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CONFLICT AT THE COAST:

Protecting California's
Coastal Resources
by Ensuring the
Consistent Application
of the Coastal Act's
Conflict Resolution
Provisions

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Introduction

► **THE CALIFORNIA COASTAL ACT** (“Coastal Act” or “Act”) is the State’s preeminent law for protecting California’s invaluable coastal resources. The Act’s overarching goal is to protect, maintain, and where feasible, enhance and restore the overall quality of and access to California’s coast. The Act lays out a complex series of provisions ranging from the California Coastal Commission’s (“Commission’s”) broad coastal resource protection mandate to responsibilities of the state’s seventy-six coastal zone cities and counties to implement the Act through more granular development and zoning restrictions. The Coastal Act requires a range of environmental, economic, public access and recreation, and scientific factors to be considered by the Commission and local jurisdictions in implementing the Act.

Given the expansive nature of the Act’s provisions all working in tandem, the drafters recognized the potential for conflict between provisions as the Coastal Act was implemented in California’s diverse coastal localities. For example, strict adherence to the Act’s “environmentally sensitive habitat” provisions may, under some circumstances, conflict with the public access mandate. In anticipation of these conflicts, the drafters included Section 30200 and Section 30007.5 of the Coastal Act to direct resolution consistent with the Act’s overarching purposes. Section 30200 directs the Commission and local governments implementing the Coastal Act to resolve conflicts through a process outlined in Section 30007.5, supported by “appropriate findings setting forth the basis for

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the resolution identified.” Section 30007.5 directs conflicts “be resolved in a manner which on balance is the most protective of significant coastal resources.”

Conflicts occur relatively infrequently and the Act’s conflict resolution provisions are not commonly cited by the Commission in staff reports or in case law. However, the Commission’s recent application of these provisions to approve the City of Pacifica’s revised Local Coastal Land Use Plan (“LCP”) is one of several Commission decisions demonstrating a lack of uniform process for conflict resolution. Under the Coastal Act, localities are required to prepare LCPs laying out local zoning and land use regulations for activities within the coastal zone, which the Commission considers for approval. To approve, the Commission must find an LCP consistent with the Coastal Act.¹ The Commission’s controversial approval of Pacifica’s LCP in May 2025 applied the conflict resolution provisions in a discretionary manner that threatens the very coastal resources the Coastal Act was enacted to protect. The Pacifica decision, along with prior decisions based on inconsistent applications of the conflict resolution provisions, demonstrates that identification and implementation of a clear analytical framework is needed to ensure the Act is upheld and coastal resources protected.

In Pacifica’s case, the City included a series of provisions in its LCP allowing shoreline armoring in what it calls “Special Shoreline Resiliency Areas” (“SSRAs”) despite clear inconsistency with the Sections 30235 and 30253 of the Act, which generally prohibit development from relying on armoring.² The Commission faced the decision to either approve the LCP with the SSRA provisions or deny the LCP (it could not require a modified version). The Commission found the decision raised a purported conflict governed by Section 30007.5. Denial would leave Pacifica’s existing, outdated LCP in effect and public infrastructure exposed to sea level rise and coastal erosion, potentially resulting in adverse effects to water quality and marine resources in the future through discharged debris and sewage, contrary to the Commission’s obligation to protect these resources under Sections 30230 and 30231. However, approval would permit additional shoreline armoring contrary to Sections 30235 and 30253. The Commission concluded it should approve the LCP (and the SSRA provisions) under Section 30007.5 to ward against possible water quality impacts and enable additional planning over a twenty-year period. It found the overall enactment of an updated LCP was more protective of coastal resources than upholding the Coastal Act’s shoreline armoring prohibition to prevent the erosion of beaches and degradation of public access, recreation, and natural scenic resources. However, in so doing, the decision prioritized speculative effects over known, near and long-term impacts of armoring, inconsistent with the underlying intent of the Coastal Act.

¹ CAL. PUB. RES. CODE §§ 30512, 30512.2.

² [CITY OF PACIFICA, LOCAL COASTAL LAND USE PLAN REVISED DRAFT](#), 6–29, 6–30 (Mar. 2025) [hereinafter Pacifica LCP].

The Commission's decision reflects the challenging moment California's coastal jurisdictions are now meeting: In many places, continued development at the coast contravenes both the letter and the intent of the Coastal Act, but local communities remain deeply divided about how to plan for the growing impacts of sea level rise. The City of Pacifica's revised LCP had been under development for the better part of a decade to update an LCP that was itself decades old. Although the newly approved LCP undercuts the Coastal Act's general prohibition on shoreline armoring, the Commission opted to approve the plan as a temporary solution to these ongoing planning complexities. But the Coastal Act demands that these challenges be met head on, now.

The Commission's interpretation of the conflict resolution provision sets a concerning precedent that will have potentially wide-ranging impacts on California's coastal resources. Over thirty other local governments are in the process of updating their LCP or awaiting Commission review of a recently updated LCP; this decision will inform their policies.³

The issues raised by the conflict resolution assessment in the Pacifica staff report are emblematic of a longstanding absence of uniformity in the Commission's application of the Coastal Act's conflict resolution provisions. The current approach lacks a systematic analytical framework with consistent factors to guide the analysis of each conflict. Without a clear set of factors, the Commission's assessments are discretionary and unpredictable, and at times, will undermine the purpose and intent of the Coastal Act.

