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Strengthening California's Hazard Disclosure Laws to Address Sea Level Rise Risks

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Introduction

The threat of flooding and erosion is increasing in every region of the United States as a warming atmosphere makes precipitation events more extreme and contributes to sea level rise (SLR). The U.S. coastline is projected to see an average of 10 to 12 inches of SLR between 2020 and 2050, which is equal to the amount measured over the last 100 years.¹ About 40% of the U.S. population lives in coastal counties, so coastal flooding will have a big impact on communities across the country.² Despite this threat, most states, including California, fail to adequately inform potential homebuyers of the physical, legal, and economic risks they need to consider in making a safe and prudent decision on a major financial investment. For example, only 10 states require the disclosure of flooding history at the time of a home purchase.³

Inadequate disclosure laws have serious consequences. Floods are costly to homeowners: A single inch of flooding may cost up to \$25,000.⁴ In 2017, over 95,000 National Flood Insurance Program (NFIP) policyholders submitted claims to the Federal Emergency Management Agency (FEMA) for approximately \$8.7 billion in damages—the third highest damages payout since 1978.⁵ The past 18 years have seen the top three most expensive claim years,⁶ and these numbers stand to escalate. Stronger disclosure practices that reveal physical hazards and options to mitigate disasters can help home purchasers better understand risks and act on them to protect them-

- 1 Nat'l Oceanic and Atmospheric Admin., Nat'l Ocean Serv., 2022 *Sea Level Rise Technical Report*, <https://oceanservice.noaa.gov/hazards/sealevelrise/sealevelrise-tech-report-sections.html#faq>. About 2 feet of SLR along the U.S. coastline "is increasingly likely between 2020 and 2100 because of emissions to date. Failing to curb future emissions could cause an additional 1.5-5 feet [] of rise for a total of 3.5-7 feet [] by the end of this century." *Id.*
- 2 Jonathan Levin, *The Ocean Is Coming for Homes. That's Not Priced In.*, BLOOMBERG (Apr. 2, 2022), <https://www.bloomberg.com/opinion/articles/2022-04-02/the-ocean-is-coming-for-homes-that-s-not-priced-in?leadSource=uverify%20wall>; Benjamin J. Keys & Philip Mulder, *Neglected No More: Housing Markets, Mortgage Lending, and Sea Level Rise 2*, NAT'L BUREAU OF ECON. RSCH. 2 (Oct. 2020), https://www.nber.org/system/files/working_papers/w27930/w27930.pdf.
- 3 Rebecca Marx et al., *Without Robust Requirements That Sellers Disclose a Home's Flooding History, Buyers Are More At Risk*, URBAN INST. (Jul. 21, 2020), <https://www.urban.org/urban-wire/without-robust-requirements-sellers-disclose-homes-flooding-history-buyers-are-more-risk>. Twenty-one states have no statutory or regulatory laws in place requiring a seller to disclose a property's flood vulnerability to a buyer. Emily Snyder & Clay Kulesza, *Let the Buyer Beware: A Comparison of Flood-Related Real Estate Disclosure Laws of Virginia and Other States*, WM. & MARY L. SCH. SCHOLARSHIP REPOSITORY 1, 4 (2020), <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1043&context=vcpclinic>.
- 4 Fed. Emergency Mgmt. Agency, *Flood Risk Disclosure: Model State Requirements for Disclosing Flood Risk During Real Estate Transactions* 1 (July 11, 2022), https://www.fema.gov/sites/default/files/documents/fema_state-flood-risk-disclosure-best-practices_07142022.pdf.
- 5 Dena Adler, *State Disclosure Laws Leave Homebuyers in the Dark about Flood Risks*, COLUM. L. SCH. SABIN CTR. CLIMATE CHANGE BLOG, <https://blogs.law.columbia.edu/climatechange/2018/08/16/state-disclosure-laws-leave-homebuyers-in-the-dark-about-flood-risks/>.
- 6 Jacob Bradt & Carolyn Kousky, *Flood Insurance in the U.S.: Lessons from FEMA's Recent Data Release (Part I)*, WHARTON U. PENN. (Jan. 2020), <https://riskcenter.wharton.upenn.edu/lab-notes/lessonsfromfemadatapart1/>.

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selves and make fully informed purchase decisions. Disclosures can be an effective way to inform buyers about risks and to influence purchasing behavior, which is why they are one of many policy tools that governments should use to address climate-related risks.⁷

This policy brief considers California's existing real estate disclosure practices, the most effective approaches to real estate risk disclosure, and best practices for risk disclosure that have been employed specifically in the SLR and coastal context. California imposes a number of statutory and common law disclosure requirements, described in Part I of this brief, but does not mandate disclosure of SLR risk in real estate transactions. In Part II below, this brief concludes that the most effective real estate hazard disclosures include specific references to physical risks, specific references to coastal regulations, and clear procedural disclosure requirements. This brief also examines best practices employed by other states, including requiring sellers to disclose whether their property lies in an area susceptible to SLR impacts, specifying relevant areas that may require permits for development, and instructing buyers to read notices carefully and refrain from signing until they fully understand the risks associated with their purchase.

Based on this research, California could make the following improvements to its hazard disclosure policies:

- Include more specific references to physical SLR risks by:
 - Adding a map indicating SLR risk to a state-maintained climate change risk repository and referencing the map in an addendum to the state's required disclosure statements and/or in the current Natural Hazard Disclosure Statement; and
 - Adding coastal-specific language to the state's general Real Estate Transfer Disclosure Statement.
- Include more specific references to coastal regulations in the Real Estate Transfer Disclosure Statement or in an addendum to this statement.
- Make certain procedural modifications, such as:
 - Extending the time given to buyers to terminate their offer and granting buyers the ability to amend their offer if disclosure is not provided before the offer is made;
 - Providing buyers with more disclosure materials; and
 - Strengthening the purchaser acknowledgement language.

7 Studies have shown that exposure to hazard information has influenced purchasing behavior in many instances. For example, a June 2023 study on wildfire hazard disclosure in California conducted by Resources for the Future (RFF) showed that homes that faced risk disclosure requirements from 2015 to 2022 sold for approximately 4.3 percent less than nearby homes that did not. Lala Ma et al., *Risk Disclosure and Home Prices: Evidence from California Wildfire Hazard Zones* iii, 2, 14 (Res. for Future, Working Paper 23-26) (June 2023). RFF used a boundary discontinuity design (comparing sales of homes that are nearby but on either side of an area boundary that requires disclosure) to estimate the effect of wildfire hazard disclosure on house prices. RFF specifically studied the universe of single-family sales transactions from the Zillow ZTRAX program in California from 2015 through 2022. RFF's work also mentions two other notable studies. First, research conducted by Bakkensen and Ma (2020) showed that prices are approximately six percent lower just inside the flood zone, where buyers tend to receive more information about flood risks, even though risk varies continuously across, and in close proximity to, the flood zone boundary. The authors used 2009 to 2012 housing sales data across six counties in Florida and studied SFHA boundaries to identify flood risk preferences from home prices. See Laura A. Bakkensen & Lala Ma, *Sorting Over Flood Risk and Implications for Policy Reform*, 104 J. ENVT'L ECON. AND MGMT. 1 (2020). Second, Pope (2008) found that following a flood risk disclosure law in North Carolina in 1996, home prices in SFHAs declined by approximately 4 percent relative to homes outside SFHAs. See Jaren C. Pope, *Do Seller Disclosures Affect Property Values? Buyer Information and the Hedonic Model*, 84(4) LAND ECON. 551 (2008). A 2022 study conducted by Redfin also shows that users of their website who viewed homes with severe and/or extreme flood risk proceeded to bid on homes with 54% less risk after gaining access to risk data. Flood risk data also impacted which homes buyers viewed online. Lily Katz et al., *Homebuyers With Access to Flood-Risk Data Bid on Lower-Risk Homes*, REDFIN NEWS (Sept. 2022), <https://www.redfin.com/news/redfin-users-interact-with-flood-risk-data/>. And although it is not clear exactly to what degree specifically adding SLR risk disclosure would influence the behavior of potential buyers in California, research has shown that increased recognition of SLR risk in other states has led to a decline in the volume of home sales in SLR-exposed areas. See Benjamin J. Keys & Philip Mulder, *supra* note 2. Wharton real estate professor Benjamin Keys and Wharton doctoral student Philip Mulder "studied housing and mortgage market trends in Florida between 2001 and 2020, and found increased recognition of SLR risk after 2013 – a period when record-breaking storms and increasingly dire scientific forecasts made SLR risk more salient." *Why Mispricing the Risks of Sea Level Rise Could Prove Costly*, KNOWLEDGE AT WHARTON PODCAST (Nov. 2020), <https://knowledge.wharton.upenn.edu/podcast/knowledge-at-wharton-podcast/keys-sea-level-rise/>. In 2013, "volumes in more-SLR-exposed areas began to decline even as their less-exposed counterparts continued to grow[.]" indicating that homebuyers are becoming more concerned about SLR. "However, home prices remained high even as sales fell, suggesting that sellers were unwilling to cut their prices and may be less inclined to believe that SLR will affect their properties." *Id.*

Stronger disclosure practices that reveal physical hazards and options to mitigate disasters can help home purchasers better understand risks and act on them to protect themselves and make fully informed purchase decisions.

I. Current Hazard Disclosure Laws

The Natural Hazard Disclosure Statement's question about whether property is located within a FEMA-designated special flood hazard area is not an optimal proxy for a sea level rise hazard disclosure.

California imposes various statutory and common law requirements on sellers when transferring residential property. California's Real Estate Transfer Disclosure Statement is statutorily created and embodied in California Civil Code § 1102.6. The Statement mandates that home sellers disclose whether they are aware of certain conditions by selecting "yes" or "no" for each of the following: (1) flooding, drainage, or grading problems; (2) "[m]ajor damage to the property or any of the structures from "fire, earthquake, floods, or landslides; and (3) "settling from any cause, or slippage, sliding, or other soil problems[.]"⁸

California also requires another statutorily created disclosure form, the Natural Hazard Disclosure Statement (NHD Statement), to be submitted with each property transfer, which applies to flooding as well as fires and earthquakes.⁹ It mandates, "seller[s] of real property that is located within a special flood hazard area (any type Zone "A" or "V") designated by the Federal Emergency Management Agency [FEMA]" must "disclose to any prospective buyer the fact that the property is located within a special flood hazard area" if either they have "actual knowledge that the property is within a special flood hazard area" or "[t]he local jurisdiction has compiled a list, by parcel, of properties that are within the inundation area."¹⁰ This disclosure obligation also applies if the parcel "is located within an area of potential flooding" shown on a dam failure inundation map.¹¹ As an alternative to providing natural hazard disclosures on the NHD Statement, sellers can also provide them on the Local Option Real Estate Transfer Disclosure Statement,¹² if mandated by the local jurisdiction and the information and warnings are substantially the same as on the NHD Statement.¹³ The seller must deliver these disclosures, in writing, "as soon as practicable before transfer of title."¹⁴ The purchaser must then sign a written acknowledgment of the disclosure.¹⁵ Should delivery of any of these disclosures or an amended disclosure occur after execution of an offer or of a purchase agreement, the buyer has three days (if the disclosure was delivered in person) or five days (if it was delivered by mail) to terminate the offer or the agreement.¹⁶

The NHD Statement's question about whether property is located within a FEMA-designated special flood hazard area is not an optimal proxy for a SLR hazard disclosure. Because of the bureaucratic and regulatory restrictions within which FEMA operates, the agency's maps are

⁸ CAL. CIV. CODE § 1102.6 (West).

⁹ CAL. CIV. CODE § 1103.2 (West).

¹⁰ *Id.*; CAL. CIV. CODE § 1103(c) (West).

¹¹ CAL. CIV. CODE § 1103(c) (West).

¹² Cities and counties in California are permitted to adopt additional disclosure requirements, such as for natural hazards not already specified by state law. CAL. CIV. CODE § 1102(a) (West). Several jurisdictions in California have right-to-farm (RTF) ordinances and measures related to agricultural operations that are intended to protect these operations. These laws play a different role than other types of disclosures because not only do they provide information about the particular condition of a property and indicate that the property may be vulnerable, but they can also provide notice of the legal consequences of that condition, which may affect the value of the property. This can have the effect of deterring lawsuits and protecting agricultural operations when suits are brought. Many jurisdictions throughout the state have other kinds of disclosures that impose requirements and provide notice of the condition of a property. For example, the cities of Pacifica, South San Francisco, San Bruno, and Millbrae have a local option real estate transfer disclosure statement regarding airport noise.

¹³ CAL. CIV. CODE § 1103.2 (West); State of Cal. Dep't of Real Est., Disclosures in Real Property Transactions 12, Sixth Edition (2005), <https://www.dre.ca.gov/files/pdf/re6.pdf>. The seller or his or her agent may elect to use the services of a third-party consultant to complete the NHD Statement in lieu of completing the NHD Statement themselves. The use of a third-party consultant does not relieve the seller or his/her agent from the obligation to deliver the NHD Statement to the buyer.

