

CITY OF SOLANA BEACH
SOLANA BEACH CITY COUNCIL, SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY, PUBLIC
FINANCING AUTHORITY, & HOUSING AUTHORITY

JOINT **REGULAR** MEETING

MINUTES

6:00 P.M.
Wednesday, September 26, 2012

CITY COUNCIL CHAMBERS
635 S. HIGHWAY 101,
SOLANA BEACH, CALIFORNIA

The City Council acts as the City of Solana Beach Redevelopment Agency and the Public Financing Authority.

CALL TO ORDER AND ROLL CALL:

Present: Kellejian, Roberts, Nichols, Campbell, and Heebner.

Absent: None.

Also Present: David Ott, City Manager
Johanna Canlas, City Attorney
Angela Ivey, City Clerk
Wende Protzman, Deputy City Mgr/Community Development Dir.
Mo Sammak, City Engineer/Public Works Dir.
Marie Berkuti, Finance Manager
Dan King, Sr. Management Analyst

CLOSED SESSION REPORT: (when applicable)

Johanna Canlas, City Attorney, stated there was no reportable action.

FLAG SALUTE:

APPROVAL OF AGENDA:

MOTION: Moved by Campbell and seconded by Heebner. **Motion carried unanimously.**

PRESENTATIONS:

(Ceremonial items that do not contain in-depth discussion and no action/direction.)

1. Highway 101 Westside Improvement Project Update

Mo Sammak, Director of Public Works, presented a powerpoint (on file) reviewing the current project.

ORAL COMMUNICATIONS:

This portion of the agenda provides an opportunity for members of the public to address the City Council on items relating to City business and not appearing on today's agenda by submitting a speaker slip (located on the back table) to the City Clerk. Comments relating to items on this evening's agenda are taken at the time the items are heard. Pursuant to the Brown Act, no action shall be taken by the City Council on public comment items. Council may refer items to the City Manager for placement on a future agenda. The maximum time allotted for each presentation is THREE MINUTES (SBMC 2.04.190). Please be aware of the timer light on the Council Dais.

Ali Dixon stated she was a member of the Public Arts Advisory Commission (PAAC) and invited the public to the Arts Alive event where free canvas bags would be given out to the first 100 people.

Marcie Beckett stated she lived in Pacific Beach and spoke of the negative impacts that Marijuana shops had on the kids in her local schools and neighborhoods.

Christine Griffiths stated the negative impacts that Marijuana shops had on the building where she worked.

Daniel Powell stated there was great participation and an economic boost from the "Taste of Solana Beach" event in Solana Beach and thanked the City and participating restaurants.

COUNCIL COMMUNITY ANNOUNCEMENTS:

COUNCIL COMMENTARY:

A. CONSENT CALENDAR: (Action Items) (A.1. - A.5.)

Items listed on the Consent Calendar are to be acted in a single action of the City Council unless pulled for discussion. Any member of the public may address the City Council on an item of concern by submitting to the City Clerk a speaker slip (located on the back table) before the Consent Calendar is addressed. Those items removed from the Consent Calendar by a member of the Council will be trailed to the end of the agenda, while Consent Calendar items removed by the public will be discussed immediately after approval of the Consent Calendar.

A.1. Waive the reading of Ordinances.

Recommendation: That the City Council

1. Approve waiving the text reading of ordinances on this agenda pursuant to Solana Beach Municipal Code Section 2.04.460.

MOTION: Moved by Roberts and seconded by Heebner. **Motion carried unanimously.**

A.2. Register Of Demands. (File 0300-30)

Recommendation: That the City Council

1. Ratify the list of demands for August 18 - 31, 2012.

MOTION: Moved by Roberts and seconded by Heebner. **Motion carried unanimously.**

A.3. General Fund Adopted Budget for Fiscal Year 2012-13 Changes. (File 0330-30)

Recommendation: That the City Council

1. Receive the report listing changes made to the Fiscal Year 2012-2013 General Fund Adopted Budget.

MOTION: Moved by Roberts and seconded by Heebner. **Motion carried unanimously.**

A.4. Award Construction Contract for Castro Street Improvements Phase 4. (File 0400-10)

Recommendation: That the City Council

1. Adopt Resolution 2012-139:
 - a. Awarding the construction contract to PAL General Engineering, in the amount of \$74,495, for the Castro Street Improvements Phase 4, Bid No. 2012-06.
 - b. Authorizing the City Manager to execute the construction contract on behalf of the City.
 - c. Approving an amount of \$26,000 for construction contingency.
 - d. Authorizing the City Manager to approve cumulative change orders up to the construction contingency amount.