Conflict resolution factors with clearly articulated conflict-weighting principles, established by regulation, are needed to strengthen the administrative record and improve the fairness, transparency, and defensibility of the Commission's decision-making. This paper will proceed in several parts. In Part II, we will discuss the Commission's interpretation of the Coastal Act's conflict resolution provisions in the Pacifica case. In Part III, we will analyze the legislative and statutory history of the Coastal Act's conflict resolution provisions, highlighting the lack of guidance regarding the application of these provisions. In Part IV, we will discuss the historical application of these provisions to other proposed actions, demonstrating the scattershot approach to conflict resolution that has been the norm. Finally, in Part V, we will offer recommendations about how the process can be standardized to effectuate the Coastal Act's intent in the future.

3 Seven local governments have LCP updates "pending" and another twenty-six are in the process of updating. Mandy Sackett, [Commission Certifies Pacifica's Sea Level Rise Plan: A Blueprint for Beach Loss, ACT COASTAL](#) (May 28, 2025).



2 | Conflict Resolution in Pacifica and Potential Ramifications for Other Coastal Communities

► **THE CITY OF PACIFICA** is located in San Mateo County, just south of San Francisco. The city is famous for its beaches and surf breaks. But like many other coastal municipalities in California, sea level rise and erosion threaten developed areas directly abutting beaches and bluffs—and its coastal land use decisions have been based on an LCP enacted decades ago.⁴ However, in May 2025, forty-five years after the previous LCP was adopted, the Commission certified Pacifica’s updated plan.⁵ The decision was the culmination of a long and controversial process centered around the inclusion of “Special Shoreline Resiliency Areas,” or SSRAs, which allow two developed areas of Pacifica to continue relying on shoreline armoring as the “preferred adaptation approach” for an interim 20-year period.⁶

The Coastal Act directs the Commission to permit armoring when “required to serve coastal-dependent uses or to protect existing structures or public beaches from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.”⁷ But new development must not “in any way require the construction of protective

4 The Coastal Act requires coastal local governments to prepare LCPs to regulate development in the coastal zone and ensure the Coastal Act’s coastal resource protection and public access objectives are met. The Commission then certifies the LCP once it determines the policies are consistent with the Coastal Act. CAL. PUB. RES. CODE §§ 30500–30534; [Local Coastal Information](#), CAL. COASTAL COMM’N (last visited Oct. 26, 2025).

5 Sackett, *supra* note 3.

6 Pacifica LCP, *supra* note 2, at 6–14.

7 CAL. PUB. RES. CODE § 30235.

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devices.”⁸ In contrast, under Pacifica’s LCP, armoring can be permitted for public infrastructure (sidewalks, accessways, parking areas, water and sewer infrastructure) and development directly inland in SSRAs regardless of whether it complies with Coastal Act requirements.⁹ The City recognized the conflict with broad Coastal Act objectives because SSRAs could result in continued loss of beaches, public recreational access, and adverse coastal resource impacts over the 20-year interim period.¹⁰ ¹¹ Indeed, Commission staff observed that “the proposed SSRA provisions are inconsistent with the Coastal Act’s limits on shoreline armoring, which direct their denial.”¹²

However, the Commission ultimately approved the LCP under the rarely-invoked Section 30007.5 conflict resolution provision.¹³ While Sections 30253 and 30235 directed the LCP’s denial based on the SSRAs’ inconsistency with the Coastal Act, Commission staff found denial would leave public infrastructure vulnerable to coastal hazards, with the potential for “adverse beach, marine, and water quality impacts” inconsistent with the Commission’s affirmative obligation under Sections 30230 and 30231 to protect marine resources and water quality.¹⁴ Staff concluded these potential impacts created a conflict. The Commission resolved the conflict by finding approval of the LCP “on balance... the most protective of coastal resources” under Section 30007.5, and therefore approved the LCP.¹⁵

Commission staff observed that “the proposed SSRA provisions are inconsistent with the Coastal Act’s limits on shoreline armoring, which direct their denial.” However, the Commission ultimately approved the LCP under the rarely-invoked Section 30007.5 conflict resolution provision.

⁸ CAL. PUB. RES. CODE § 30253.

⁹ Pacifica LCP, *supra* note 2, at 6–30.

¹⁰ [Stephanie Rexing, Oceane Ringuette, and Julian Honey, CITY OF PACIFICA LOCAL COASTAL PROGRAM AMENDMENT NUMBER LCP-2-PAC-23-0056, CAL. COASTAL COMM’N, 3 \(Apr. 23, 2025\)](#), [hereinafter Pacifica Staff Report].

¹¹ Armoring impedes public access and accelerates the loss of the beach and coastal habitats in a variety of ways. Structures limit sand supply, disrupt natural floodplain processes, create a physical barrier to access, make swimming or surfing less safe, and contrast harshly with the natural landscape. MOLLY LOUGHNEY MELIUS & MARGARET R. CALDWELL, STAN. L. SCH. ENV’T & NAT. RES. L. & POL’Y PROGRAM, 2015 CALIFORNIA COASTAL ARMORING REPORT: MANAGING COASTAL ARMORING AND CLIMATE CHANGE ADAPTATION IN THE 21ST CENTURY, 7–12 (2015).

¹² Pacifica Staff Report, *supra* note 10, at 3.

¹³ The Coastal Act requires conflicts between policies be resolved “in a manner which on balance is the most protective of significant coastal resources.” CAL. PUB. RES. CODE § 30007.5.

¹⁴ Pacifica Staff Report, *supra* note 10, at 68, 54.