¹⁴ CAL. CIV. CODE §§ 1102.3, 1103.3 (West).

¹⁵ CAL. CIV. CODE § 1103.2 (West).

¹⁶ CAL. CIV. § 1102.3 (West).

often outdated and fail to reflect the latest science.¹⁷ And when the maps are updated, they still do not reflect “the degree to which climate change and sea-level rise are expected to heighten the risk of flooding and expand the areas that will be subject to flooding in the future.”¹⁸ This is because the “flood maps are based on existing shoreline characteristics and wave and storm climatology at the time of the flood study and historic storm data.”¹⁹ For these reasons, mandating a statewide SLR hazard disclosure (in addition to the existing flood risk disclosure) would give homebuyers a fuller picture of the risks to their properties.

Although SLR risk disclosures are not specifically required by California state law, guidance exists in the SLR context. The California Association of Realtors and Smart Coast California collaborated to add guidance concerning SLR disclosures to the Statewide Buyer and Seller Advisory (SBSA), which is an advisory document that identifies various conditions that sellers should disclose to buyers before they officially transfer the property. The disclosure flags SLR as a potential problem “affect[ing] coastal residents, recreation, and development[,]” includes a potential list of issues that may be impacted by SLR, and advises buyers “to consult with appropriate professionals, including having a geological inspection, to identify the effect of the listed conditions, if any, on the property.” The disclosure also includes “a non-exhaustive list of potential resources... as a starting point for Buyer investigations[.]”²⁰ The SBSA disclosure is an important step towards informing California buyers of potential SLR risks. Legislation mandating updates to the state’s disclosure statements so that sellers are required to disclose property-specific SLR hazard information could further ensure that buyers are aware of these potential risks.

A real estate seller also has a common law duty of disclosure.²¹ “In the context of a real estate transaction . . . where the seller knows of facts materially affecting the value or desirability of the property . . . and also knows that such facts are not known to, or within the reach of the diligent

17 First Street Found., *First Street Foundation Mission*, <https://firststreet.org/mission/> (last visited July 20, 2023). “FEMA is required by statute to revise and update all its maps at least once every five years, but it falls woefully short of that goal. Though the agency set a goal in 2009 of assessing at least 80 percent of mapped areas as new, valid or updated by the end of 2014, when that deadline came, it had done so for only 49 percent of program miles. By the end of 2016, the total had fallen to 42 percent.” R.J. Lehmann, *Do No Harm: Managing Retreat By Ending New Subsidies 5*, R STREET POL’Y STUDY No. 195 (2020) <https://www.rstreet.org/wp-content/uploads/2020/02/195.pdf>. A 2022 study conducted by North Carolina State University researchers also suggests that FEMA flood maps do not capture the full extent of flood risk. Elyssa L. Collins, *Predicting Flood Damage Probability Across the Conterminous United States*, 17 ENV’T RSCH. LETTERS (2020), <https://iopscience.iop.org/article/10.1088/1748-9326/ac4f0f>. The study used machine learning models to predict where flood damage is likely to happen in the continental United States. To create their computer models, researchers used reported data of flood damage for the United States, along with other information such as whether land is close to a river or stream, type of land cover, soil type, and precipitation. The computer was able to “learn” from actual reports of damage to predict areas of high flood damage likelihood for each pixel of mapped land. These models found a high probability of flood damage—including monetary damage, human injury, and loss of life—for more than a million square miles of land across the United States across a 14-year period. The areas identified were more than 790,000 square miles greater than flood risk zones identified by FEMA’s maps. Because these flood-susceptible areas are outside the floodplain, they do not need to abide by insurance, building code, and land-use requirements “that could help protect people and property.” It is worth noting, though, that the researchers used historical climate data in the model; they themselves admit that there is additional work to be done to make the model more dynamic, and they plan to account for climate change in the future, which will require them to update the maps and models as events occur.

18 R.J. Lehmann, *supra* note 17, at 4.

19 Ocean Prot. Council, *State of California Sea-Level Rise Guidance 2018 Update 32*, https://opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A_OPC_SLR_Guidance-rd3.pdf.

20 Smart Coast California & California Association of Realtors, *Sea Level Rise Disclosure in Statewide Buyer and Seller Advisory*, SAN MATEO CNTY. ASSOC. OF REALTORS (May 4, 2021), <https://www.samcar.org/posts/sea-level-rise-disclosure-in-statewide-buyer-and-seller-advisory/>.

21 There are also several takings cases featuring disclosures, which have helped limit liability in various instances. These cases can be classified under two categories: (1) cases with disclosures that have alerted property owners of certain legal consequences associated with acquiring the property in question and that reveal that the property is encumbered in some way (e.g. the government has the right to take the property for public use or a third party may use the property for a specified purpose); and (2) cases with disclosures that notify property owners that because their property is designated in a particular manner, they are either completely prohibited from developing or undertaking an activity on their property or are required to obtain a permit before undertaking such activity. In most of the cases examined, the disclosures have helped limit liability. Cases that fall under the first category include *Severance v. Patterson*, 370 S.W.3d 705, 720–21 (Tex. 2012) and *Southwestern Electric Power Company v. Lynch*, 595 S.W.3d 678 (Tex. 2020). Cases that fall under the second category include *Good v. United States*, 189 F.3d 1355, 1362–63 (Fed. Cir. 1999); *Norman v. United States*, 63 Fed. Cl. 231, 261–81 (2004), *aff’d*, 429 F.3d 1081 (Fed. Cir. 2005); *Brace v. United States*, 48 Fed. Cl. 272, 274–75 (2000); and *Columbia Venture, LLC v. Richland County*, 413 S.C. 423, 454, 776 S.E.2d 900, 917 (2015).

attention and observation of the buyer, the seller is under a duty to disclose them to the buyer.”²² This broad statement of duty has led one commentator to conclude that the ancient maxim *caveat emptor* (‘let the buyer beware’) “has little or no application to California real estate transactions.”²³ “Whether information ‘is of sufficient materiality to affect the value or desirability of the property ... depends on the facts of the particular case.’”²⁴ Undisclosed facts are material if they would have a significant and measurable effect on market value.²⁵ “However, the legal ramifications of the factual nature of [property], and a conclusion as to how they may adversely impact value, is not a ‘fact’ subject to required disclosure.”²⁶ Three considerations bear on the question of materiality: the gravity of the harm inflicted by non-disclosure; the fairness of imposing a duty of discovery on the buyer as an alternative to compelling disclosure; and its impact on the stability of contracts if rescission is permitted.²⁷ A seller’s failure to disclose a negative fact when it can reasonably be said to have a foreseeably depressing effect on the value of property is tortious because this conduct amounts to a representation of the nonexistence of that fact.²⁸ A breach of the duty of disclosure will give rise to a cause of action for both rescission and damages.²⁹

An obligation to disclose material facts that are not necessarily apparent to a diligent buyer only arises if a seller has actual or constructive knowledge of deficiencies.³⁰ “[A]ctual knowledge can be inferred from the circumstances only if . . . such inference is not based on speculation or conjecture. Only where the circumstances are such that the defendant ‘must have known’ and not ‘should have known’ will an inference of actual knowledge be permitted.”³¹ It is unclear whether a seller has a common law duty to disclose known facts related to SLR or regulation affecting their property under the Coastal Act that the buyer might not be able to figure out

- 22 Shapiro v. Sutherland, 64 Cal. App. 4th 1534, 1544, 76 Cal. Rptr. 2d 101, 107 (1998) (quoting Lingsch v. Savage, 213 Cal. App. 2d 729, 735, 29 Cal. Rptr. 201, 204 (Ct. App. 1963)). See, e.g., Reed v. King, 145 Cal. App. 3d 261, 265, 193 Cal. Rptr. 130 (Ct. App. 1983) (holding that purchaser stated a cause of action against vendor and real estate agent for vendor’s failure to disclose that house was the site of a multiple murder given that murder is not such a common occurrence that buyers should be charged with anticipating and discovering); Alexander v. McKnight, 7 Cal. App. 4th 973, 977, 9 Cal. Rptr. 2d 453 (1992) (holding that owners would be required to inform prospective buyers of neighborhood noise problems because “the fact that a neighborhood contains an overtly hostile family who delights in tormenting their neighbors with unexpected noises or unending parties is not a matter which will ordinarily come to the attention of a buyer viewing the property at a time carefully selected by the seller to correspond with an anticipated lull in the ‘festivities.’”). Examples of factual matters that would require revelation include that the property was constructed on filled land, was in violation of building codes or zoning ordinances, had been condemned, and was termite ridden. Sweat v. Hollister, 37 Cal. App. 4th 603, 608, 43 Cal. Rptr. 2d 399 (1995), as modified on denial of reh’g (Aug. 24, 1995), and disapproved of by Santisas v. Goodin, 17 Cal. 4th 599, 951 P.2d 399 (1998), and disapproved of by Brannon v. Superior Ct., 114 Cal. App. 4th 1203, 8 Cal. Rptr. 3d 491 (2004).
- 23 Reed v. King, 145 Cal. App. 3d at 265 (citing 1 Miller and Starr, Current Law of Cal. Real Estate (rev. ed. 1975) § 1:80).
- 24 *Id.* (citing Lingsch v. Savage, 213 Cal. App. 2d 729, 737, 29 Cal. Rptr. 201, 205 (Ct. App. 1963)). Materiality “is a question of law, and is part of the concept of right to rely or justifiable reliance.” *Id.* (citing 3 Witkin, Cal. Procedure (2d ed. 1971) Pleading, § 578, p. 2217).
- 25 Shapiro v. Sutherland, 64 Cal. App. 4th at 1544 (citing Reed v. King, 145 Cal. App. 3d at 267).
- 26 Sweat v. Hollister, 37 Cal. App. 4th at 609. In *Sweat v. Hollister*, the court affirmed the trial court’s grant of summary judgment for defendants in an action by real estate purchasers against the seller and their brokers, alleging that defendants failed to disclose that the property was subject to a nonconforming use. The property was located in a floodplain, and the local ordinance prevented the property from being altered or enlarged in the event of destruction by fire or other calamity, resulting in a reduction in the value of the property. The court reasoned that “[a]ctionable nondisclosure relates to facts not discoverable by the plaintiffs” and “the *factual* matter leading to the alleged defect in the house—that it was in a flood plain—was revealed to the plaintiffs. The legal and practical effects of this state of affairs do not rise to the status of a fact—they are conclusions as to value resulting from the fact of situs in a flood plain.” “That disabilities [associated with owning a house located in a floodplain] may exist should be obvious to any buyer. It is not the obligation of the seller to research local land-use ordinances and advise a buyer as to their effect on the realty.” 37 Cal. App. 4th at 603, 609.
- 27 Reed v. King, 145 Cal. App. 3d at 266.
- 28 RSB Vineyards, LLC v. Orsi, 15 Cal. App. 5th at 1097, 223 Cal. Rptr. 3d at 464 (citing *Calemine v. Samuelson*, 171 Cal. App. 4th 153, 161 (2009)); Alexander v. McKnight, 7 Cal. App. 4th at 974 (citing Reed v. King, 145 Cal. App. 3d at 267).
- 29 Shapiro v. Sutherland, 64 Cal. App. 4th at 1535 (citing *Karoutas v. HomeFed Bank*, 232 Cal. App. 3d 767, 77, 283 Cal. Rptr. 809 (1991)).
- 30 See *id.* (holding that the relocation management company was not liable for misrepresentation or nondisclosure of a noise problem in the neighborhood because the company had no knowledge of the noise problem or any possible misrepresentation by the original sellers, and it had no duty to investigate the property); RSB Vineyards, LLC, 15 Cal. App. 5th at 1098, 223 Cal. Rptr. 3d at 465–66 (holding that defendant vineyard vendors were not liable for nondisclosure because although the vendors had a duty to disclose the deficiencies mentioned in the civil engineer’s declaration given that they affected “the value or desirability of the property” and were not necessarily apparent to a diligent buyer, the obligation to disclose did not arise because the number and type of defects in the property were insufficient to infer that vineyard vendors had actual knowledge of the defects, and knowledge of defects acquired by professionals who worked on conversion could not be imputed to vendors).
- 31 RSB Vineyards, LLC, 15 Cal. App. 5th at 1098, 223 Cal. Rptr. 3d at 465 (citing *Yuzon v. Collins*, 116 Cal. App. 4th 149, 163, 10 Cal. Rptr. 3d 18 (2004)).

themselves. However, a statewide mandate for SLR risk disclosure would shed light on this duty and promote consistency across state real estate transactions.