MOTION: Moved by Roberts and seconded by Heebner. **Motion carried unanimously.**

A.5. Community Grant Program Fiscal Year 2012-13. (File 0330-25)

Recommendation: That the City Council

1. Adopt Resolution 2012-143 approving and authorizing the FY 2012-13 Community Grant Program.

MOTION: Moved by Roberts and seconded by Heebner. **Motion carried unanimously.**

NOTE: The City Council shall not begin a new agenda item after 10:30 p.m. unless approved by a unanimous vote of all members present. (SBMC 2.04.070)

B. PUBLIC HEARINGS: (B.1. - B.2.)

This portion of the agenda provides citizens an opportunity to express their views on a specific issue as required by law after proper noticing by submitting a speaker slip (located on the back table) to the City Clerk. After considering all of the evidence, including written materials and oral testimony, the City Council must make a decision supported by findings and the findings must be supported by substantial evidence in the record. An applicant or designees for a private development/business project, for which the public hearing is being held, is allotted a total of fifteen minutes to speak, as per SBMC 2.04.210. A portion of the fifteen minutes may be saved to respond to those who speak in opposition. All other speakers have three minutes each. Please be aware of the timer light on the Council Dais.

B.1. Development Review Permits (DRP), Minor Exception Compliance (MEC), and Structure Development Permits (SDP) at 264 Pacific Avenue, Applicant: Don Glatthorn, Case: 17-11-27. (File 0600-40)

Recommendation: That the City Council

1. Conduct the Public Hearing: Open the Public Hearing, Report Council Disclosures, Receive Public Testimony, Close the Public Hearing.
2. Find the project exempt from the California Environmental Quality Act pursuant to Section 15301 of the State CEQA Guidelines; and
3. If the City Council makes the requisite findings and approves the project, adopt Resolution 2012-144 conditionally approving a DRP, MEC and an administrative SDP to allow for the conversion of nonconforming living space to garage and an interior remodel and 1,459 square foot addition to their existing single-family residence at 264 Pacific Avenue.

David Ott, City Manager, introduced the item.

Corey Johnson, Associate Planner, presented a powerpoint (on file) reviewing the proposed project.

Council reported their disclosures.

Jim Sneed stated that he was the architect for the project and was available for questions.

Mayor Kellejian opened the public hearing.

MOTION: Moved by Campbell and seconded by Roberts to close the public hearing.
Motion carried unanimously.

Councilmember Nichols stated that he could not support the project motion because he felt there were other possible design options that could have been explored that should part of the exercise for a Minor Exception.

MOTION: Moved by Campbell and seconded by Heebner. **Motion carried 4/1** (Noes: Nichols.)

B.2. Community Development Block Grant Funds Fiscal Year 2013-2014.
(File 0400-10)

Recommendation: That the City Council

1. Conduct the Public Hearing: Open the public hearing, Report Council disclosures, Receive public testimony, Close the public hearing.
2. Adopt Resolution 2012-138:
 - a. Finding that the funding request and project implementation are exempt from the California Environmental Quality Act pursuant to the State CEQA Guidelines.
 - b. Approving the list of public street ADA Ramp Locations (Attachment 1).
 - c. Requesting Fiscal Year 2013-14 Community Development Block Grant Funds for ADA pedestrian ramp improvements at various public street intersections per Attachment 1.
 - d. Finding that all of Fiscal Year 2013-14 CDBG funds, presently estimated at a total of \$38,000, are designated to be used for ADA pedestrian ramp improvements. Furthermore, the County is encouraged to advance future years' CDBG funding to allow a more cost-effective and less community-impacting implementation.

David Ott, City Manager, introduced the item.

Mayor Kellejian opened the public hearing.

MOTION: Moved by Heebner and seconded by Campbell to close the public hearing.
Motion carried unanimously.

MOTION: Moved by Roberts and seconded by Nichols. **Motion carried unanimously.**

C. STAFF REPORTS: (C.1. - C.2.)
Submit speaker slips to the City Clerk

C.1. Consideration of California Coastal Commission's Suggested Modifications to the City's Land Use Plan and Proposed Revisions from the Beach & Bluff Conservancy and the Condominium Owners of South Sierra Avenue. (File 0610-12)

Recommendation: That the City Council

1. Consider the options as discussed above and provide direction as needed.

David Ott, City Manager, introduced the item and stated that on March 7, 2012, the Coastal Commission approved many modifications to the City's Land Use Plan (LUP), that there were some issues that required clarification such as the Recreation Mitigation Fee Modification, and that this issue was brought back to the Coastal Commission's June meeting. He said that two law suits against the California Coastal Commission (CCC) had been filed earlier this year, one by the Beach and Bluff Conservancy (BBC) and one by Joseph Steinburg, a resident of the City and that a hearing had not been set for either of the petitions. He continued stating that he had negotiated with both Surfrider and the BBC to agree that each group would receive 25 minutes to present their side this evening with an additional 5 minutes of rebuttal time, and that individuals that were associated with either group would waive their individual speaking time.