¹⁵ *Id.* at 3.

A. The Commission Found Both Approval and Denial of Pacifica's LCP Conflicted With the Coastal Act

Commission staff followed a complex two-part analysis to reach this conclusion. First, staff considered seven factors that the Commission has historically used to assess whether the Coastal Act's conflict resolution provisions apply. The first two factors assess whether approval and denial of the proposed action would both be inconsistent with the Coastal Act.¹⁶ The second two consider whether the proposed action (here, certifying a revised LCP) would require tangible resource enhancement and whether it is consistent with the Act's resource enhancement mandate.¹⁷ The next two factors consider whether the proposed action's coastal benefits derive directly from the proposal, rather than being ancillary benefits or requirements of other laws.¹⁸ The final factor considers whether there are any feasible alternatives to the proposed action that do not violate the Act.¹⁹ Commission staff determined that both approval and denial of the LCP would conflict with the Act in some way; that approval would result in tangible, necessary resource enhancement consistent with the Act's mandates; that coastal benefits derived directly from the LCP proposal; and there were no feasible alternatives to the LCP proposal that would not also violate the Act.²⁰ Approval of a modified version of the LCP without the SSRA provisions was not an option without Pacifica's input. Accordingly, the Commission found that a conflict existed.

Commission staff then applied the conflict resolution provision to determine whether approval or denial of the updated LCP was "on balance... the most protective of coastal resources" under Section 30007.5.²¹ The provision states "broader policies... may be more protective, overall, than specific wildlife habitat and other similar resource policies."²² Staff interpreted this to mean "broader overall considerations may be more critical than more single-resource focused considerations."²³ Staff reasoned that near-term, but speculative, adverse water quality and marine resource impacts from potential erosion, were "relatively obvious" if armoring was prohibited, while removal of at-risk infrastructure and restoration of beaches if the natural replenishment of sediment was enabled was "highly uncertain, if not improbable."²⁴ Therefore, staff found that the SSRA's extra allowances for armoring served as a "temporary 'bridge'" toward longer-term solutions, and approval of the LCP would result in a "significant step forward" in coastal resource protection despite clear inconsistencies with the Coastal Act.²⁵ Staff cited the SSRA provisions as the "practical

¹⁶ *Id.* at 68.

¹⁷ *Id.* at 68–70.

¹⁸ *Id.* at 70–71.

¹⁹ *Id.* at 73–74.

²⁰ *Id.* at 68–74.

²¹ CAL. PUB. RES. CODE § 30007.5.

²² *Id.*

²³ Pacifica Staff Report, *supra* note 10, at 74.

²⁴ *Id.* at 75.

²⁵ *Id.* at 77, 3.



planning approach,” enabling the Commission and local governments to “address the reality of existing and expected future coastal hazards.”²⁶

Following a public hearing on the proposal, eight out of nine commissioners voted to approve the updated LCP. While the Commission did not reference Section 30007.5 directly in its deliberation at the May 2025 hearing, it agreed with the staff recommendation that approval was the practical approach and therefore a good first step in sea level rise planning, even if the plan was, in Commissioner Wilson’s words, “probably not the best one.”²⁷ The Commission expressed concern that the benefits of the “Shoreline Adaptation Program” were not completely fleshed out and called for more specifics going forward.²⁸ The lone commissioner who opposed the LCP also raised concerns about the precedent this decision would set because “things beget things,” referring to armoring.²⁹ The Commission and staff both acknowledged the importance of the Pacifica decision as the first of many similar LCP amendments the Commission will consider in the coming years.³⁰

²⁶ *Id.* at 78.

²⁷ Public Hearing, held by California Coastal Commission, Cal-Span at 3:36 (May 8, 2025) (available online at https://cal-span.org/meeting/ccc_20250508/) [hereinafter Hearing].

²⁸ *Id.* at 3:55, 4:07. The Shoreline Adaptation Program has five primary components: (1) identification of baseline conditions and expected change for the shoreline from sea level rise and armoring; (2) development of an overall vision for Pacifica’s coastline and requirements for new and existing development; (3) evaluation of adaptation options for SSRAs and armoring; (4) identification of sandy beach areas used for recreation and strategies to preserve these areas; and, (5) identify funding for adaptation options. Pacifica Staff Report, *supra* note 10, at 40.

²⁹ Hearing, *supra* note 27, at 4:07.

³⁰ *Id.* at 3:41; Pacifica Staff Report, *supra* note 10, at 3.

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B. Approval of Pacifica's LCP Sets Concerning Precedent for California's Coastal Jurisdictions Conducting Sea Level Rise Planning

The Commission's approval of Pacifica's updated LCP and the reasoning offered by the Commissioners and staff does not comport with the letter or the intent of the Coastal Act and will have serious ramifications for California's coastal resources if applied to other LCP update approval processes.

First, it is unclear whether the Commission's initial decision that a conflict is present met the seven-factor test to identify a conflict subject to Section 30007.5. Staff's findings in this regard are vague, incomplete, and subjective.³¹ Staff provided no real evidence of the "potential" marine resource and water quality degradation it referenced as the primary reason that denial of the LCP is inconsistent with the Commission's obligation to protect coastal resources. The "potential" water quality impacts from potential erosion and structural failures staff focused on were purely speculative and presumed an inability to relocate any of the coastal development away from coastal hazards.