Although California does not currently mandate disclosure of SLR hazards in real estate transactions, the state has begun to update its General Plan Guidelines for cities and counties to include land-use planning to avoid SLR hazards within their municipal jurisdictions.³² Additionally, many coastal cities and counties are independently addressing SLR by adopting land-use policies that anticipate rising sea levels.³³ And as of the time of this paper's publication, California lawmakers are considering legislation that would require local governments within the Coastal Zone³⁴ or within the San Francisco Bay Conservation and Development Commission's (BCDC's) jurisdiction to implement SLR planning and adaptation through Local Coastal Programs (LCPs).³⁵ Requiring disclosures of SLR risks in real estate transactions across the state would also help the public and property purchasers prepare for and avoid these risks. The next section will discuss a survey of best disclosure practices around the country, some of which have required SLR (and other coastal) risk disclosures.

II. Best Hazard Disclosure Practices

States beyond California have their own real estate hazard disclosure requirements; here, the brief examines SLR risk disclosure best practices from around the country through the lens of some overarching features that make for effective hazard risk disclosure. The best disclosure policies contain information about various physical coastal risks and coastal regulations governing development and construction, as well as procedural elements intended to ensure buyers understand risks and regulations prior to their purchase decisions. Subsection A discusses how best practices and effective disclosures may be defined and how they are defined in this paper. Subsection B identifies effective disclosure standards, discusses various states' disclosure policies, and analyzes whether they meet the standards. Subsection B also examines and evaluates California's disclosure policies against both the standards and other states' policies.

A. Defining "Best Practices" and "Effective" Disclosures

The effectiveness of a disclosure should be measured with reference to its goal. In the context of SLR, storm surge, and other coastal risk, disclosure goals may include: (1) ensuring that home purchasers understand the physical risks associated with the property they are considering purchasing; (2) mitigating legal risk for sellers and municipalities; (3) increasing the likelihood that coastal property pur-

32 Governor's Office of Planning and Research, *State of California General Plan 2017 Guidelines*, https://opr.ca.gov/docs/OPR_COMPLETE_7.31.17.pdf.

33 See, e.g., City of Santa Barbara Local Coastal Program Coastal Land Use Plan (Aug. 2019), <https://santabarbaraca.gov/sites/default/files/documents/Services/LCP%20Update/City%20of%20Santa%20Barbara%20Complete%20Certified%20Coastal%20LUP.pdf>; San Francisco Sea Level Rise Action Plan (Mar. 2016), https://sfplanning.s3.amazonaws.com/default/files/plans-and-programs/planning-for-the-city/sea-level-rise/160309_SLRAP_Final_ED.pdf; Adaptation Land Use Planning: Guidance for Marin County Local Governments, <https://www.marincounty.org/-/media/files/departments/cd/slr/alup0228.pdf?la=en>. The San Francisco Bay Conservation and Development Commission (BCDC) and a broad range of Bay Area leaders are also collaborating on a consensus-driven strategy for regional SLR adaptation, called Bay Adapt. In 2021, the group developed the Bay Adapt Joint Platform, which lays out a set of guiding principles, priority actions, and vital tasks to help the Bay Area equitably and swiftly adapt to rising bay levels, upon implementation. The Bay Adapt Joint Platform has been adopted by BCDC and adopted or endorsed by over 50 local, regional, state, and other organizations in the Bay Area. Bay Adapt: Regional Strategy for a Rising Bay, Joint Platform, <https://www.bayadapt.org/jointplatform/>.

34 "The Coastal Zone is a legislatively-defined geographic region that establishes the area regulated under the Coastal Act, encompassing both land and water areas along the length of the California coastline from the Oregon border to the Mexico border." Cal. Coastal Comm'n Statewide Plan. Unit, *California's Coastal Zone*, https://documents.coastal.ca.gov/assets/our-mission/Coastal_Zone_Slide_Show.pdf.

35 S.B. 272, <https://legiscan.com/CA/text/SB272/2023>. "Local Coastal Programs (LCPs) are basic planning tools used by local governments to guide development in the coastal zone, in partnership with the Coastal Commission." California Coastal Commission, *Local Coastal Programs*, <https://www.coastal.ca.gov/lcps.html>.

chasers will consider the information provided by a disclosure statement in their purchase decisions; and (4) ensuring that home purchasers are aware of the rights of the public to use and enjoy coastal lands under the public trust doctrine. While some of these goals may overlap with one another, there may be divergence among other goals and the ability of disclosures to meet multiple goals.

Effective disclosures will be ones carefully crafted to meet one or multiple goals, based on the desire of the regulator. For example, a disclosure that meets the first two goals (and to an extent, the third goal as well) would make specific references to physical risks from SLR and other coastal changes; include specific references to coastal regulations that may affect the property; contain strong language describing the purchaser acknowledgment of receipt and examination of the disclosure form; and allow a sufficient amount of time for a buyer to terminate an offer and permit the buyer to amend their offer in the event the disclosure is not provided before the offer is made.

This paper identifies different standards of effectiveness that meet the goals articulated above, based on a sampling of current state-level disclosure policies and practices around the country.³⁶ These standards, which will be discussed in turn in subsection B, are designed to serve as benchmarks but are in no way exhaustive.

B. Standards of Effectiveness

This subsection discusses three different standards of effectiveness: (1) the inclusion of specific references to physical risks from SLR and other coastal changes; (2) the inclusion of specific references to coastal regulations that may affect the property; and (3) the inclusion of clear procedural disclosure requirements. The third section on procedural aspects of disclosures is further broken down into two specific standards: (a) the inclusion of strong language describing the purchaser acknowledgment of receipt and examination of the disclosure form; and (b) the provision of sufficient time to terminate an offer and ability to amend an offer if the disclosure is not received before a purchase offer is made. Each subsection will begin by discussing what an ideal disclosure should look like and will then examine the actual practices in different states, evaluating whether those practices meet the standards. California's disclosure policies will also be examined and compared to those of other states and the standards themselves.

Although there is some nuance as to which standards of effectiveness fulfill certain goals of disclosures, disclosures that make specific references to physical risks tend to map onto the first goal of disclosures (ensuring purchasers understand the physical risks involved in purchasing coastal property). Meanwhile, disclosures that make specific references to coastal regulations tend to accomplish the second goal (mitigating legal risk for sellers and municipalities). Additionally, procedures in disclosures involving robust purchaser acknowledgment language and sufficient time to terminate offers and ability to amend offers in the event disclosures are not timely received may be perceived to fulfill the third goal (increasing the likelihood that coastal property purchasers will consider the information provided by a disclosure statement in their purchase decisions).³⁷ And express acknowledgments of the public's rights to enjoy and recreate on coastal

The best disclosure policies contain information about various physical coastal risks and coastal regulations governing development and construction, as well as procedural elements intended to ensure buyers understand risks and regulations prior to their purchase decisions.

³⁶ I surveyed approximately eighteen states' disclosure policies, opting to investigate policies of states located along the coast. The state policies I discuss in the paper represent a sampling of illustrative case studies.

³⁷ A University of Florida study, which will be discussed *infra*, considered this goal in determining the effectiveness of Florida's coastal hazards disclosure law. Kevin Wozniak et al., *Florida's Coastal Hazards Disclosure Law: Property Owners Perceptions of the Physical and Regulatory Environment*, U. FLA. LEVIN C. L. CONSERVATION CLINIC, p. v, (Jul. 2012), <https://repository.library.noaa.gov/view/noaa/35330>. Disclosures can be an effective way to inform buyers about risks and to influence purchasing behavior, as mentioned above. See Lala Ma et al., *supra* note 7; Laura A. Bakkensen & Lala Ma, *supra* note 7; Jaren C. Pope, *supra* note 7; Lily Katz et al., *supra* note 7. But it is worth acknowledging that even if the text of certain disclosures appears to be designed to fulfill some of the goals discussed here, there is no guarantee that these disclosures will ensure that purchasers understand and consider risks (even though the disclosures may be more likely to yield this outcome). For this reason, disclosures are one of many policy tools that governments should use together to address climate-related risks.

lands would accomplish the fourth goal.³⁸ Table 1 at the end of this paper summarizes the goals and standards that states' disclosure policies satisfy.

1. Specific References to Physical Risks from Sea Level Rise and Other Coastal Changes

SLR and other coastal changes pose different types of physical risks, such as coastal flooding, coastal or beach erosion, and bluff erosion.³⁹ Defining these terms serves as an important foundation to discussing them throughout this subsection, especially because one of the challenges of disclosure regimes is that where terms are vague, different individuals use and understand them differently and, sometimes, inaccurately. Key defined terms are as follows:

Term	Definition
Flood	A general and temporary inundation of normally dry land areas.
Coastal flood	A flood produced by a coastal process such as waves, tides, storm surge, rising groundwater (as rising seas push up groundwater levels), or heavy rainfall from coastal storms. ⁴⁰ Coastal flooding caused by a storm surge can be temporary, but some coastal flooding can lead to permanent inundation and can take place everywhere along the coast. ⁴¹
Beach erosion	The removal of sand from a beach to deeper water offshore or alongshore into inlets, tidal shoals, and bays. Such erosion can result from any number of factors, including the simple inundation of the land by rising sea levels. ⁴²
Coastal erosion	The process by which local SLR, strong wave action, and coastal flooding wear down or carry away rocks, soils, and/or sands along the coast. ⁴³
Bluff erosion	The process by which oceanfront bluffs are exposed to wave attack, triggering landslides and the loss of structural and geological stability of bluffs. This can impact development such as homes, infrastructure, roads, and public utilities. ⁴⁴

a. The Standard

An effective state disclosure policy consistent with the goals and definitions outlined in this paper would require sellers to disclose SLR and other coastal risks affecting their properties, like the ones defined above. This type of disclosure would aid buyers in understanding the physical hazards associated with purchasing coastal properties.

Flood risk modeling also plays an important role in disclosures. An ideal disclosure would (1) reveal a property's flood history, and (2) fully account for all areas susceptible to flooding and reflect ongoing and future risk. Some disclosures reveal information about the existing risk of flooding as assessed by conventional and readily-available proxies for that risk, such as whether a property is in

³⁸ While a couple of state policies examined (e.g. in Texas and Wisconsin) make reference to regulations affecting public rights under the public trust doctrine, none of the disclosures meaningfully and explicitly discuss public rights to enjoy and recreate on public lands.

³⁹ Because flooding and erosion are the main physical coastal risks referenced in the state disclosure policies examined, this paper primarily focuses on those risks. However, it is worth noting that there are other impacts of SLR, such as saltwater intrusion, changes to sediment supplies, and wave impacts. Cal. Coastal Comm'n, *Sea Level Rise: Science and Consequences*, <https://www.coastal.ca.gov/climate/slr/science/>.

⁴⁰ Ctrs. for Disease Control and Prev., *Coastal Flooding, Climate Change, and Your Health: What You Can Do to Prepare*, p. 3, (Nov. 2017), <https://www.cdc.gov/climateandhealth/pubs/CoastalFloodingClimateChangeandYourHealth-508.pdf>.

⁴¹ Elizabeth Kocan, *Before Buying a Coastal Home, Consider Rising Sea Levels*, USA TODAY (Oct. 13, 2022), <https://www.usatoday.com/story/money/reviewed/2022/10/13/rising-sea-levels-risk-buying-ocean-front-property/10484390002/>.

⁴² *What Causes Beach Erosion?*, SCI. AM. (Dec. 2008), <https://www.scientificamerican.com/article/what-causes-beach-erosion/>.

⁴³ U.S. Climate Resilience Toolkit, *Coastal Erosion* (Apr. 2021), <https://toolkit.climate.gov/topics/coastal-flood-risk/coastal-erosion>.

⁴⁴ Cal. Coastal Comm'n, *Sea Level Rise: Science & Consequences*, (2019), <https://www.coastal.ca.gov/climate/slr/science/>.

Many states do not require sellers to tell prospective home buyers whether a property has been damaged by a flood in the past, even though a home that has flooded once is likely to flood again.

a Federal Emergency Management Agency (FEMA)-designated floodplain. But as discussed above, FEMA flood maps do not capture the full extent of flood risk. And many states do not require sellers to tell prospective home buyers whether a property has been damaged by a flood in the past, even though a home that has flooded once is likely to flood again.⁴⁵ Even disclosure of all known current and past actual flooding would not in most cases be adequate to address future SLR risks. Mapped flood hazard areas today should cover both areas that have already experienced flooding as well as areas that are expected to experience flooding in the future.⁴⁶

Erosion is also a major issue for many beachfront properties and is often the reason for restrictive administrative regulations. Similar to the different temporal stages of flooding, a potential coastal property purchaser would also benefit from knowing about past, present, and future erosion problems on the property. Many disclosure statements only address “soil stability” or “earth sliding/settling.” While these questions may tip off the most prudent homebuyer, a statement with specific regard to “erosion” or “coastal erosion” may be less ambiguous for both the seller filling out the statement and the purchaser reading it over.⁴⁷ But the level of ambiguity of questions about erosion may depend on the substance of the disclosure.

b. State Practices

This subsection will explore state practices in Hawai‘i, Florida, Wisconsin, Washington, and Ohio to illustrate a range of state approaches to disclosing physical coastal risks. California’s policies will subsequently be examined in comparison. Hawai‘i’s and Florida’s policies are more robust than those of the other states and are thus analyzed in more detail. For this reason, this subsection is divided into four parts—Hawai‘i, Florida, the other states, and California.