Leslea Meyerhoff, consultant, presented a power point (on file), reviewing the history and background of the Local Coastal Program (LCP)/Land Use Program LUP). She stated that the City had until September 7, 2013 to take formal action on the LUP, that once two law suits were filed against the California Coastal Commission (CCC), the BBC and COOSSA then submitted a letter to the Council requesting for the LUP, that had been approved by the Coastal Commission, be rejected and resubmitted with their proposed changes.

David Ott, City Manager, stated that City Staff had met with the Coastal Staff regarding the 18 modifications that were submitted to the City, that the items included concerns of the use of the terms "void" and "minimize," that the language was not well written, and that revision of the language were needed. He stated that another discussion was regarding how the 50% or less provision for a remodel would be measured and determined, and that there was a difference between the City and Coastal Commission on how the measurement would be determined. He said that they discussed the geological set back line focused on the 75 year erosion rate, it did not matter if the property had a lower seawall protection device, the Coastal Commission would still presume that the seawall was not there and would use the minimum 40 foot plus 75 year requirement. He said that the City felt that this was not reasonable, that clarification language was needed regarding an owner wanting to build a new house requiring a set back of at least 40 feet from the bluff edge, and that a property with a lower seawall would use caissons to support it. He stated that they discussed how the mitigation fees could be used, that the CCC stated that the funds should only be used for beach access, and that the CCC had agreed that the City should be able to determine how to spend the funds. He stated that other topics of discussion included the start time of the

20 year permit, which the CCC agreed that the start time could begin at the final permit for construction completion of the seawall, that studies were needed in order to determine whether a home could be moved back, that the term "minor addition" had to be more clearly defined, and that an owner should retain their original building rights in the event that their home was destroyed by a natural disaster.

Council and Staff discussed the time line of the modifications that the CCC had made to the LUP prior to the June 2011 adoption by the Council, that the one year extension that the city had received for the LUP was based on a "good cause" extension, and Council questioned the City Attorney on what that term meant.

Johanna Canlas, City Attorney, stated that the basis of the "good cause" extension was due to the litigation that was filed as a result of the Coastal Commission's adoption of the suggested modification of the LUP, and that the extension was a statutory extension under the Public Resources Code.

Council and Staff discussed that another meeting had not been scheduled with the Coastal Commission, that tonight was the first opportunity to take action on the proposed modifications, and that there had been progress on a majority of the items at the meeting with the Coastal Commission. Discussion continued that the Coastal Commission Staff was waiting for the revised language on the modifications and that the Coastal Commission's goal for the LUP was to bring non-conforming structures into conformance.

David Ott, City Manager, reviewed the speaking agreement for each group.

Mayor Kellejian recessed the meeting at 7:40 p.m. for a break and reconvened the meeting at 7:52 p.m.

Steve Aceti, Executive Director of the California Coastal Coalition, stated that he wanted to discuss a decision out of the Court of Appeal, Second District, Division 8, in May involving the City of Malibu, that the case relied on a another case from 1988, U.S. v. Thomas, that it talked about the restrictions on how far the Coastal Commission (CCC) could go on writing cities LCP/LUP, that the case was 2012 West Law, 1631767, and that the court ruled that the CCC acted in excess of its jurisdiction when it approved modifications to the City's LCP over the objection of the 'City. He stated that the court went into the legislative intent of the Coastal Act, Public Resource Code Section 3004 Subdivision A, that the courts stated that the Coastal Act required every local jurisdiction in the coastal zone to prepare an LCP, that a Land Use Plan was part of the LCP, that Section 30512 of the Public Resource Code stated that the CCC shall certify a Land Use Plan if the LUP conformed with the policies in the Coastal Act, however, the CCC review of a Land Use Plan was limited to it the review of whether the plan conformed with the provisions in Chapter 3, Section 30512, Subdivision A.