Staff did not meaningfully consider the certain harms to these same resources and others the Coastal Act obligates the Commission to protect, such as beaches, recreation, public access, and natural and scenic resources, from shoreline armoring.³² In comparison to the potential harms from not allowing SSRAs, the harm of shoreline armoring is already well-documented and actively occurring in Pacifica where structures have crumbled into the ocean or been deemed uninhabitable and seawalls and rip rap take up increasing room on disappearing beaches.³³ Beyond the ongoing harm, extending the use of shoreline armoring for at least the next twenty years (and likely much longer because once installed, there is no evidence armoring is ever meaningfully removed) would also bring a slew of potential harms that the staff analysis and Commission decision fail to grapple with.³⁴ Under the third and sixth factors of the analysis, the Commission found the benefits of the "Shoreline Adaptation Program" included in the revised LCP were uncertain because program specifics have yet to be developed. Staff noted the program's goal of establishing a "long-term comprehensive approach" to addressing changes at the coastline with an emphasis on "maintaining beaches... and their related access, recreation, habitat, and other benefits."³⁵ But localities are already expected to conduct this analysis under SB 272 through the LCP update process.³⁶ Further, armoring will likely interfere with or even preclude any potential LCP "benefits," such as enhanced access and recreation.

31 Pacifica Staff Report, *supra* note 10, at 3, 69.

32 CAL. PUB. RES. CODE §§ 30001, 30220, 30221, 30230, 30231, 30251, 30252.

33 Ezra David Romero, *Rising Tides, Tough Choices: Pacifica Allowed to Bolster Seawalls as a Stopgap Plan*, KQED (May 9, 2025).

34 Sackett, *supra* note 3.

35 Pacifica Staff Report, *supra* note 10, at 39.

36 Governor Gavin Newsom approved SB 272 on October 7, 2023. The bill requires coastal localities in California to develop and integrate sea level rise plans into LCPs subject to Commission approval. The plans must use the best available science and include a vulnerability assessment, adaptation strategies and recommended projects, identification of lead planning and implementation agencies, and a timeline for updates as needed. Sea level rise: planning and adaptation. S.B. 272, 2023-2024 Reg. Sess. (Cal. 2023).

Second, even if the seven-factor test is appropriately applied to determine that a proposed action would cause a conflict between Coastal Act provisions, the Pacifica process highlights the fact that the next part of the decision-making process—deciding how to resolve that conflict—is highly subjective and completely discretionary. Both the staff recommendation and the Commissioners considered factors beyond what the Coastal Act envisions. Staff and commissioners relied heavily on their own conclusion that SSRAs are the practical near-term (twenty-year) solution, and other strategies like inland relocation are not feasible. In addition, the staff recommendation found SSRAs will help maintain Pacifica’s “character” by allowing protected businesses to “avoid uncertainty” regarding sea level rise and erosion impacts.³⁷ These conclusions are not accompanied by specific findings on the connection to protecting coastal resources or citation to a Coastal Act provision permitting these factors to be considered.

The staff recommendation and the Commission also both focused heavily on the benefit to coastal resource protection of passing an updated LCP in comparison to denial and continued use of the 1980 LCP. This is particularly dangerous reasoning because it could be broadly applicable to almost every LCP review process where many other jurisdictions’ LCPs are also decades old. This line of thinking could support the approval of supposed “bridge” LCPs with provisions that significantly harm coastal resources in contravention of the Coastal Act, so long as the majority of the LCP provisions are consistent with the Act’s requirements—without forcing hard conversations during the planning process or more deeply assessing whether a completely Coastal Act-compliant plan would be possible. Most troublingly, if coastal jurisdictions mired in challenging land use debates know in advance that the Commission is likely to turn a blind eye to inconsistencies with the Coastal Act to facilitate approval of an LCP, they will have every incentive to choose a path that favors coastal development and continued reliance on harmful armoring as an “interim” measure, as Pacifica did. But these “interim” plans will change the coastal landscape of their jurisdictions over the critical next few years, with impacts lasting well beyond the lifespan of an LCP.

If coastal jurisdictions mired in challenging land use debates know in advance that the Commission is likely to turn a blind eye to inconsistencies with the Coastal Act to facilitate approval of an LCP, they will have every incentive to choose a path that favors coastal development and continued reliance on harmful armoring as an “interim” measure.

³⁷ Pacifica Staff Report, *supra* note 10, at 78.



3 | Legislative / Statutory History of the Conflict Provisions of the Coastal Act

► **UNFORTUNATELY, THERE IS VERY LIMITED** legislative history that could have aided the Commission’s interpretation of the Coastal Act provisions on conflict resolution. Both Section 30007.5 and Section 30200 were originally added by Stats. 1976 (the Coastal Act). Section 30007.5 has not been amended since, and the legislative history does not offer a more specific interpretation of the statute’s balancing framework language. Section 30200 was amended by Stats. 1982, c. 43 to add subsection (b), directing the Commission and local governments to resolve conflicts identified in implementation of the Coastal Act by following Section 30007.5 and including “appropriate findings setting forth the basis for resolution of identified policy conflicts.” The Summary Digest for the 1982 amendment explains that “legislative findings and declarations, which provide for resolving policy conflicts in a