■ Hawai‘i

Hawai‘i’s policy is the most effective in terms of specifically identifying SLR risks affecting coastal properties, and Hawai‘i was the first state to enact such a law. As of May 1, 2022, sellers in Hawai‘i real estate transactions must disclose any SLR risk to property.⁴⁸ Specifically, the law requires sellers to disclose whether their land lies in an area susceptible to impacts from a projected 3.2-foot increase in sea level by 2050.⁴⁹ Many real estate agents in Hawai‘i already warn prospective buyers about coastal climate hazards that could affect a property, but the new disclosure makes it mandatory

⁴⁵ Nat. Res. Defense Council, *How States Stack Up on Flood Disclosure*, (Aug. 2018), <https://www.nrdc.org/flood-disclosure-map>.

⁴⁶ It is important to acknowledge the challenges involved in crafting “recommendations for incorporating future conditions in” assessment modeling, especially when considering “the impacts of natural processes and human policies on flood risk.” Tech. Mapping Advisory Council, *Future Conditions Risk Assessment and Modeling*, p. 3-1, FEMA (Dec. 2015), https://www.fema.gov/sites/default/files/documents/fema_tmac_2015_future_conditions_risk_assessment_modeling_report.pdf. “[U]ncertainty about future conditions is inherent in any approach to develop flood hazard data[,]” particularly as projections are made over longer time frames.” *Id.* at 3-1, 3-2. With respect to “expected natural changes in floodprone areas, the direction (increasing or decreasing) of future trends may be uncertain for any particular location.” *Id.* at 3-1. And future laws, regulations, and policies—or even changes to the NFIP itself—may impact the way development is planned and implemented. These uncertainties create challenges in how best to comprehensibly communicate future risk. There is also imprecision in analysis methods and data, which may arise from a lack of understanding of events and processes or from a lack of data. “While care is exercised to identify and reduce uncertainty and bias in model results, no strict standards exist with respect to the acceptable amounts of uncertainty in flood hazard identification.” *Id.* at 3-4. Uncertain or as-yet-unquantified trends should themselves be acknowledged, particularly for mapping products that attempt to quantify future hazards beyond the next century. *Id.* at 3-1.

⁴⁷ Anderson Tran, Memorandum on North Carolina Coastal Hazards Disclosures in Real Estate Transactions (May 12, 2021).

⁴⁸ S.B. 474, 31st Leg., (Haw. 2021), https://www.capitol.hawaii.gov/session2021/bills/SB474_.HTM. The Hawai‘i Climate Change Mitigation and Adaptation Commission recommended this mandatory disclosure requirement.

⁴⁹ These areas are identified in the SLR vulnerability and adaptation report, approved by the Commission. See Haw. Climate Change Mitig. and Adapt. Comm’n, *Hawai‘i Sea Level Rise Vulnerability and Adaptation Report* (2017). Prepared by Tetra Tech, Inc. and the State of Hawai‘i Department of Land and Natural Resources, Office of Conservation and Coastal Lands, under the State of Hawai‘i Department of Land and Natural Resources Contract No: 64064, https://climateadaptation.hawaii.gov/wp-content/uploads/2017/12/SLR-Report_Dec2017.pdf. “These areas are designated as the sea level rise exposure area projection, which the commission recommends be adopted as a sea level rise exposure area overlay to guide state and county adaptation strategies and standards for development.” S.B. 474, 31st Leg., (Haw. 2021), https://www.capitol.hawaii.gov/session2021/bills/SB474_.HTM.

and sheds light on which properties are expected to be destroyed or damaged by SLR. The disclosure requirement applies to oceanfront and near-oceanfront properties, as well as to properties close to streams or areas likely to flood in heavy rainfall events.⁵⁰ Section 508D-15 of the Hawai'i Revised Statutes also states that when residential real property lies (1) "Within the boundaries of a special flood hazard area as officially designated on Flood Insurance Administration maps promulgated by the United States Department of Housing and Urban Development for the purposes of determining eligibility for emergency flood insurance programs", or (2) "Within the sea level rise exposure area as designated by the Hawai'i climate change mitigation and adaptation commission or its successor," among other areas, the seller must include this material fact⁵¹ information in a written disclosure statement provided to the buyer.

Hawai'i's law accomplishes at least the first two goals of disclosures.⁵² It makes it more likely for buyers to understand and acknowledge the risks associated with purchasing and owning property in coastal areas. The law also strengthens the state's and counties' abilities to deny emergency permits for shoreline hardening structures for private property threatened by coastal erosion (as the buyer willingly assumed the risks when they purchased the property).⁵³ And the policy reflects future projected coastal risks. The SLR exposure areas were identified by the Hawai'i Sea Level Rise Viewer, an online atlas and interactive mapping tool.⁵⁴ In this way, Hawai'i's policy offers a science-based solution to the problem of SLR and coastal erosion and serves as a solid SLR disclosure model for other states, including California.⁵⁵

■ Florida

Meanwhile, all buyers of properties in Florida that are either partially or totally seaward of the State Coastal Construction Control Line (CCCL) must be provided a Coastal Properties Disclosure Statement upon execution of the contract.⁵⁶ There are physical risk and regulatory aspects of the disclosure; the physical will be discussed in this section and the regulatory will be discussed in the next. With respect to physical

- 50 *Starting Sunday Real Estate Transactions Must Disclose Sea Level Risk*, HAW. DEP'T OF LAND AND NAT. RES. (Apr. 29, 2022), <https://dlnr.hawaii.gov/blog/2022/05/02/nr22-062/>.
- 51 A "material fact" is defined under section 508D-1, Hawai'i Revised Statutes, in pertinent part, to mean "any fact, defect, or condition, past or present, that would be expected to measurably affect the value to a reasonable person of the residential real property being offered for sale." The value of property lying within the boundaries of a SLR exposure area will likely be affected over time, which the legislature determines to be a material fact that should be disclosed by the seller in a real property transaction. S.B. 474, 31st Leg., (Haw. 2021), https://www.capitol.hawaii.gov/session2021/bills/SB474_.htm.
- 52 With respect to the third goal of disclosures, many Hawai'i real estate agents doubt that the new disclosure will do much to change the behavior of home buyers and sellers amid other more visible market forces. "More than coastal hazards, Big Island real estate broker Beth Thoma Robinson said the stock market slump, roaring inflation and rising interest rates are more likely factors to influence an oceanfront homeowner's decision to sell these days." "Looking ahead I see no slowdown in oceanfront sales at all or any diminution of price," Robinson said. Brittany Lyte, *Hawaii Homeowners Must Tell Prospective Buyers If Sea Level Rise Threatens Their Property*, HONOLULU CIV. BEAT (May 3, 2022), <https://www.civilbeat.org/2022/05/hawaii-homeowners-must-tell-prospective-buyers-if-sea-level-rise-threatens-their-property/>.
- 53 Stefanie Sekich-Quinn, *Hawai'i's New Law Requires Real Estate Disclosures for Sea Level Rise*, SURFRIDER FOUND. (Jul. 12, 2021), <https://www.surfrider.org/coastal-blog/entry/hawaiis-new-law-requires-real-estate-disclosures-for-sea-level-rise>.
- 54 "The Viewer is intended to provide map data depicting projections for future hazard exposure and assessing economic and other vulnerabilities due to rising sea levels." Pac. Islands Ocean Observing Sys., *Sea Level Rise: State of Hawai'i Sea Level Rise Viewer* (2022), <http://www.pacioos.hawaii.edu/shoreline/slr-hawaii/>. The map also comprehensively takes into account the combined impacts of SLR (e.g. flooding and coastal erosion).
- 55 Although Hawai'i's policy offers a science-based solution to these physical hazards, "science," of course, does not provide a certain or precise answer to the questions of where, how much, and in what form SLR hazards and other coastal change will occur. The science here is modeling, which, as discussed above, is imperfect and continually improving.
- 56 FLA. STAT. § 161.57. The Coastal Construction Control Line (CCCL) is a jurisdictional line established by the Florida Department of Environmental Protection along all of Florida's sandy beaches. It is intended to define the areas of Florida shoreline subject to severe fluctuations due to storm surge, storm waves, flooding, or other predictable weather conditions. Once the CCCL has been established within a coastal county, almost all construction seaward of the CCCL is regulated by the state and requires special permitting from the Florida Department of Environmental Protection.

risks, buyers must be notified that coastal property may be subject to coastal erosion and affected by beach renourishment activities. Unless the buyer waives the disclosure in writing, the seller has to provide an affidavit or survey delineating the location of the CCCL on the property being transferred.⁵⁷

This coastal disclosure statement reveals more information about coastal-specific hazards than most of the other state disclosure policies examined, but a University of Florida Conservation Clinic study that sought to explore how well the statement is performing determined that it is not fulfilling its statutory purpose.⁵⁸ The study, supported by the National Sea Grant College Program of the U.S. Department of Commerce's National Oceanic and Atmospheric Administration (NOAA), specifically sought to determine the extent to which coastal property purchasers considered the information provided by the disclosure statement in their purchase decision. The study found that most surveyed buyers (85.7%) either did not receive or did not recall receiving the coastal hazards disclosure statement that the law requires. Additionally, most did not know their properties were partially or totally seaward of the CCCL, and did not consider that fact in their decision to buy coastal property. And the study found that surveyed buyers did ultimately encounter factors (sea turtle nesting restrictions, erosion, winter storms, and beach renourishment) post-purchase that they initially did not consider.

The study demonstrates that although Florida's disclosure statement is more advanced than most of the other state disclosure policies examined (which make no reference to coastal hazards), it can certainly be improved.⁵⁹ The authors of the study make some solid recommendations to improve purchasers' understanding of coastal hazards, including requiring sellers to provide purchasers a separate writing accompanying the affidavit or survey that describes the purpose and regulatory effect of the Florida CCCL Program, including critical erosion areas, and the significance of Special Flood Hazard Area designations.⁶⁰ Explicitly defining the terms on the disclosure statement would make it more likely for buyers to understand the physical risks involved. Additionally, the phrasing of the clause on coastal erosion seems to cover present and future erosion; requiring sellers to also disclose past erosion would improve the statement. None of these recommendations has been adopted to date.

Interestingly, although Florida law requires sellers to disclose a property's potential for coastal erosion under certain conditions, the legislature has not passed a comparable law when it comes to property flooding. The Florida Association of

⁵⁷ *Id.*

⁵⁸ Wozniak et al., *supra* note 37. The authors of the study drew their conclusion from a mail survey that was distributed to 2,500 randomly selected coastal property owners in five coastal counties on the Atlantic Ocean, Gulf Coast, and in the Florida Panhandle. The study was conducted in 2012, but the mail survey results are informative, nonetheless. Records indicated that these property owners had purchased their property after the effective date of the statute and were entitled to receive the notice based on the location of their property in relation to the CCCL. About 290 individuals who had purchased their property after the law took effect responded to the survey, resulting in an 11.6% return rate.

⁵⁹ I was unable to determine for certain whether the establishment of CCCLs takes into account both historic and future events, but information on the Florida Department of Environmental Protection website indicates that CCCLs are mainly established by collecting historical data. The CCCL location is based on coastal engineering models, survey and bathymetric data, and scientific principles that determine the upland or landward extent of the damaging effects of a 100-year storm event. CCCLs are established in 25 of Florida's coastal counties with sandy beaches, and may be re-established if a county's shoreline conditions change dramatically due to historic erosion or hurricanes and other large storms. Florida Department of Environmental Protection, *LOCATE the Coastal Construction Control Line (CCCL)*, <https://floridadep.gov/rcp/coastal-construction-control-line/content/locate-coastal-construction-control-line-cccl>. Also, a lot of Florida's coastal data is stored in a "historic shoreline database" that "contains many directories of related types of information about beach changes in Florida over the past 150 or so years and continues to be updated as new surveys are processed." Fla. Dep't of Env't Prot., *Historic Shoreline Database*, <https://floridadep.gov/rcp/beaches-inlets-ports/content/historic-shoreline-database>.

⁶⁰ Wozniak et al., *supra* note 37, at 4.

Realtors has a form sellers can use to disclose flooding, but its use is voluntary.⁶¹ Because information about past and future risk of flooding could substantially impact the value of the property, making flood disclosure mandatory would benefit Florida buyers.