Vicki Driver stated that she had concerns regarding beach safety, that the plan that was rewritten by the CCC had negative impacts to the City, and that when the CCC decided to let the bluff erode and let the sea advance and had not considered safety and costs of infrastructure. She stated that since 1995 five people in North County had been killed

by falling bluffs, that the collapses were measured in tons of sand, that seawalls protected the bluffs from collapse, and the beaches were unsafe if bluffs were unprotected. She stated that the fees from seawalls could help fund sand replenishment and other amenities for the beaches, that the CCC was not concerned with the day-to-day policies that they were trying to enforce, that the Coastal Act stated that the LUP was supposed to be developed by the City with public participation, and that the CCC was to determine if the plan conformed with the Coastal Act. She stated that the City's quality of life relied on the plan, that the plan should be rejected, and that the City should work to get the plan adopted that everyone agreed on.

Daniel Powell stated that the community had worked collaboratively for years on a Land Use Plan that met interests of residents and businesses, that a balanced plan was drawn up for the community's future, and that the plan was approved by Council. He stated that the Coastal Commission had different plans for the City, that the Commission substituted their priorities in the plan for the priorities of the citizens, and that the changes that were made by the Commission were bad for the city. He questioned what would happen to the property tax revenue of 1,400 coastal properties that would be negatively affected by the rules on seawalls, that property values would plummet due to the 20 year rule, and that an unelected government body could let a house fall into the sea. He questioned who would pay for bluff reinforcement when the homes were gone, that the CCC did not consider these matters when they wrote the City's LUP, that it was not their role to determine the role and fate of the community, that the changes would be devastating to the property tax base and quality of life, and that the LUP should be rejected.

Marco Gonzales stated that he was with the Coastal Environmental Rights foundation, that 15 years ago he was appointed to the City's General Plan Advisory Group, which assisted in creating the first LCP document in 2001. He stated that these issues were not new, that a few years ago there had been a lot of litigation regarding the City's codes, that settlement was negotiated for a process that would result in an LCP submittal to the Coastal Commission and final approval from the Council. He stated that 15 years later a lot had changed, that it was critical to see an end goal in sight, that no one had obtained everything they wanted and everyone had to compromise, and that he did not want to go back to the beginning.

Margaret Schlesinger stated that she and others given up attending meetings regarding the LCP a long time ago and that in the meantime the bluffs had been destroyed by ugly seawalls, and public property had been compromised. She stated that she grieved for the bluffs and beach that existed when she moved to the City 34 years ago, that she had relied on the Coastal Act to protect her beach, that she gathered signatures in 1972 to create legislation that would create the Coastal Commission, and that she had relied on the contracts signed by private property owners to not create seawalls if allowed to redevelop their properties. She stated that she was wrong to believe in those things as the walls were built, and beaches slowly disappeared, that the Coastal Commission held the purview over the structures between the sea and the first public road, but perhaps that was no longer true, that after 25 years there had finally been a Coastal Commission approved LUP, and that the plan approved by Council should be adopted.

Julia Chunn stated that she was the Campaign Coordinator for Surfrider San Diego (25 minutes allowed) and said that there were at least 15 members and activists present at the meeting, that the Council had received about 361 emails regarding the issue, and that 49 of those emails were from local City residents. She stated that there was a lot of economic value brought by surfers, there was not enough coastline to go around for everyone and that it had to be shared, and that by keeping in step with the Coastal Commission the City had the protection of the State Attorney. She stated that this was a sensitive issue, there were issues of private and public land takings, that a local fude should not overtake 10 years of work, that the Council should review the motivation of the BBC's litigation, their requests did not comply with the Coastal Act, and that the law suit was a delay tactic.

Jim Jaffe, continued the group's presentation and showed a powerpoint (on file). He stated that the BBC supported the Coastal Commission's 153 modifications with 2 amendments that was approved at the March hearing, that the BBC urged certification at this time, and that approval would streamline the permit process. He stated that the BBC had not contacted the CCC until they filed a law suit, that City staff had worked toward a recommendation for approval and was successful in obtaining changes they wanted to the LUP, and that the City Manager had previously agreed that the caissons were acceptable. He stated that surfrider submitted a comment letter in September regarding the 143 changes, that a comment letter was submitted to the Coastal Commission by Surfrider, that the BBC and COOSSA did not participate, and that if the LUP was not approved the process would be delayed.

Angela Howe continued the powerpoint rebutting a June 18th letter by the BBC. She stated that the BBC wanted to change policy 2.4 and 2.7, that instead of using the term "avoid" they want to go back to the term "minimize," and that there was mitigation involved in both policy 2.4 and 2.7. She stated that the City was encouraged to work with the Coastal Commission, the City was within the coastal zone and had to adhere to the Coastal Act, and that the Coastal Act protected the beach from possible reverse takings. She stated that by allowing a reduction of beach width it was taking property from many to give to few, and that the Council should not allow that to happen.