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prescribed manner,” are required in conflict resolution, but this merely points back to the “appropriate findings” requirement in subsection (b) of the statute. The legislature did not release committee reports for the 1976 enactment or 1982 amendment and the bill analyses do not add interpretive language. In *McAllister v. California Coastal Commission*, the court found the Coastal Act requires “the Commission to make findings that identify the conflict and explain how it has been resolved.”³⁸ In *Kalnel Gardens, LLC v. City of Los Angeles*, the court noted provisions must be liberally construed under Section 30009 to resolve conflicts in a manner that accomplishes the Act’s goals.³⁹ California courts have located these goals in Section 30001.5, therefore directing liberal construction to advance protection of the coast and maximum public access.⁴⁰ To resolve the conflict in *Kalnel Gardens*, the court cited Section 30001.5, stating “protecting coastal resources is a paramount concern because those resources are of vital and enduring interest.”⁴¹

Therefore, while it is clear conflicts resolved under Section 30007.5 must be accompanied by findings that identify the conflict and demonstrate how the Commission’s resolution maximizes coastal resource protection, the statutory language and case law is unclear with respect to what findings should be considered and how the Commission should weigh them in order to appropriately meet that requirement. Nor does the statute’s legislative history provide good guidance about the Legislature’s intent for a conflict resolution process.

Ultimately, without reform, the Commission’s approach will continue to stretch the intended scope of the provisions and undermine transparency and uniformity in coastal decision-making.

38 169 Cal. App. 4th 912, 941 (2008), as modified (Jan. 20, 2009).

39 3 Cal. App. 5th 927, 945–46 (2016). See CAL. PUB. RES. CODE § 30009, “The Coastal Act must ‘be liberally construed to accomplish its purposes and objectives.’”

40 See *Pac. Palisades Bowl Mobile Ets., LLC v. City of Los Angeles*, 55 Cal. 4th 783, 794–96 (2012); *Greenfield v. Mandalay Shores Cmty. Assn.*, 21 Cal. App. 5th 896, 900 (2018); *Citizens for S. Bay Coastal Access v. City of San Diego*, 45 Cal. App. 5th 295, 306–07 (2020), as modified (Mar. 16, 2020).

41 The court held affordable housing was not required where the project would block coastal access, intrude into environmentally sensitive areas, or be visually incompatible with existing uses. 3 Cal. App. 5th at 946.



4 | A Review of the Commission's History of Conflict Resolution Decisions Reveals Overarching Challenges

► **A THOROUGH REVIEW** of past California Coastal Commission decisions that include conflict resolution analysis reveals the Commission's inconsistent application of the Coastal Act's conflict resolution provisions. These inconsistencies have led to decisions at odds with the intent of the Coastal Act and to unpredictability for local governments, communities, and stakeholders in coastal regions across California. Without a clear rule to guide the Commission's determination once it decides a conflict exists, the Commission can invoke the provisions without clearly articulating whether or why certain interests outweigh others explicitly protected in the Coastal Act. Ultimately, without reform, the Commission's approach will continue to stretch the intended scope of the provisions and undermine transparency and uniformity in coastal decision-making.

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A. The California Coastal Commission's Seven-Factor Conflict Resolution Identification Is Not Treated Uniformly Across Staff Reports, Creating Confusion

In some staff reports, such as the Pacifica decision, the Commission outlines a rigorous and systematic seven-factor⁴² approach to determine, in the first instance, if there is a conflict that triggers conflict resolution assessment. This analysis is done before the Commission next assesses which decision is, on balance, most protective of coastal resources. Thus, there is essentially a two-step process for assessing conflict resolution: first, using the seven factors to assess if there is a conflict, and then second, analyzing which decision is most protective of coastal resources.

However, in other reports,⁴³ the staff uses these seven factors as the only basis for conflict resolution analysis, and not as a threshold assessment. Thus, there is no "step two" which contains a weighing analysis after the seven factors to determine which decision is, on balance, most protective of coastal resources. For example, in the staff report for a Caltrans "State Route-1 Bicycle and Safety Improvement project,"⁴⁴ Commission staff asserted that "the Commission has traditionally resolved conflicts via Section 30007.5 by analyzing the project according to the following seven steps." After assessing the seven factors, the report concludes that "the proposed project as mitigated and conditioned is approvable pursuant to the conflict resolution provisions of the Coastal Act." No weighing or analysis occurred beyond the seven-factor analysis. Thus, the staff is essentially using the seven factors as the conflict resolution assessment process, rather than as a first step to determine if there is a conflict that triggers conflict resolution assessment.

This analytical approach is in direct contrast to the majority of staff reports, such as the one evaluating Pacifica's LCP update, which use the seven factors to resolve the threshold question of whether there is indeed a conflict to assess, as a first step, and then, as a second step, assess which decision is, on balance, most protective of coastal resources. For example, the staff report considering the Caltrans Gleason Beach Highway 1 Realignment project indicates that the seven factors are "criteria for applying conflict resolution," and thus criteria to determine if there was