■ Other States

Wisconsin's disclosure form also references physical hazards that may be caused by SLR or other coastal change. It requires sellers to indicate their awareness as to whether their property is located in a floodplain, wetland, or "shoreland zoning area."⁶² In Wisconsin, shoreland zoning rules apply to unincorporated land that is within 1,000 feet of a navigable lake, flowage, or pond; or within 300 feet of a navigable stream, or the landward side of a floodplain, whichever is greater.⁶³ There may be similarities between the shoreland zone in Wisconsin and the coastal zone in California in terms of flooding concerns and development restrictions. However, California's disclosure form does not ask whether property is in the coastal zone. Although mention of the "shoreland zone" is a positive feature of Wisconsin's disclosure form because it constitutes a specific reference to an area that may be impacted by SLR, the disclosure form does not explain the implications of properties being located in *any* of the areas mentioned. Thus, buyers reviewing the disclosure form in Wisconsin may not fully understand the physical (or legal) risks involved in purchasing their properties.

Similarly, Washington's disclosure form asks whether there are any shorelines, wetlands, floodplains, or critical areas on the property.⁶⁴ However, the vague phrasing of the question on Washington's form raises other questions—what are the implications of there being a shoreline on the property (e.g. does this mean that the buyer cannot develop further or that development would be subject to state regulation?), and will a buyer understand these implications simply by reviewing the form? The answer to the second question is likely no. Washington's disclosure form could go further in notifying buyers of physical risks and making them more prepared to mitigate those risks, but it is one of the only state disclosure forms (of the forms surveyed) that makes reference to a "shoreline" or anything resembling a coast.

Ohio's disclosure form captures previous, current, and future climate change risks well. It makes a reference to the state's Lake Erie Coastal Erosion Area (CEA), a designated area of land adjacent to Lake Erie that is anticipated to be lost to erosion in 30 years due to climate change-induced rising lake levels, unless preventive measures are taken.⁶⁵ "Coastal erosion is measured by determining how far landward the bluff, bank, or dune has receded over time."⁶⁶ Just as rising lake levels in Ohio will result in increased coastal erosion,⁶⁷ rising sea levels will similarly result in coastal erosion in California, and

61 *Florida Disclosure Law: Sellers and Agents, Tread Carefully*, RABIDEAU KLEIN, <https://rabideauklein.com/law-and-the-land/florida-disclosure-law-sellers-and-agents-tread-carefully/#:~:text=Sellers%20in%20Florida%20are%20not,of%20protection%20against%20legal%20action>. See Fla. Realtors, Seller's Property Disclosure – Residential, <https://www.unlimitedmls.com/forms/Property-Disclosure-Form.pdf>.

62 Disclosures by Owners of Real Estate, <https://docs.legis.wisconsin.gov/statutes/statutes/709.pdf> (pursuant to Wis. STATS. § 709.03).

63 Wis. ADMIN. CODE Ch. NR 115.03.

64 WASH. REV. CODE tit. 64, Ch. 64.06, § 64.06.020.

65 OHIO ADMIN. CODE § 1501-6-10.

66 Ohio Emergency Mgmt. Agency, *2.10 Coastal Erosion*, <https://ema.ohio.gov/mitigation-plan/risk-analysis> (section within the State of Ohio 2019 Mitigation Plan).

67 Advanced regional climate modeling systems show that several of the Great Lakes in the Midwestern U.S. are expected to rise by roughly 20 to 50 centimeters by 2050, which will result in increased coastal erosion and flooding. *Great Lakes Levels Are Likely to See Continued Rise in Next Three Decades*, AM. GEOPHYS. UNION (June 22, 2022), <https://news.agu.org/press-release/great-lakes-levels-are-likely-to-see-continued-rise-in-next-three-decades/#:~:text=New%20research%20using%20the%20most,a%20result%20of%20climate%20change>.

it would be helpful for California's real estate disclosure to also warn buyers of this type of erosion risk. Although Ohio's form mentions the CEA designation, it does not explain what a CEA is or that a permit is required to construct a new building or septic system within a CEA.⁶⁸ The disclosure form would be strengthened with the inclusion of this information. The form does, however, ask whether the seller knows "of any previous or current flooding, drainage, settling or grading or erosion problems affecting the property[]" and whether there have been "any repairs, modifications or alterations to the property or other attempts to control" these problems in the last five years.⁶⁹

■ California

In California, sellers must disclose whether their property is located within a special flood hazard area (any type Zone "A" or "V") designated by FEMA if either they have "actual knowledge that the property is within a special flood hazard area" or "the local jurisdiction has compiled a list, by parcel, of properties that are within the inundation area."⁷⁰ The seller also has these duties if the parcel "is located within an area of potential flooding designated pursuant to Section 6161 of the Water Code," which relates to dam inundation areas.⁷¹ California's Real Estate Transfer Disclosure Statement also asks whether there is "any settling from any cause, or slippage, sliding, other soil problems"; any flooding, drainage, or grading problems; or major damage to the property or any of the structures from fire, earthquake, floods, or landslides.⁷² With respect to the special flood hazard area designations, the FEMA maps likely fail to reflect all areas susceptible to flooding, as discussed in subsection (a). Thus, a property that a seller indicates is not located within a special flood hazard area may still be at flood risk, and a buyer may not receive the whole picture of the property they are purchasing.

In California, a property that a seller indicates is not located within a special flood hazard area may still be at flood risk, and a buyer may not receive the whole picture of the property they are purchasing.

In sum, each of the state policies discussed here has some positive attributes. Hawai'i's policy is unique in that it is the only one to specifically acknowledge SLR risks and does well at discussing coastal hazards and capturing potential future risk. The policies in Florida, Wisconsin, and Washington also do well at specifically referencing specific hazards, such as coastal erosion in Florida, or designating shoreline jurisdictional lines or areas impacted by SLR. However, the policies in these states would all be improved by including information about what these designated lines and areas mean for coastal property purchasers, so that purchasers will be aware of potential physical risks to their properties and/or development restrictions. Ohio's policy stands out by referencing certain erosion areas, which are established by estimating projected changes in the future. California can adopt some of these state practices to inform buyers of SLR and coastal-specific risks that they may encounter in the future as climate change worsens.

68 See Ohio Dep't of Nat. Res., *Coastal Erosion Area Permit*, <https://ohiodnr.gov/buy-and-apply/regulatory-permits/lake-erie-land-and-water-permits/coastal-erosion-area-permit>.

69 Ohio Realtors, *New Residential Property Disclosure Form effective June 1, 2022*, <https://www.ohiorealtors.org/blog/1653/new-residential-property-disclosure-form-effective-june-1-2022/> (link to form contained therein). The form is required by OHIO REV. CODE § 5302.30 and contained in OHIO ADMIN. CODE 1301:5-6-10.

70 CAL. CIV. CODE § 1103(c) (West).

71 *Id.*

72 Cal. Ass'n of Realtors, *Real Estate Transfer Disclosure Statement*, <https://www.car.org/-/media/CAR/Documents/Transaction-Center/PDF/Standard-Forms/2020-June-Final/TDS-VERSION-1-REDLINE-1.pdf?la=en&hash=D42DDF11D099FB7A7ED0A9D5F74950C4781C44F8> (pursuant to CAL. CIV. CODE § 1102.6).

A disclosure that refers to the specific coastal regulations that may affect a property would put homebuyers on notice of construction and development restrictions, and thus would likely mitigate legal risk for sellers and municipalities.



2. Specific References to Coastal Regulations

This subsection will discuss the standard of effectiveness involving specific references to coastal regulations that may impact coastal properties and identify some state policies that fulfill this standard.

a. The Standard

A disclosure that refers to the specific coastal regulations that may affect a property would put homebuyers on notice of construction and development restrictions, and thus would likely mitigate legal risk for sellers and municipalities. Such a disclosure would both make clear the economic and legal risks of purchasing a coastal property and would communicate that those risks would fall upon the buyer. It would also help promote reasonable economic expectations for buyers and prevent them from overpaying for property based on an assumption that they can undertake activities or undergo development that is unlikely to be approved. Many disclosure statements inquire as to whether a property is in violation of any zoning restrictions and whether a property is nonconforming with local zoning or any other setback-type regulations. While such general inquiries are important, even they can fail to provide notice to potential homebuyers about materially significant development restrictions on coastal properties. Without notice of specific coastal regulations, homebuyers can be frustrated to learn of unanticipated restrictions post-closing, unless they undertake extensive due diligence. Ideally, a disclosure will provide information about specific coastal zoning regulations that may affect the property.⁷³

b. State Practices

This subsection will look at state practices in Texas, Wisconsin, Oregon, and Florida, as well as California in comparison. Texas' policy is stronger than that of other states and will thus be discussed in more detail. Accordingly, this subsection is divided into three parts—Texas, the other states, and California.

⁷³ Tran, *supra* note 47, at 3.

■ Texas

Texas' disclosure statement is particularly effective in making specific references to coastal regulations. The state's standard disclosure statement specifies relevant areas,⁷⁴ refers to the state's Open Beaches⁷⁵ and Dune Protection Acts, and indicates that special permits may be required for repairs or improvements. Specifically, the form states, "If the property is located in a coastal area that is seaward of the Gulf Intracoastal Waterway or within 1,000 feet of the mean high tide bordering the Gulf of Mexico, the property may be subject to the Open Beaches Act or the Dune Protection Act (Chapter 61 or 63, Natural Resources Code, respectively) and a beachfront construction certificate or dune protection permit may be required for repairs or improvements."⁷⁶

Texas also requires a disclosure addendum for the sale of all properties located seaward of the Gulf Intracoastal Waterway.⁷⁷ The addendum provides notice to potential homebuyers of the "legal and economic risks of purchasing coastal real property near a beach[,] in accordance with state law. It instructs buyers to read the notice carefully and refrain from signing until they fully understand the risks they are assuming. These risks are described as ones that are "over and above the risks involved in purchasing inland real property." It warns:

If you own a structure located on coastal real property near a gulf coastal beach, it may come to be located on the public beach because of coastal erosion and storm events... As the owner of a structure located on the public beach, you could be sued by the state of Texas and ordered to remove the structure... The costs of removing a structure from the public beach and any other economic loss incurred because of a removal order would be solely your responsibility.

The addendum also informs that "[m]uch of the Gulf of Mexico coastline is eroding at rates of more than five feet per year. Erosion rates for all Texas Gulf property subject to the open beaches act are available from the Texas General Land Office." It advises the purchaser to "determine the rate of shoreline erosion in the vicinity of the real property."⁷⁸

- 74 Like Texas' disclosure statement, Maryland's form also specifies relevant areas that may be affected by coastal flooding. It requires the seller to indicate whether their property is located in particular areas subject to flooding—namely, a Chesapeake Bay critical area or Designated Historic District. Maryland Residential Property Disclosure and Disclaimer Statement, <https://www.dllr.state.md.us/forms/propertydandddform.pdf>; Md. CODE ANN., Real Property Article, § 10-702. It is worth noting, though, that Maryland gives sellers the option to issue a disclaimer and sell their properties "as is" as an alternative to disclosing information about the condition and defects of their properties. However, even with the disclaimer, sellers must still mention latent defects. *Id.*
- 75 Under the Texas Open Beaches Act (TOBA), the public has the free and unrestricted right to access Texas beaches, which are located on what is commonly referred to as the "wet beach," from the water to the line of mean high tide. The dry sandy area that extends from the "wet beach" to the natural line of vegetation is usually privately owned but may be subject to the public beach easement. The line of vegetation may shift due to wind, and wave and tidal actions caused by storms and hurricanes. TEX. NAT. RES. CODE, Tit. 2, Ch. 61; Tex. Gen. Land Office, *Open Beaches*, <https://www.glo.texas.gov/coast/coastal-management/open-beaches/index.html#:~:text=Under%20the%20Texas%20Open%20Beaches,line%20of%20mean%20high%20tide>. Before the 2012 Texas Supreme Court decision, *Severance v. Patterson*, courts historically recognized the legal concept of a "rolling easement" under TOBA, which allows an easement to "roll" with the changing coastal events. Beachapedia, *Texas Open Beaches Act*, (2015), https://beachapedia.org/Texas_Open_Beaches_Act#:~:text=Also%2C%20located%20in%20an%20area,with%20the%20changing%20coastal%20events. The *Severance* court ruled that the TOBA rolling easement did not automatically apply (or spring forward) to eroded beaches and adjacent property after storm events, 370 S.W.3d 705 (Tex. 2012), which weakened the TOBA. However, the rolling easement was upheld for gradual coastal change. Because the TOBA upholds the public's right to free and unrestricted access to Texas beaches, the Texas addendum's reference to the TOBA somewhat maps onto the fourth goal of disclosures involving the provision of information about public rights to use and enjoy coastal lands under the public trust doctrine. However, absent explicit mention of these rights, homebuyers likely would be unaware of these public rights, unless they took the time to consult the laws and regulations mentioned in the disclosure. The addendum advises buyers to refrain from signing until they fully understand the risks they are assuming, so Texas coastal property purchasers may be more likely to look into some of these regulations than buyers in other states.
- 76 Seller's Disclosure Notice, (Sept. 1, 2019), https://www.trec.texas.gov/sites/default/files/pdf-forms/OP-H_1.pdf; language adopted from TEX. PROP. CODE § 5.008(b).
- 77 TEX. NAT. RES. CODE, Sec. 61.025.
- 78 Addendum for Property Located Seaward of the Gulf Intercoastal Waterway, <https://www.trec.texas.gov/forms/addendum-property-located-seaward-gulf-intercoastal-waterway>, required by TEX. NAT. RES. CODE § 61.025.

