptation measures” that should be incorporated into a Port Master Plan to mitigate the sea-level rise impacts. (Sea-Level Rise Policy, pp. 49-63.) Many of those measures seem to be designed to limit or prohibit development (or redevelopment) instead of altering the design of development to accommodate sea-level rise. By way of example, one measure states that land use designations should be updated to establish conservation, open space and recreational uses for impacted areas. (Sea-Level Rise Policy, p. 50.) Another measure states that a plan should be updated to limit or prohibit shoreline protection for new development, which in turn may limit the available footprint for development. (Sea-Level Rise Policy, p. 51.) Other measures require establishment of greater setbacks and buffer zones, which could constrain development. (Sea-Level Rise Policy, pp. 53, 57-58.) These types of measures present severe economic impacts and potential legal implications (i.e., regulatory takings, abuse of discretion, etc.). CAPA suggests that other measures such as engineering design, alternative materials, raised foundation, siting of development and use of shoreline protection for built areas be included in the Sea-Level Rise Policy.

In addition, CAPA recommends that project life or design life be removed from consideration in the Sea-Level Rise Policy document. Project life is difficult to determine. Also, it is not clear how the Commission established the 75 to 100 year design life. Predictions for building life-spans are extremely rough estimates, and one estimation technique is based on the type of construction: Temporary: 0-5 years; Semi-permanent: 5-25 years; Permanent: over 25 years: while other methods utilize tables of the expected life of building components or various material types. Architects and engineers, for example, may select particular building materials/components based upon the expected life of the project. Many factors affect the life expectancy of building components, including the quality of the component, quality of installation, level of maintenance, weather and climatic conditions, and intensity of use. If there are no cost constraints, maintenance and repair activities can indefinitely extend the physical life of the structure. Building a new structure that industry determines to have a 25-30 year life to handle expected sea-level rise in 100 years could increase the costs for construction and make capital improvement projects un-affordable.

³ It should be noted that many of the ports in California are currently or in the process of addressing climate change and adaptation outside of their individual Port Master Plans. (ADD).

IV. Certain requirements depend on “feasibility,” which is an undefined term.

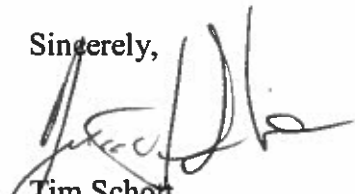
Many of the Coastal Development Permit measures in the Sea-Level Rise Policy depend on the feasibility of a project’s siting or design. However, the Sea-Level Rise Policy does not define what “feasible” or “feasibility” mean. Nor does the Sea-Level Rise Policy refer to the Coastal Act’s definition of “feasible”. (Coastal Act Section 15364 (defining “feasible” as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors”).) For example, if feasible and without shoreline protection, development should not be proposed in locations subject to current and future risks from sea-level rise (i.e., inundation, flooding, erosion, etc.). (Sea-Level Rise Policy, p. 77.) But there is nothing guiding such a feasibility analysis. Clarification on this point would be helpful.

V. Deficiency in resources to implement the Sea-Level Rise Policy.

Implementation of the Sea-Level Rise Policy requires modeling, data collection, mapping, public outreach, drafting, and monitoring. Additionally, California Environmental Quality Act (CEQA) review would be required for any Port Master Plan amendment. The costs for these tasks are anticipated to be in the hundreds of thousands of dollars. Without independent funding sources, such as the grant program for Local Coastal Programs (which is unavailable to ports), CAPA is concerned with the financial burden of implementing the Sea-Level Rise Policy. The Coastal Commission should consider creating a funding source or grant program for ports to implement the Sea-Level Rise Policy.

We appreciate your thoughtful consideration of these comments and look forward to working with you as the Sea-Level Rise Policy Guidance document is further refined.

Sincerely,



Tim Schott
Executive Director