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- 42 In order to invoke conflict resolution, the Commission has stated that it must conclude all of the following with respect to the proposal before it: 1) The project, as proposed, is inconsistent with at least one Chapter 3 policy; 2) The project, if denied or modified to eliminate the inconsistency, would affect coastal resources in a manner inconsistent with at least one other Chapter 3 policy that affirmatively requires protection or enhancement of those resources; 3) The project, if approved, would be fully consistent with the policy that affirmatively mandates resource protection or enhancement; 4) The project, if approved, would result in tangible resource enhancement over existing conditions; 5) The benefits of the project are not independently required by some other body of law; 6) The benefits of the project must result from the main purpose of the project, rather than from an ancillary component appended to the project to "create a conflict;" and, 7) There are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies. See e.g. Marc Talavera, Staff report: REGULAR CALANDAR APPLICATION NUMBER 5-23-0291, CAL COASTAL COMM'N, 38 (Mar. 28, 2024) <https://documents.coastal.ca.gov/reports/2024/4/F11c/F11c-4-2024-report.pdf> (Approving with conditions the Caltrans State Route 1 Bike Lanes and Safety Improvement Project).
- 43 See Karl Lintvedt, STAFF REPORT: REGULAR CALENDAR APPLICATION NUMBER 6-22-0196, CAL. COASTAL COMM'N (Feb. 7, 2024) <https://documents.coastal.ca.gov/reports/2024/3/Th16a/Th16a-3-2024-report.pdf> (Approving with conditions the El Camino Real Bridge Project).
- 44 In this report, staff outlines a potential Coastal Act conflict as the proposed project is inconsistent with Section 30240(a) of the Coastal Act because the proposed project will take place in coastal dune and coastal scrub Environmentally Sensitive Habitat Area (ESHA) under the California Endangered Species Act, and thus will impact ESHA, and the project's purpose is not a resource-dependent use allowed within ESHA. However, if the Commission denied the development, the existing bike lane would remain in its current non-standard, intermittent condition, and the improved public safety and public access to the coast would be lost.

a conflict.⁴⁵ Similarly, the MST Bus Road CDP Staff Report⁴⁶ uses the seven-factor test to conclude that the proposed project did not qualify for conflict resolution, and accordingly, “the next step of evaluation” was not required. This inconsistency casts uncertainty on the purpose of the seven factors.

Thus, regulatory improvements are needed to make the process more uniform, transparent, and consistent with the primary purposes of the Coastal Act, and the test must be adopted fairly and subject to public comment. The seven-factor process should be codified to align with the majority approach: as a threshold analysis to determine whether there is a conflict that must subsequently be weighed to determine which side, on balance, is most protective of coastal resources. It should be the first step, not the end of the conflict resolution analysis.

B. Current Conflict Resolution Assessment Contains No Uniform Factors or Systematic Guidance for Analysis

While in most staff reports, the Commission completes the seven-factor assessment in order to identify the threshold question of whether a conflict exists, there is a second problem: once a conflict is identified, rigorous analysis ends. In many staff reports, the crucial next step, assessing which decision is on balance the most protective of coastal resources, lacks meaningful analysis. The Commission has no defined factors or criteria for how to actually weigh the competing policies and considerations to determine which resolution to the conflict is “most protective” of coastal resources. As a result, the existing process leaves the Commission with broad discretion to elevate certain policy considerations over others without a transparent or consistent rationale.

Many staff reports do not outline any factors for assessing how the Commission concluded that project approval would be, on balance, most protective of coastal resources. Instead, they list the benefits of approving the project, the downsides of denying it, and summarily conclude that approval is most protective of coastal resources, without any systematic analysis of why this is the case. For example, a staff report for the City of San Diego Crest Canyon Park project⁴⁷ indicates only one reason why project denial would be less protective of coastal resources: It “would result in significant adverse effects to ESHA⁴⁸ due to the continued erosion and habitat transformation from the existing stormwater pipe and outfall.” However, there is no analysis or explanation of why this is

45 See CAL. COASTAL COMM’N, 2-20-0282, STAFF REPORT: CDP APPLICATION (Oct. 23, 2020) <https://documents.coastal.ca.gov/reports/2020/11/F10a/F10a-11-2020-report.pdf> (Approving with conditions the Caltrans Gleason Beach Highway 1 Realignment).

46 See CAL. COASTAL COMM’N, 3-23-0288, COMBINED STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION CDP DE NOVO HEARING CDP APPLICATION (Jul. 26, 2024), <https://documents.coastal.ca.gov/reports/2024/8/W15a-W16a/W15a-W16a-8-2024-report.pdf> (Issuing substantial issue and denial of two CDPs associated with the Monterey-Salinas Transit bus road project.)

47 See Karl Lintvedt, STAFF REPORT: REGULAR CALENDAR APPLICATION NUMBER 6-22-0597, CAL. COASTAL COMM’N (Aug. 24, 2023) <https://documents.coastal.ca.gov/reports/2024/3/Th16a/Th16a-3-2024-report.pdf> (Approving with conditions the City of San Diego aluminum storm-drain pipe and outfall replacement project).

48 ESHA refers to Environmentally Sensitive Habitat Area, defined by Coastal Act Section 30107.5 as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.” Coastal Act Section 30240 emphasizes that “environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas... Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.”

the case. The staff report does not systematically compare the magnitude or permanence of the harm to the ESHA from the new project versus the continued harm from the existing condition.

Another example is the California Department of Transportation State Route 1 Bicycle and Safety Improvements Project, where staff offered a conclusion rather than an analysis, asserting that the project is essential and that impacts will be minimized, without any systematic assessment of the benefits or downsides of approval. After the seven-factor assessment,⁴⁹ the report only had two brief sentences that represent the entirety of the conflict resolution assessment. In these sentences, no weighing occurred at all, and the staff instead concluded that the benefits of completing the contiguous bike lane and associated safety improvements make the project approvable, even though ESHA impacts will occur.

The above examples indicate the frequent lack of balancing analysis in conflict resolution assessments.⁵⁰ Without uniform criteria, conflict resolution assessments are unpredictable across regions and project types, creating uncertainty for stakeholders across California.