Of the state disclosure policies examined, none of them is as explicit as Texas' about the economic risks of purchasing a coastal property and the fact that those risks fall upon the buyer. These policies accomplish at least the first two goals of disclosures discussed above, and perhaps even the third. By mentioning Gulf of Mexico coastline erosion rates, the addendum ensures that buyers understand the physical risks associated with purchasing coastal properties. Clearly providing notice of the legal and economic risks⁷⁹ of purchasing coastal properties helps minimize the state and local governments' legal liability. And instructing buyers to carefully read the notice and only sign after fully understanding their assumption of risks makes it more likely that buyers will take these disclosures into consideration in their purchase decisions.

■ *Other States*

Disclosure statements in Wisconsin,⁸⁰ Oregon,⁸¹ and Hawai'i⁸² all inquire about nonconforming uses of the property. Oregon's disclosure statement also asks whether there are "any governmental studies, designations, zoning overlays, surveys or notices that would affect the property[.]" As mentioned above, questions about nonconforming uses can help provide notice of administrative regulations but fail to notify buyers of specific development restrictions on coastal properties. Wisconsin's disclosure statement further queries whether the seller is "aware of the property being subject to a mitigation plan required under administrative rules of the Wisconsin Department of Natural Resources related to shoreland zoning ordinances,⁸³ which obligates the owner of the property to establish or maintain certain measures related to shoreland conditions and which is enforceable by the county[.]" This mitigation plan inquiry is helpful to buyers because it provides specific notice of their obligation to establish measures related to shoreland conditions before purchasing their property.

Florida's coastal hazards disclosure law also references coastal regulations in addition to its mention of physical coastal risks. It requires that sellers or seller's agents notify purchasers that the "property being purchased may be subject to...federal, state, or local regulations that govern coastal property, including the delineation of the Coastal Construction Control Line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles." Additionally, sellers must communicate that "[t]he property may be in the Coastal Building Zone and therefore subject to governmental regulation." Although the disclosure law mentions regulations governing coastal property, it would more effectively put home purchasers on notice by referencing specific federal, state, or local regulations and explicitly discussing attendant legal and economic risks.

79 Texas' addendum seeks to disclose the risks involved in purchasing coastal property and characterizes these risks as "legal and economic." However, the risks described in the addendum are also physical ones, despite the fact that Texas does not use the phrase "physical risks."

80 Disclosures by Owners of Real Estate, <https://docs.legis.wisconsin.gov/statutes/statutes/709.pdf> (pursuant to Wis. STATS. § 709.03).

81 OR. REV. STAT. § 105.464, Form of Seller's Property Disclosure Statement, https://oregon.public.law/statutes/ors_105.464.

82 Seller's Real Property Disclosure Statement, Hawaii Association of Realtors Standard Form, <http://www.theceshop.com/webapp/asset-storage/etsassets.synegen.com/ces-cms-dev/pdf/3c0bfe6f-2888-4924-80da-495901ecff7f/Sellers-Property-Disclosure-Statement.pdf>; pursuant to HAW. REV. STAT., Ch. 508D.

83 It is worth noting that these ordinances are established in part to "promote and protect the public trust in navigable waters." See Grant County Shoreland Zoning Ordinance, p. 3, <http://www.co.grant.wi.gov/docview.asp?docid=25495&locid=147>. However, Wisconsin's disclosure form does not explicitly state this purpose, so it cannot be said that the form educates home purchasers on the rights of the public to use and enjoy coastal lands under the public trust doctrine—the fourth goal of disclosures identified in part A.

California's disclosure statement would benefit from inclusion of specific reference to coastal regulations affecting certain properties.

■ California

In contrast to some of these state policies, California's real estate disclosure statement does not make any references to coastal regulations. It merely asks whether there are "any zoning violations, nonconforming uses, [or] violations of 'setback' requirements."⁸⁴ Hence, California's disclosure statement would benefit from inclusion of specific reference to coastal regulations affecting certain properties. The challenge in California is that, rather than stemming from the state, most land use regulation is localized. For instance, many land use laws take the form of local ordinances, permits, or zoning codes.⁸⁵ However, there are statewide coastal regulations in the coastal context, like the Coastal Act, which applies to the state's Coastal Zone and is administered by the California Coastal Commission.⁸⁶ The Coastal Act addresses issues such as shoreline public access and recreation, terrestrial and marine habitat protection, landform alteration, and development design, among others.⁸⁷ Moreover, counties along the San Francisco Bay are subject to certain regulations administered by the San Francisco Bay Conservation and Development Commission (BCDC), such as the San Francisco Bay Plan and the Suisun Marsh Protection Plan.⁸⁸ These regulations are intended (1) to prevent the unnecessary filling of and increase public access to the San Francisco Bay, and (2) to preserve the Suisun Marsh.⁸⁹ Any proposed development within the BCDC's jurisdiction (e.g. filling, dredging, or substantially altering the use of land, water, or structure within the area) typically requires a permit from the agency.⁹⁰

Many counties in the BCDC's jurisdiction have local disclosures and advisories alerting buyers of the BCDC's authority and potential development restrictions.⁹¹ These documents also encourage buyers of property within the BCDC's jurisdiction to contact the agency to gain more information.⁹² California's disclosure could similarly include information about development restrictions in the Coastal Zone to help better apprise homebuyers of the economic and legal risks associated with purchasing coastal properties. Specific recommendations on the inclusion of coastal regulations will be further explored in the "Recommendations" section below.

In sum, of the policies discussed here, Texas' disclosure most effectively sheds light on buyers' legal and economic risks, and specifically mentions coastal regulations. Wisconsin's disclosure form also provides insight on the legal requirements imposed on coastal purchasers. And while Florida's law indi-

84 Cal. Ass'n of Realtors, Real Estate Transfer Disclosure Statement, [https://www.car.org/-/media/CAR/Documents/Transaction-Center/PDF/Standard-Forms/2020-June-Final/TDS-VERSION-1-REDLINE-\(1\).pdf?la=en&hash=D42DDF11D099FB7A7ED0A9D5F74950C4781C44F8](https://www.car.org/-/media/CAR/Documents/Transaction-Center/PDF/Standard-Forms/2020-June-Final/TDS-VERSION-1-REDLINE-(1).pdf?la=en&hash=D42DDF11D099FB7A7ED0A9D5F74950C4781C44F8).

85 See Julia Gill & Jenny Shuetz, *In California, Statewide Housing Reforms Brush Against Local Resistance*, BROOKINGS INST. (June 28, 2023), <https://www.brookings.edu/articles/in-california-statewide-housing-reforms-brush-against-local-resistance/>. "Based on 'police powers' in the [California] state constitution, cities and counties have, for many decades, regulated how land may be used." Dan Walters, *Commentary: Who Will Control Land Use in California?*, CALMATTERS (Apr. 29, 2018), <https://calmatters.org/commentary/2018/04/commentary-who-will-control-land-use-in-california/>.

86 CAL. PUB. RES. CODE § 30000 et seq.; Cal. Coastal Comm'n, *Laws & Regulations: The Coastal Act*, <https://www.coastal.ca.gov/laws/>.

87 *Id.*

88 S.F. Bay Conserv. & Dev. Comm'n, San Francisco Bay Plan, <https://www.bcdc.ca.gov/pdf/bayplan/bayplan.pdf>; S.F. Bay Conserv. & Dev. Comm'n, Suisun Marsh Protection Plan, https://bcdc.ca.gov/plans/suisun_marsh.html#3; S.F. Bay Conserv. & Dev. Comm'n, *Planning*, <https://bcdc.ca.gov/planning/>.

89 *Id.*

90 S.F. Bay Conserv. & Dev. Comm'n, *Types of Permits*, https://bcdc.ca.gov/permits/types_of_permits.html.

91 See, e.g., Solano County Disclosures and Disclaimers Advisory, p. 5, https://saor.org/sites/saor.org/files/Solano%20County%20Disclosure%20%20%20Disclaimers%20Advisory%20-%20Update%2011-1-2021_1.pdf; San Mateo/Santa Clara Counties Advisory, p. 14, <https://myalliancebay.com/wp-content/uploads/2020/10/San-Mateo-Santa-Clara-Counties-Advisory-RSMSCA.pdf>; Alameda County Disclosures and Disclaimers Advisory, p. 15, <https://myalliancebay.com/wp-content/uploads/2021/07/Alameda-County-DDA-Aug2020.pdf>.

92 *Id.*

cates that coastal properties may be subject to coastal regulations, it should include more information about these regulations to put purchasers on notice. Overall, all of the state policies examined in this section are more effective than California's, which makes no reference to coastal regulations.

3. Procedural Aspects of Disclosure Forms

This subsection will explore two procedural standards of effectiveness in disclosure policies: (1) strong language describing purchaser acknowledgment of receipt and examination of the disclosure form, and (2) sufficient time to terminate an offer and ability to amend an offer in the event the disclosure is not provided before the offer is made.

a. Strong Language Describing Purchaser Acknowledgment of Receipt and Examination of Disclosure Form

■ *The Standard*

An effective disclosure would contain robust language asking the purchaser to acknowledge receipt and examination of the disclosure form. This language would increase the likelihood that purchasers fully understand the legal, economic, and physical risks imparted in the form and that they consider this information when deciding whether to proceed with their purchase.

■ *State Practices*

This subsection assesses state practices in South Carolina, Texas, and California. South Carolina's disclosure form stands out; it requires purchasers to make a significant number of acknowledgments prior to signing. Not only do purchasers have to acknowledge that they received and examined a copy of the disclosure, but they must also certify that they had time and opportunity to consult with legal counsel. Above the purchaser's signature line, it also states that the disclosure is "not a warranty by the real estate licensees" or the owner; the disclosure is "not a substitute for obtaining inspections of on site and off site conditions[;]" and "[p]urchasers have sole responsibility for obtaining inspection reports from licensed home inspectors, surveyors, engineers, or other qualified professionals." The placement of these disclaimers might make it more likely for purchasers to consider undertaking inspections or, at the very least, to understand that they would bear the responsibility for deciding to forgo inspections.⁹³

The required addendum for the sale of all properties in Texas located seaward of the Gulf Intracoastal Waterway contains purchaser acknowledgment language that is similar to some of the language on South Carolina's disclosure form. As stated above, the addendum instructs buyers to read the notice carefully and refrain from signing until they fully understand the risks they are assuming. The addendum also makes clear that "the purchaser is hereby notified" that they should "seek the advice of an attorney or other qualified person before executing this contract or instrument of conveyance as to the relevance of these statutes and facts to the value of the property the purchaser is hereby purchasing or contracting to purchase."⁹⁴

93 State of South Carolina Residential Property Condition Disclosure Statement, <https://www.scstatehouse.gov/CommitteeInfo/HomeownersAssociationStudyCommittee/September292015Meeting/008.SC%20Disclosure%20Statement%20and%20Addendum.pdf> (pursuant to S.C. CODE ANN. tit. 27, ch. 50, art. 1).

94 Addendum for Property Located Seaward of the Gulf Intracoastal Waterway, <https://www.trec.texas.gov/forms/addendum-property-located-seaward-gulf-intercoastal-waterway>, required by TEX. NAT. RES. CODE § 61.025.

In contrast to the strong acknowledgment language contained in the disclosure forms described above, California's hazard disclosure form has a meager one-sentence purchaser acknowledgment statement: "Transferee represents that he or she has read and understands this document." This does little to ensure that purchasers took the time to fully read and understand the risks discussed in the form.

To conclude, the South Carolina and Texas disclosure forms contain particularly robust language describing the purchaser's acknowledgement that they received and examined the disclosure form. California's disclosure form, on the other hand, fails to meet this standard.

b. Sufficient Time to Terminate Offer and Ability to Amend Offer in Event That Disclosure is Not Provided Before Offer is Made

Although there is no objectively "best" termination period, a buyer should at least have the opportunity to fully read, understand, and consider the risks contained in a disclosure form before ultimately making their purchase decision.

■ **The Standard**

As discussed throughout this section, the type of information in a disclosure could influence a buyer's decision about the transaction, or at least the offer price. For this reason, a buyer would ideally receive a disclosure prior to making an offer so that they can consider the conditions of and risks to the property as they deliberate about whether they want to make an offer and at what price. However, in the event the buyer receives the disclosure after already having made an offer, they should be given enough time to terminate the offer.

