



PACIFIC LEGAL FOUNDATION

April 10, 2017

Honorable Cristina Garcia, Chair
Assembly Natural Resources Committee
1020 N Street, Room 164
Sacramento, CA 95814

RE: AB 1129 (Stone) – OPPOSE

Dear Chairwoman Garcia:

We write on behalf of Pacific Legal Foundation to express our opposition to AB 1129. Pacific Legal Foundation (PLF) is the nation's most experienced public interest law firm dedicated to the defense of property rights. It is a nonprofit, tax-exempt foundation organized under the laws of California, founded in 1973. During the past several decades PLF has litigated numerous cases against the Coastal Commission (Commission) asserting constitutional and statutory rights of individual homeowners threatened by unlawful actions of the Commission. We have litigated these matters in both trial and appellate courts, including the United States Supreme Court (e.g., *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987)). The undersigned attorneys are members of PLF's Coastal Land Rights Project who have particular expertise in the Coastal Act and the rights of coastal landowners.

This bill would modify the Coastal Act to deny property owners of homes and other structures built after January 1, 1977, an entitlement to permits for the construction of shoreline protective devices (such as seawalls) necessary to defend their homes against storms, erosion, and other natural hazards. This is a radical change to the Coastal Act that unfairly burdens individual homeowners, will generate litigation, will subject the State and municipalities to liability when homes deprived of shoreline protection are destroyed, and offers no real benefit to the public in terms of coastal access or enjoyment. Rather, the change attempts to codify an errant policy against shoreline protection that the Commission has pursued in recent years. Further, the bill gives the Commission authority to impose monetary penalties on property owners who maintain a shoreline protective device in violation of the revised Coastal Act and undermines property owners' rights to temporary, emergency shoreline protection. None of these changes is warranted by any reasonable concern for the preservation of public coastal resources

Article 1, Section 1 of the California Constitution recognizes an individual right to protect property, including from natural hazards. Moreover, Section 30235 of the Coastal Act requires the Commission to approve permits for the construction of shoreline protective devices to safeguard existing structures in danger from erosion, with certain conditions. Historically "existing structures" has been understood to mean structures existing at the time a permit application is made for a shoreline protective device. The Commission has itself defended that meaning of Section 30235 in

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various court actions in the past, but has in recent years reversed course and taken the extreme position that “existing structures” in Section 30235 means structures existing at the time of the enactment of the Coastal Act in 1977. The proposed bill would ratify this latter untenable interpretation of the law, favored by the present Commission, presumably because it better supports the agency’s aggressive policy of “managed retreat” (i.e., requiring private property owners to helplessly abandon the coast and their homes to destruction in the face of natural hazards rather than take sensible actions to protect and preserve the safety and value of their property).

To further the its largely ideological animus against shoreline protection, the Commission has established a de facto policy of requiring all permit applicants for new beachfront or cliff-top residential development to forever forfeit the right to build a shoreline protective device as a condition of receiving a permit. This policy has been in place since 2010 and PLF has identified more than one hundred permit applications subject to this requirement. Remarkably, this policy has never been subjected to rulemaking procedures under the Administrative Procedure Act, making it unlawful. The changes sought to the Coastal Act by AB 1129 would effectively allow the Commission to continue this policy insulated from future judicial review, to the detriment of an untold number of future homeowners.

The undersigned attorneys recently represented one property owner in San Clemente in a challenge to an application of that policy, *Capistrano Shores Property, LLC v. California Coastal Commission*, Orange County Superior Court Case No. 30-15-00785032. The issue in that case was whether the Commission had authority to require the property owner to waive his right to shoreline protection under Section 30235 in exchange for a permit to replace his beachfront mobile home with a substantially identical new one. The court held for the property owner, overturning the waiver condition on the permit as unlawful, although the court was not required to address the meaning of “existing structure” in its holding. As a result, the family that owns the property continues to enjoy the security and value of their cherished mobile home. The proposed changes would likely have resulted in a loss for the property owner in that case. Likewise, PLF represents other property owners in additional cases involving the rights of coastal landowners to shoreline protection under Section 30235—rights that will be lost if AB 1129 is enacted. See, e.g., *Beach & Bluff Conservancy v. City of Solana Beach*, San Diego Superior Court Case No. 37-2013-000446561. One such case is now pending before the California Supreme Court (*Lynch v. Coastal Commission*, California Supreme Court Case No. S221980).

AB 1129 also will give rise to significant new litigation and liability for governmental agencies. Homeowners along California’s 1,100 miles of coastline have built, restored, or enhanced their coastal properties since 1977, relying on Section 30235’s promise of shoreline protection for existing structures. AB 1129 negates this promise. These homes were built with permits issued by the Coastal Commission or municipalities operating under Commission-approved Local Coastal Programs. The destruction of these homes that will inevitably result from the new policy will subject the State and local governments to liability when individual homes are damaged.

Finally, the changes worked by AB 1129 will not produce any material benefits to the public in terms of coastal access or preservation of coastal resources. Eliminating the right of homeowners to protect their property from destruction by forces of nature will not, in fact, improve California’s beaches. Storms, erosion, and other natural hazards will continue to occur. Those forces that destroy

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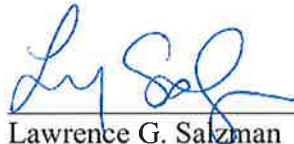
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bluffs and deplete the beaches of sand, not shoreline protection of private property, are the enemies of the public's enjoyment of the coast. Far from presenting any public harm, shoreline protective devices built to protect private property—at private expense—preserve the public property that borders private spaces. There is a harmony of interests in this regard between the public and private property along the coast. People can walk more safely on beaches below bluffs when those bluffs are secured by protective devices; seawalls that buffer land from the encroaching sea also protect the walkways, streets, access paths, and other public resources enjoyed by the general public. Additionally, the existing language of Section 30235 gives the Commission all the power necessary to deny, condition, or mitigate proposed shoreline protective devices that may pose a bona fide risk to public resources.

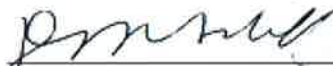
In short, AB 1129 will result in great harm to private property owners along the coast, and will subject the State to liability, while ignoring the public benefits that arise from private action to preserve a stable shoreline in areas where natural forces threaten erosion and other damage. AB 1129 should be rejected.

PLF Senior Attorney Damien Schiff is available to testify about these and related matters before the Assembly Natural Resources Committee when it meets to consider AB 1129 on April 17. He can be reached at any time prior at 916-419-7111.

Sincerely,



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