However, some staff reports suggest a better analytical approach by weighing each side of the conflict. For example, proposed construction activities for the Caltrans Gleason Beach Highway 1 Realignment Project⁵¹ required the removal of portions of environmentally sensitive coastal scrub habitat area. This habitat removal would violate the Coastal Act, but denying or modifying the project would violate Coastal Act requirements to maximize public access and recreation, restore marine resources, and protect scenic and visual qualities, because leaving the highway in its present location would mean continued loss of public access to the stretch of coast and its public recreational opportunities. The staff clearly outlined the downsides of both approving and denying or modifying the project, and clearly articulated why, on balance, approving the project would better achieve coastal protection. The staff report also illustrated how negative impacts caused by project approval would be mitigated.⁵²

49. The report only includes the following as a conflict resolution assessment: “although impacts to ESHA will occur because of completing the contiguous bike lane and associated safety improvements, the Applicant has included measures to minimize any ESHA impacts and has included advance mitigation for those impacts. While these impacts are inconsistent with Section 30240(a), the proposed project as mitigated and conditioned is approvable pursuant to the conflict resolution provisions of the Coastal Act.” See Talavera, *supra* note 42, at 40.

50. The Commission has also clearly stated that the conflict resolution assessment is entirely discretionary. In the San Francisco Public Utilities Commission Ocean Beach Armoring staff report, staff indicate that “in order to resolve the identified conflict, the Commission must take an action which is, on balance, the most protective of significant coastal resources. Such a determination is a **discretionary decision for the Commission**, where the pros and cons for various outcomes can be **considered** and applied.” (emphasis added). In this report, the staff did not undergo only systematic balancing of the conflict and did not thoroughly evaluate the downsides of project approval. Staff instead outlined just the benefits of approval and the downsides of denial, which does not seem to be a sufficient approach to weighing a conflict. See CAL. COASTAL COMM’N, 2-21-0912, STAFF REPORT: CDP APPLICATION (Oct. 31, 2024) <https://20811975.fs1.hubspotusercontent-na1.net/hubfs/20811975/Th10a-11-2024-report.pdf> (Approving with conditions the removal of temporarily authorized San Francisco Public Utilities Commission armoring).

51. See Caltrans Gleason Beach Highway 1 Realignment, *supra* note 45.

52. Staff outlines that denying the project would cause an alternative road to become the access to the coast, thus blocking off a significant stretch of the coast, and if the highway were left in place additional shoreline protection would be required given the current erosion rate. The report also indicates that while some agricultural land will need to be converted for the realignment, in the alternative if the road is closed, this would reduce access to ranchland which would harm the agricultural economy. Ultimately, this report does a more thorough job than many other staff reports to illustrate how when all aspects of coastal resource use are factored in, the balance shifts in favor of project approval.

Ultimately, conflict resolution would be more transparent and predictable if the Commission applied clearer, set rules for weighing the benefits and harms—and their consistency with the letter and intent of the Coastal Act—from approval or disapproval of a proposed action. In particular, there should be set requirements for the time frame that ecological or societal impacts will be assessed for each conflict and criteria for evaluating the extent of ecological harm (e.g., in terms of scope of impacted coastal resources, scope in time, and whether the impact is certain or speculative), the availability of alternatives, and the cumulative effects of a decision. For example, rules should provide that more weight be given to adverse impacts that will be ongoing into the indefinite future, such as permanent loss of beach and the recreational benefits that the public is entitled to, versus less weight to speculative, one-time water quality impacts from a structure falling into the ocean (where the presumption of those impacts fails to consider that inland relocation could avoid those one-time impacts). Further, the new rules should include an explicit requirement to consider both the benefits and downsides of both sides of the conflict, rather than the most common current approach, where Commission staff outlines only the benefits of the side they ultimately select and the downsides of the side they do not select.

C. The Lack of a Systematic and Uniform Conflict Resolution Assessment Process Creates Inconsistency and a Lack of Transparency for Stakeholders, Local Planners, and Community Members

Without a standardized conflict assessment process, the Commission is more likely to apply conflict resolution inconsistently, using it to approve or reject similar projects across coastal regions based on a variety of factors, such as political considerations, rather than Coastal Act requirements. Because there is no codified set of factors for weighing policies once a conflict is found, the staff are more likely to emphasize different Coastal Act policies from one project to the next without reasoned justification.⁵³ Thus, it is more likely that the Commission may make decisions on a pretextual basis, rather than making decisions that properly consider scope in terms of geography and time, and are, on balance, more protective of coastal resources. Ultimately, a discretionary, ad hoc approach creates inconsistency for stakeholders pursuing comparable coastal projects.

For example, in the California Department of Transportation State Route 1 Bicycle and Safety Improvements Project,⁵⁴ no systematic assessment of the benefits and downsides of approval appeared in the staff report, which instead made the conclusory assertion that the project was essential and impacts would be minimized, without undergoing any

53 Indeed, in the Pacifica Staff report, Staff emphasize the lack of systematic requirements for conflict resolution. The staff indicate when balancing a conflict, they can “re-weigh **some or all** of the criteria applicable to the seven applicability tests discussed above or **can more broadly consider** the ways in which the conflict presented affects significant coastal resources or can apply some synthesis of the two.” (emphasis added). Further, staff assert that the “only explicit Coastal Act direction on this point is in Section 30007.5, which states that ‘broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource Policies.’” Ultimately, this language further underscores the current lack of uniform protocols for conflict resolution analysis, creating an entirely discretionary process that can become politicized. See Pacifica Staff Report, *supra* note 10, at 74.

