

Legal Implications and Regulatory Takings

STATUTORY SHORELINE PROTECTION FOR EXISTING STRUCTURES

COASTAL ACT SECTION 30235

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Steven H. Kaufmann
Nossaman LLP

Coastal Act Section 30235 – Existing Structures”

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

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

Coastal Act Section 30235 – “Existing Structures”

Section 30235 (First Sentence):

- Revetments, . . . seawalls . . . cliff retaining walls, and other such construction . . . that alter natural shoreline processes **shall be permitted when required to . . . protect *existing structures* . . .** and designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

CCC Position on “Existing Structures” (Since 2015)

“Existing Structures” means:

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

CCC Position on “Existing Structures” (Since 2015)

“Existing structures” are not:

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

CCC Position from 1977 to 2015

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

“. . . the Commission interpreted existing structure to mean **[1] whatever structure was there legally at the time that it was making its decision**, and so **[2] structures that had been approved by the Commission, subsequent to the Coastal Act, were deemed to be existing structures for purposes of Section 30235**, and the Commission found that **[3] under Section 30235, those structures need to be protected where it was required, and that shoreline protective devices were approvable.**”

CCC Position From 1977 to 2015

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

Surfrider Foundation v. CCC (2005)



Cotton, Shires & Associates/Dall & Associates

Surfrider Foundation v. CCC (2005)

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

Casa Mira Homeowners Assn v. CCC (2023)



Casa Mira Homeowners Assn v. CCC -- Redfin

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

- Tentative Ruling: “Existing” means existing at the time of the application for shoreline protection, not 1-1-77
- Not yet final
- An appeal is likely

Section 30235 – “Existing” in Context

“Revetments, . . . seawalls . . . that alter natural shoreline processes shall be permitted when required to . . . protect **existing** structures . . . and designed to eliminate or mitigate adverse impacts on local shoreline sand supply. **Existing** marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.”

“Existing” in Coastal Act Policies

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

“Existing” in More Coastal Act Policies

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

“Existing” in Other Coastal Act Provisions

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

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

- Sec. 30610.6 – section’s application to any “legal lot **existing . . . on the effective date of this section [January 1, 1981]**”
- Sec. 30614 – refers to “permit conditions **existing as of January 1, 2002**”
- Sec. 30608 – “no person who has obtained a vested right for development “**prior to the effective date of**” **the Coastal Act** is required to obtain approval of the development under the Act

Harmonizing 30235 and 30253

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

Unsuccessful Bills to Amend “Existing” in 30235

- AB 2943 (2002 Wiggins) – “existing structure” means “a structure that has obtained a vested right as of January 1, 1977”
- AB 1129 (2017 Stone) – “existing structure” means “structure that is legally authorized and in existence as of January 1, 1977”

Coastal Act v. LCPs Certified Before 2015

- 30235 – applicable only if “existing structure” is within original CCC permit jurisdiction (i.e., seaward of MHTL) or an uncertified area
- Certified LCP -- if “existing structure” is landward of the MHTL, the standard of review is consistency with the LCP
- Most LCPs have the same or similar language
- CCC ordinarily is the final word on the interpretation of an LCP
- BUT, for LCPs certified before 2015 SLR Guidance, because the CCC’s position was “existing structure” means “existing as of the time of the application” – that must be the interpretation of the LCP