Although there is no objectively "best" termination period, a buyer should at least have the opportunity to fully read, understand, and consider the risks contained in a disclosure form before ultimately making their purchase decision. California gives purchasers three days after delivery of the disclosure in person or five days after delivery by deposit in the United States mail to terminate the offer.⁹⁵ A purchaser must deliver a written notice of termination to the seller or the seller's agent. Three to five days may not be enough time to fully appreciate the risks involved and decide to terminate. A purchaser would also ideally have the ability to amend their offer once they have reviewed the disclosure, given how much of an impact disclosed information can have on the buyer's decision about the offer price.

■ **State Practices**

Oregon, Hawai'i, and Texas all provide better alternatives to the short window of time given to California buyers to terminate their offers. In Oregon, if the seller fails or refuses to provide a property disclosure statement, the buyer has the right to revoke their offer immediately, so long as the sale has not closed.⁹⁶ But if the seller *does* issue a disclosure statement and the buyer has not waived their right to revoke their offer, they have five business days after delivery to revoke their offer.⁹⁷ Hawai'i's disclosure form also provides a good timescale for offer termination. Unless otherwise agreed

⁹⁵ California's policy is included in the subsection describing the standard of effectiveness here rather than in the subsection on state practices to illustrate the point that although there is not an objective amount of time for a buyer to terminate their offer, the amount of time allotted for homebuyers in California may not be sufficient.

⁹⁶ Laura Perrin, *Property Disclosure Statements in Oregon: What Home Sellers Need to Know*, COLUM. DEV. (Apr. 23, 2019), <https://columbiadevelopment.com/2019/04/23/property-disclosure-statements-in-oregon-what-to-know/>; OR. REV. STAT. § 105.464, Form of Seller's Property Disclosure Statement, https://oregon.public.law/statutes/ors_105.464.

⁹⁷ OR. REV. STAT. § 105.475.

upon in the purchase contract, the buyer has fifteen calendar days from the date of receiving the disclosure statement to examine the disclosure statement and rescind the purchase contract in writing to the seller or seller's agent. If timely written notice is provided, the buyer's deposits are immediately returned.⁹⁸ And in Texas, if the seller fails to deliver the disclosure form pre-contract, the buyer may terminate the deal within seven days of receiving it.⁹⁹

It is hard to say whether any of these states meet the ideal standard of time given to a buyer to terminate an offer in the event they receive the disclosure after an offer is made. However, a longer termination window offers a better opportunity to comprehend and consider the information disclosed before making a purchase decision. For this reason, they all perform better than California in terms of providing an adequate post-disclosure termination window. None of the disclosure policies examined explicitly grants buyers the ability to amend their offer when the disclosure is provided after the offer is made. However, California should still strive to meet this standard. Specific recommendations about extending the termination period and amending offers in the event disclosure is provided post-offer will be explored in the "Recommendations" section below.

III. Recommendations

Stronger disclosure practices can help home purchasers protect themselves from purchasing, or overpaying for, property with potential SLR threats. This section will propose recommendations for strengthening California's hazard disclosure laws to better inform purchasers of the physical, legal, and economic risks involved in acquiring coastal properties. The section will be divided into two subsections: the first will focus on recommendations on disclosures of substantive risks, while the second will focus on procedural recommendations. The disclosure of substantive risks subsection will be further divided into recommendations on disclosing physical coastal risks and recommendations on disclosing regulations.

A. Recommendations on Disclosure of Substantive Risks

1. Addressing Physical Coastal Risks

California's real estate disclosure laws would benefit from more specific references to SLR hazards to put buyers on notice of potential risks affecting coastal properties. This subsection will discuss two approaches to incorporating these references: (a) including a map that indicates SLR risk in a state-maintained climate change risk repository and referring to the map on California's real estate disclosure documents, and (b) adding coastal-specific language to California's general Real Estate Transfer Disclosure Statement.

⁹⁸ HAW. REV. STAT., § 508D-5(2).

⁹⁹ It is worth noting, though, that Texas does not necessarily require advanced delivery of the disclosure to the buyer. The form must be delivered to the buyer "on or before the effective date" of the property purchase contract. TEX. PROP. CODE § 5.008(f). This delivery timescale is a little late and should not necessarily be considered a best practice.

a. Include Map Indicating Sea Level Rise Risk Areas in State-Maintained Climate Change Risk Repository and Refer to the Map on California's Real Estate Documents

One way to include specific references to these risks would be to include a map indicating SLR risk areas in a state-maintained climate change risk repository that is then referenced on California's real estate disclosure documents. One example of such a repository is the California Governor's Office of Emergency Services (CalOES)'s MyHazards online tool. Currently, the MyHazards online tool provides map overlays indicating areas at risk from earthquakes, flooding, fires, and tsunamis, along with a search tool that allows the public to locate an address and see which hazard zones might overlie a given property or the nearby area.¹⁰⁰ MyHazards also provides steps users can take to reduce personal risk.¹⁰¹

There are various existing SLR mapping tools that can be used to create a map overlay tool detailing future flooding risks for properties in California. Each of the available tools "serves a unique niche, target audience[,] and role; has strengths and limitations; and requires varying levels of skill to use."¹⁰² For example, the CoSMos/Our Coast Our Future hazard map, which covers the California Coast, Russian River, and Los Peñasquitos Lagoon, provides SLR maps for eleven different amounts in 25 cm (0.8 ft) intervals and three different storm scenarios (annual, 20-year, and 100-year). It also allows users to explore various "scenario topics," such as flooding, flood duration, and cliff retreat.¹⁰³ Another instrument is the Coastal Resilience Toolkit, which was created by the Nature Conservancy and "provides maps showing inundation, flooding, wave impact zone[s], and erosion risk zones with low, medium, and high sea level rise scenarios for the years 2030, 2060, and 2100."¹⁰⁴ The tool allows users to view statewide SLR impacts and also offers more detailed modeling for Los Angeles, Monterey Bay, Santa Barbara, and Ventura.¹⁰⁵ The Surging Seas Risk Finder created by Climate Central presents "detailed local projections and analysis of over 100 infrastructure and population variables tabulated by dozens of administrative area types" for the contiguous U.S. Climate Central also has an interactive map called Ocean at the Door that shows areas, homes, and home value at risk of annual flooding as sea levels rise, projected for the year 2050.¹⁰⁶ And lastly, the NOAA Sea Level Rise and Coastal Flooding Impacts Viewer provides maps for different amounts of SLR in 1-ft increments and the scale of potential flooding, but does not include impacts from storms, erosion, or waves or illustrate the exact location of flooding. The viewer covers the coastal contiguous U.S. (excluding the Great Lakes), Hawai'i, and the U.S. territories.¹⁰⁷

There are various existing sea level rise mapping tools that can be used to create a map overlay tool detailing future flooding risks for properties in California. Each of the available tools "serves a unique niche, target audience[,] and role; has strengths and limitations; and requires varying levels of skill to use."

¹⁰⁰ Cal. Governor's Office of Emergency Services, *MyHazards*, <http://myhazards.caloes.ca.gov/>.

¹⁰¹ *Id.*

¹⁰² Ocean Prot. Council, *State of California Sea Level Rise Guidance 2018 Update* 34, https://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A_OPC_SLR_Guidance-rd3.pdf. These tools are helpful aids in learning about SLR risk, but none are completely precise, and they will continue to evolve over time as scientific knowledge and modeling capabilities improve. Both the Ocean Protection Council and California Coastal Commission have flagged some of these tools in their SLR guidance documents for use by local governments and communities for planning purposes. See *id.*; Cal. Coastal Comm'n, *Critical Infrastructure at Risk Sea Level Rise Planning Guidance for California's Coastal Zone: Final Adopted Guidance* 27 (Nov. 2021); California Coastal Commission *Sea Level Rise Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits* 77, 81 (Nov. 2018).

¹⁰³ Our Coast Our Future Hazard Map, <https://ourcoastourfuture.org/hazard-map/>. Our Coast Our Future is a partnership between Point Blue Conservation Science and U.S. Geological Survey.

¹⁰⁴ California Coastal Commission *Sea Level Rise Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits* 77 (Nov. 2018).

¹⁰⁵ Coastal Resilience California, <https://maps.coastalresilience.org/california/#>.

¹⁰⁶ Surging Seas: Sea Level Rise Analysis by Climate Central, <https://sealevel.climatecentral.org/about/>; Climate Central/Zillow Report – Ocean at the Door: Rising Seas, Real Estate & Risk, https://rzh.climatecentral.org/#12/40.7298/-74.0070?show=zillow_k17&projections=1&level=5&unit=feet&pois=hide.

¹⁰⁷ NOAA Sea Level Rise and Coastal Flooding Impacts Viewer, <https://coast.noaa.gov/slr/#/layer/slr>. More information on these tools and others can be found on Climate Central's Sea Level Rise and Coastal Flood Web Tools Comparison Matrix: <https://sealevel.climatecentral.org/matrix/CA.html?v=1>.

Data from one or more of these tools can be used to create a SLR map overlay detailing future flooding risks for properties in California. This highly detailed map of future SLR risks could then be integrated into a state repository of risk data layers, like MyHazards, to give buyers access to information on the potential risk to a given parcel. Once the map is integrated into the repository, the California Legislature could then mandate sellers to provide buyers with an addendum or advisory that contains information about potential SLR risks to the property, a link to the repository, and perhaps the contact information of the state agency maintaining the repository to learn more. Further, the Legislature could amend California Civil Code § 1103.2 so that California's Natural Hazard Disclosure Statement will also reference the map. This addition may allow prospective buyers to not only learn about SLR-related hazards, but also other hazards affecting properties, if the repository contains various risk data layers, like the MyHazards tool. Additionally, local jurisdictions throughout the state could include information about the map in their local option disclosure statements to give buyers the ability to readily ascertain risks.¹⁰⁸

b. Add Coastal-Specific Language in an Amendment to California Civil Code Section § 1102.6

California's general Real Estate Transfer Disclosure Statement, based on California Civil Code § 1102.6, can also be amended to include specific references to SLR risks. The Statement asks the seller whether they are aware of certain conditions affecting the property, including "settling from any cause, or slippage, sliding, or other soil problems"; "[f]looding, drainage or grading problems"; and "[m]ajor damage to the property or any of the structures from fire, earthquake, floods, or landslides[.]" To better account for SLR risks, the statement can be amended to either replace this language or add to it with the following coastal-specific language:

- *Any issues with erosion that have affected the property, or any erosion control measures that have been taken on the property*
- *Flood hazards, including federally designated flood hazard areas, storm surge, king tides, El Niño events, or flooding caused by anticipated future sea level rise (e.g. due to direct coastal flooding, groundwater rise, or tidal waters backing up into rivers or stormwater conveyance systems)*

Adopting one or more of these amendments to existing natural hazard disclosure requirements would not require substantial enforcement action where sellers are concerned and would reap several benefits. As with other natural hazards and disclosures, sellers are incentivized to disclose this information to buyers to relieve themselves of further duty and potential liability.¹⁰⁹ Referencing SLR risks in California's hazard disclosure laws can also help internalize the risks of

¹⁰⁸ Other potential recommendations to incorporate specific references to physical coastal risks to properties in California's disclosures include (1) establishing and referring to a "Sea Level Rise Exposure Area" in an amendment to California Civil Code §§ 1103(c) and 1103.2, using Hawaii's hazard disclosure policy as a model; or (2) adopting a certain SLR exposure benchmark and requiring sellers to disclose if their properties are subject to this degree of exposure in California Civil Code § 1103(c). The first recommendation involves collecting and analyzing data from either the various existing mapping tools or a new tool to delineate SLR exposure areas throughout the state, and requiring sellers to indicate on the NHD Statement whether their property lies in the SLR Exposure Area. The second recommendation would entail coming up with a SLR exposure benchmark (e.g. 3.5 feet of SLR by 2050), informed by state agency guidance, and requiring sellers to use various available tools to determine if their properties meet the benchmark. Both of these recommendations have limitations. Delineating a SLR exposure area would be politically challenging because people inside the hazard zone will anticipate loss of property value and likely oppose such a map, and difficult decisions would have to be made about what level of risk to base the SLR Exposure Area map on and by what date. With respect to the SLR exposure benchmark recommendation, it would likely be difficult to reach a consensus on the appropriate benchmark; in the past, certain benchmarks used by state agencies were widely seen as way-too-high worst-case scenarios. Additionally, many properties within the area designated may not be affected by SLR, while others outside of the area could be affected.

¹⁰⁹ CAL. CIV. CODE § 1103.5 (West).

Just as several Bay Area counties' local disclosures contain information about potential development restrictions on properties within the BCDC's jurisdiction, California's real estate disclosure should also include information about development restrictions on property within the Coastal Zone.

buying and building in hazardous locations, promote reasonable economic expectations for owners of such property, and promote responsible land use practices. Although amending California's disclosure statements is likely to be met with opposition from realtors' associations, local governments, and coastal property owners, it is vitally important for the state to confront the threat that rising seas pose to infrastructure and property as well as public trust lands. Doing so would increase property owners' awareness of these risks and even encourage them to participate in SLR planning at the local government level to ensure their communities are resilient during future coastal flooding and erosion events. SLR planning could serve as a benefit to the long-term property values in some areas throughout the state.