54 See Talavera, *supra* note 42.

substantive weighing assessment for coastal protection.⁵⁵ Additionally, in some cases, such as the Caltrans Refugio Creek Bridge project,⁵⁶ Commission staff accepts the applicant's position that the project will create unavoidable impacts and asserts that the project is most protective of coastal resources without demonstrating how the harms and benefits were comparatively evaluated. Rather than weighing the tradeoffs of each side of the conflict or explaining why one policy interest prevails over another, these reports treat the need for project approval as self-evident, leaving very little transparent reasoning to show how the balance was struck. Without reasoned analysis or a set process for achieving resolution of a conflict, the outcomes of these actions can appear driven by Commission staff or individual stakeholders' current policy preferences, rather than by a consistent analytical method.

A more systematic process for conflict resolution will improve the fairness, transparency, and defensibility of the Commission's decision-making and ensure that Commission decisions are the most protective of coastal resources. Better factors with clearly articulated weighing principles will be crucial to allow the public to better understand how the Commission resolves conflicts and hold it accountable when similar facts lead to different results. Further, crucially, more uniform factors will strengthen the administrative record, thus protecting well-reasoned Commission decisions from legal challenges for arbitrariness.

Further, it is important to note that the Commission has not adopted any specific regulation that formally defines how to assess when a conflict between policies under the Coastal Act is identified, or specific factors that must be included in the analysis. Instead, in practice, as indicated above, Commission staff have set forth ad hoc standards to guide interpretation in their staff reports.⁵⁷ California courts have made clear that the California Administrative Procedure Act (APA) applies to interpretive regulations similar to these.⁵⁸ Therefore, any rule creating a uniform process must meet APA requirements.

Ultimately, conflict resolution assessment standards should be subjected to the APA's notice-and-comment procedures to adhere to the APA's requirements, clarify ambiguities in the law, and ensure agency-wide uniformity. Notice-and-comment procedures provide a critical avenue for the stakeholder engagement necessary to produce the best rule and to provide certainty that meets the needs of all parties.

55 The staff report simply made the following assertion, "although impacts to ESHA will occur because of completing the contiguous bike lane and associated safety improvements, the Applicant has included measures to minimize any ESHA impacts and has included advance mitigation for those impacts. While these impacts are inconsistent with Section 30240(a), the proposed project as mitigated and conditioned is approvable pursuant to the conflict resolution provisions of the Coastal Act." This seems more like a conclusory statement than a balanced assessment.

56 See CAL. COASTAL COMM'N, 4-22-0459, STAFF REPORT: REGULAR CALENDAR. (Mar. 29, 2023). <https://documents.coastal.ca.gov/reports/2023/4/Th15b/Th15b-4-2023-report.pdf> (Approving with conditions the Caltrans Refugio Creek Bridge project).

57 Under the California Administrative Procedure Act (APA), a regulation means "every rule, regulation, order, or standard of general application, or the amendment, supplement, revision or any rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." See Government Code section 11342.600. A systematic approach to conflict resolution is a clear example of an agency interpreting and making specific the law administered by it, namely the Coastal Act. See e.g. *Tidewater Marine W, Inc. v. Bradshaw*, 14 Cal. 4th 557, 574-75 (1996) (Emphasizing that a written statement of policy that an agency intends to apply generally, that is unrelated to a specific case, and that predicts how the agency will decide future cases is essentially legislative in nature even if it merely interprets applicable law.)

58 See *id.* (holding that if the California Legislature did not intend the APA to apply to interpretive regulations, it would not have expressly included interpretive regulations as the definition of a regulation.)



5 | Conclusion and Recommendations

► **TO ENSURE THAT THE COMMISSION** applies the conflict resolution provisions of the Coastal Act justly and consistently, regulatory updates are needed to replace today's ad hoc and opaque practices with a uniform and transparent framework. First, the conflict resolution process should be clarified. The seven-factor process should be codified as the threshold analysis to determine whether there is a conflict that will need to be subsequently weighed to determine which side, on balance, is most protective of coastal resources. The seven-factor assessment should not be treated as the end of the conflict resolution analysis, as it has been in some instances.

Once a conflict is determined to exist, staff should be required to apply a separate, equally rigorous process designed to fairly weigh both sides of the conflict and determine which outcome is most protective of coastal resources. The process should mandate an explicit evaluation of factors, including benefits and downsides for each decision path. Further, clearer protocols must be established for distinguishing between long-term and short-term effects and between hypothetical or speculative harms as opposed to tangible, evidence-based impacts. In particular, the Commission should consider the scope of adverse impacts, in terms of temporal impacts, and geographic scope—namely, how far

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and wide impacts will be felt. Further, the Commission should consider cumulative impacts with other related coastal decisions, and how many members of the public are impacted.

With protocols like these in place, the decision in Pacifica would likely have been reached through a more transparent and defensible analysis, and the substantive outcome may have been different. The staff report would have more deliberately weighed tangible impacts against hypothetical ones and accounted for long-term consequences, like the assured continued loss of public trust beaches, and public trust recreational opportunities at beaches lost to armoring.

Ultimately, better regulation subject to public review and comment is needed to ensure conflict resolution decisions apply consistent factors and follow a structured process. This would provide greater certainty to key stakeholders and the public by improving the procedural integrity of the process, while ensuring the critical goals of the Coastal Act are advanced in all decision-making processes affecting the California Coast.

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