2. Specific References to Coastal Regulations

California's disclosure should reference coastal regulations affecting properties to better apprise homebuyers of the economic and legal risks associated with purchasing coastal properties. Like the development regulations enforced by the BCDC in the Bay Area, any development activities within the Coastal Zone require a permit, called a Coastal Development Permit, pursuant to the Coastal Act.¹¹⁰ Just as several Bay Area counties' local disclosures contain information about potential development restrictions on properties within the BCDC's jurisdiction, California's real estate disclosure should also include information about development restrictions on property within the Coastal Zone. California's Real Estate Transfer Disclosure Statement should either be updated to include this information, or it could be included in an addendum to the statement. For example, the statement or addendum could include the following language:

The Coastal Act mandates protection and, where feasible, enhancement and restoration of coastal resources including public access, recreation, marine environments, water quality, agricultural land, and environmentally sensitive habitat. Shoreline armoring, especially when coupled with impacts of sea level rise, can threaten public access and coastal resources in a manner that conflicts with the Coastal Act. The Coastal Act requires new development to be structurally stable, requires risks from flooding and other hazards to be minimized, and protects coastal resources, including by limiting the use of shoreline armoring. Coastal Act policies also require that new development be located in areas with adequate public services, and other policies prioritize certain uses over others.

Any 'development' activity in the Coastal Zone generally requires a Coastal Development Permit (CDP) from the Coastal Commission or local government with a certified Local Coastal Program (LCP). The width of the Coastal Zone varies, but it can extend up to five miles inland from the shore, including private and public property. 'Development' is broadly defined by the Coastal Act. Examples of development include, but are not limited to:

- *Demolition, construction, replacement, or changes to the size of a structure*
- *Grading, removal of, or placement of rock, soil, or other materials*
- *Clearing of vegetation in, or that provides, sensitive habitat*
- *Impeding access to the beach or public recreational trails*
- *Altering property lines, such as through a lot line adjustment or subdivision*
- *Changing the intensity of use of land, such as using a single-family home as a commercial wedding venue*
- *Repair or maintenance activities that could result in environmental impacts*

¹¹⁰ CAL. PUB. RES. CODE § 30600(a) (2023).

If you have any questions about whether your project requires a CDP, please contact your local Commission office or city/county planning department. Undertaking non-exempt development activities without a CDP is a violation of the Coastal Act and may result in an enforcement action.¹¹¹

This language would provide improved notice to potential homebuyers of the regulations their property would be subject to should they choose to purchase. It is also important for coastal municipalities to address SLR hazards in land use planning and adopt land use policies that anticipate rising sea levels. Jurisdictions located in the Coastal Zone are required to both develop a General Plan and a Local Coastal Program (LCP).¹¹² General Plans are comprehensive planning documents, which all California cities and counties must prepare, that serve as a blueprint for a municipality's future land use decisions.¹¹³ LCPs are planning tools used by local governments to guide development in the Coastal Zone, in partnership with the Coastal Commission.¹¹⁴ There tends to be confusion among local governments as to the connection between General Plan elements and LCP policies, as well as a lack of clarity about where and to what projects LCP policies apply.¹¹⁵ To resolve this confusion and fully account for SLR hazards in land use planning decisions, jurisdictions in the Coastal Zone should connect LCP SLR policies with General Plans and coordinate with local planners to ensure planners understand LCPs.¹¹⁶ And municipalities that have not already done so should include references to local land use policies and regulations on local option disclosures to apprise homebuyers of development restrictions imposed by them.

B. Procedural Recommendations

The Legislature can make several procedural amendments to California's disclosure laws. These possible amendments include extending the time given to buyers to terminate their offer and granting buyers the ability to amend their offer if disclosure is not provided before the offer is made, providing buyers with more disclosure materials, and strengthening the purchaser acknowledgement language.

1. Extend Time to Terminate Offer and Grant Ability to Amend Offer in Event That Disclosure is Not Provided Before Offer is Made

As mentioned above, requiring disclosure to be provided to all prospective buyers rather than just those who put in an offer would ensure that buyers have the information they need to make an informed offer decision. For example, if a buyer knows about coastal flooding risks prior to making an offer, their offer may be different. A 2022 study conducted by Redfin shows that users

¹¹¹ This language is based in part on a Coastal Commission enforcement document. Cal. Coastal Comm'n, *When Do You Need a Coastal Development Permit?*, https://www.coastal.ca.gov/enforcement/cdp_pamphlet.pdf.

¹¹² CAL. GOV'T CODE §§ 65300-65303.4; CAL. PUB. RES. CODE § 30500.

¹¹³ Governor's Office of Plan. & Rsch., *General Plan Information*, <https://opr.ca.gov/planning/general-plan/>.

¹¹⁴ Cal. Coastal Comm'n, *Local Coastal Programs*, [https://www.coastal.ca.gov/lcps.html#:~:text=Local%20Coastal%20Programs%20\(LCPs,76%20coastal%20cities%20and%20counties](https://www.coastal.ca.gov/lcps.html#:~:text=Local%20Coastal%20Programs%20(LCPs,76%20coastal%20cities%20and%20counties).

¹¹⁵ According to Coastal Commission staff, coastal jurisdictions approach the requirements for completing both plans in different ways. Small jurisdictions entirely or mostly within the Coastal Zone often combine the General Plan and LCP as a single document; others keep them wholly separate; and still others combine them but include some sort of notation for which policies are LCP-specific and/or are only relevant in the Coastal Zone.

¹¹⁶ Passage of SB 272 would help to achieve the objective of addressing SLR hazards in development and land use planning. According to the 2022 State Agency Sea Level Rise Action Plan for California, a collaborative document developed by 17 state agencies, the Coastal Commission plans to lead efforts to distribute funding to local and tribal governments to update LCPs through the LCP Local Assistance Grant Program. The Coastal Commission, Ocean Protection Council, and other agencies also plan to support the adoption of SLR adaptation plans across the entire coast of California, Bay Area, and Delta region, and coastal State Parks. Ocean Prot. Council et al., *State Agency Sea-Level Rise Action Plan for California* 18 (Feb. 2022), https://www.opc.ca.gov/webmaster/_media_library/2022/02/Item-7_Exhibit-A_SLR-Action-Plan-Final.pdf.

Giving purchasers the ability to amend their offer ensures that sellers are not incentivized to withhold disclosure until they have an offer in hand and leaves parties with flexibility in the transaction.

of their website who viewed homes with severe and/or extreme flood risk proceeded to bid on homes with 54% less risk after gaining access to risk data.¹¹⁷ Flood risk data also impacted which homes buyers viewed online.¹¹⁸ On the other hand, amending the law to establish a set deadline for disclosure and requiring sellers to provide disclosure to all prospective buyers could interfere with the flexibility buyers and sellers currently enjoy in real estate transactions. As an alternative to such a bold policy change, the California Legislature could at least extend the time to terminate an offer in the event disclosure is not provided before an offer is made.

California gives purchasers three days after delivery of the disclosure in person or five days after delivery by deposit in the U.S. mail to terminate the offer. As discussed in the “Best Practices” section of the paper, three to five days may not be enough time to fully appreciate the risks involved and decide to terminate an offer. For this reason, California should follow the lead of states like Oregon or Hawai‘i, which provide the buyer with more time to terminate their offer. For example, Hawai‘i grants buyers fifteen calendar days from the date of receiving the disclosure statement to examine the disclosure statement and rescind the purchase contract, unless otherwise agreed upon in the purchase contract.¹¹⁹ California should model its statutory language after Hawai‘i’s to afford buyers more time to consider their purchase decisions. And given how important disclosed information can be to the buyer’s decisions about whether to purchase *and* at what price to purchase, California would ideally take a step further by allowing buyers the ability to amend their offer once they have reviewed the disclosure. A binary purchase-no purchase decision is a tough one to make for buyers. Giving them the ability to amend their offer ensures that sellers are not incentivized to withhold disclosure until they have an offer in hand and leaves parties with flexibility in the transaction.

2. Provide Buyers with More Disclosure Materials

There should also be a requirement to provide buyers with more disclosure materials, such as a survey, weblinks, and/or pamphlet to apprise them of physical risks and regulations. In Florida, the seller or seller’s agent must provide the purchaser with an affidavit or survey, which indicates the relationship between the property and the Coastal Construction Control Line.¹²⁰ California law also requires sellers of homes built before 1960 with one to four units of conventional light-frame construction to deliver to the buyer a copy of a booklet, called the Homeowner’s Guide to Earthquake Safety, and disclose certain earthquake deficiencies.¹²¹ The Homeowner’s Guide to Earthquake Safety was developed by the California Seismic Safety Commission and provides information on the most common earthquake-related hazards that can damage homes; how to find and fix potential structural risks in a home; and how to find more information on earthquake safety.¹²² The California Legislature could similarly require sellers to provide buyers with an affidavit or survey, like in Florida, and a separate writing on coastal hazard safety, like the current requirement for earthquake safety, to inform buyers of potential coastal risks and provide recommendations for how to mitigate them. This requirement could potentially be triggered for

117 Lily Katz et al., *supra* note 7. “Redfin conducted this experiment from Oct. 12, 2020 to Jan. 3, 2021 in partnership with researchers from University of Southern California, the National Bureau of Economic Research and Massachusetts Institute of Technology.” This experiment “coincided with a period in the housing market when being picky could set buyers back; many were losing bidding war after bidding war as competition surged due to record-low mortgage rates, pandemic-fueled migration and an intensifying housing shortage. Still, flood-risk data caused Redfin users to become more selective about the homes they viewed and bid on—a sign that many homebuyers take climate risk seriously.”

118 *Id.*

119 HAW. REV. STAT., § 508D-5(b).

120 FLA. STAT. § 161.57.

121 CAL. GOV’T CODE §§ 8897.1- 8897.5.

122 Cal. Seismic Safety Comm’n, *Homeowner’s Guide to Earthquake Safety* 3 (2020), https://earthquake.ca.gov/wp-content/uploads/sites/8/2022/12/20-01_hog-1.pdf.



homes located in the Coastal Zone, and ideally, the affidavit or survey and separate writing would be delivered along with the disclosure statements.

3. Strengthen Acknowledgment Language

Lastly, California's disclosure law can be amended to require that both the purchaser and seller acknowledge in writing that the purchaser has received the disclosure statement, affidavit or survey, and freestanding brochure or pamphlet. California could also instruct buyers to read the disclosure documents carefully and refrain from signing until they fully understand the risks they are assuming, as stated on Texas' addendum for the sale of properties located seaward of the Gulf Intracoastal Waterway. Further, California could add disclaimers (e.g. the disclosure is "not a substitute for obtaining inspections of on site and off site conditions"), modeled after South Carolina's disclosure form. Strengthening the purchaser acknowledgement language in California's disclosure documents may make it more likely for buyers to review the information in the statement, affidavit/survey, and brochure/pamphlet, and thus, more likely to understand and consider that information in their purchase decision.

Conclusion

As climate change contributes to SLR, storm surge, and more extreme precipitation events, hundreds of thousands of homes are at risk of erosion and chronic flooding in the coming decades. It is imperative to effectively inform potential homebuyers of the physical, legal, and economic risks associated with their coastal property purchases. Amending California's disclosure laws to better account for hazards and coastal regulations affecting properties, as well as to give buyers more hazard information and time to consider this information (among other procedural changes), will allow buyers to make better informed purchase decisions.

Table 1: Goals and Standards that the States' Disclosure Policies Satisfy

State	Standards of Effectiveness			Goals			
	Inclusion of specific references to physical risks	Inclusion of specific references to coastal regulations	Inclusion of clear procedural disclosure requirements	Ensuring that home purchasers understand the physical risks associated with the property they are considering purchasing	Mitigating legal risk for sellers and municipalities	Increasing the likelihood that coastal property purchasers will consider the information provided by a disclosure statement in their purchase decisions	Ensuring that home purchasers are aware of the rights of the public to use and enjoy coastal lands under public trust doctrine
California	X			X (to an extent)			
Florida	X	X		X	X (potentially)		
Hawai'i	X	X	X (namely, sufficient time to terminate the offer upon receipt of disclosure form)	X	X	X	
Ohio	X	X		X			
Oregon			X (namely, sufficient time to terminate the offer if the disclosure is not provided before the offer is made)		X		
South Carolina			X (namely, strong language describing purchaser acknowledgment of receipt and examination of disclosure form)			X (potentially)	
Texas	X	X	X	X	X	X	
Washington	X			X (to an extent)			
Wisconsin	X	X		X (to an extent)	X (potentially)		



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