Jim Jaffe continued the powerpoint and stated that the BBC was not disclosing that they were accepting many of the conditions that they were arguing against in their permits, and he showed a few examples of Coastal permits on the web that demonstrated the BBC was accepting conditions in their permits that they were arguing against. He said that the BBC members had accepted the setback conditions similar to those in the LUP, that the BBC did not have any dialogue with the CCC to resolve changes to setbacks in the LUP, and that setbacks were needed because policy 4.27 had to comply with section 30253 of the Coastal Act. He continued that there were a lot of letters from City residents on the LUP, that 71% of beach visitors came from outside of the city, that the LUP needed to be approved with the 153 changes from the Coastal Commission staff, that any changes from the City would start the clock over again, and that all residents would have to go to two-stop shopping for their permits. He stated that the LUP could be approved and then amendments could be filed later. He showed a video regarding the Coastal Commission meetings reviewing the city's LUP.

Jim Jaffe stated that at the meeting on the video shown, the Coastal Commission approved the LUP with 150 changes and 2 amendments, that the two amendments were what the City had lobbied for, which included the vacation rental and what Surfrider negotiated regarding the lease fees to be released after the LUP was certified, that 20 years was unanimously adopted by the Council, there was a public hearing, and that no law suit was filed by BBC in the time that was allowed by the statute for objection to that.

Julie Chunn stated that the 20 year provision was in the June report. She questioned whether the 20 years would begin with permit approval or construction completion, and that it would be a key opportunity to manipulate the process by taking five years to build the seawall some additional time would be bought. She stated that the Council should stay strong on that point, that City staff had only spoken to Coastal Commission Staff and not to the Commissioners, that the sticking points for the Commission and the City were not the same that were now being touted by the homeowners, and that one key point in the video was regarding the fact that all seawalls in the City were on public land. She stated that the City would be creating a reverse taking of land if they did not move forward with the LUP and begin collecting land lease and mitigation fees.

David Ott, City Manager, clarified some statements made by the Surfrider presenters. He stated that all lower seawalls were public property, that not all bluffs were on public land, and that the permit to build a seawall was only valid for two years so five years could not be taken to build a seawall.

Council discussed their role in meetings with the Coastal Commission staff, discussed that the video shown was a very edited video of a complex topic, that more information had come out since the time of the meeting, and discussed clarifications from the video that was presented by the Surfrider representatives.

John Corn, Counsel for the BBC and COOSSA, presented a power point (on file). He stated that he was the counsel for many HOA's and individual property owners along the ocean front and that he was a former bluff top property owner. He stated that he participated on the formers citizen's committee who helped draft the initial LUP, and that the right LUP should be done for the City. He stated that the LUP should be rejected because it had too many problems, the issues were outlined in 18 points in a June memo from the BBC, rejecting the LUP would not restart the clock, and that rejection of the LUP was part of the process to get to the best document for the City. He stated that the LUP that was adopted by the City allowed people to protect homes until 2081, it provided funds for sand replenishment, and that it allowed bluffs to be restored to their natural state later in the century. He said that the Coastal Commission tossed out the plan approved by the City, that everyone wanted an LCP as quickly as possible and the law suit was not to delay matters, that no one wanted seawalls, but they were a resolution to a problem that was not of the bluff top owners making, there was no beach because of man made developments, and that private homeowners were willing to fund seawalls and sand replenishment. He stated that despite the way the CCC hit the City with the revised LCP in March, which was objectionable and against the Coastal Act, that they were fine with all but 18 of the 143 changes, that Surfrider wanted the whole document approved, and that the LUP should be rejected. He stated that even if there

was only one change made to the LUP the whole document should be rejected, that the geo setback now had zero building envelopes, it would result in a taking of land, and that the private stairways would be affected by taking them away from the condos. He stated that the condos had a vested interest in the stairways, that the idea of bluff top owners only being able to protect their homes if they first determined that they could not move them landward, or remove portions or protect them with caissons was unacceptable, that the Coastal Act, Section 30235 stated that existing structures could be protected, and that once the LUP became certified and adopted it would be the city's law to enforce and defend. He stated that the LCP provided to set local policy based on local conditions, that prior to the Coastal Act each city was able to create local control, and that the LUP had to be rejected tonight. He reviewed the LUPs taken to the Coastal Commission and changes made by the Commission, and reviewed a letter sent to Charles Lester by David Ott. He stated that the Coastal Commission staff seemed like they wanted to help but changed things up last minute, that the CCC could not be trusted, that they would continue to make changes, and that the City needed to do what was best for the City.

Chris Hamilton, Chairman of the Beach and Bluff Conservancy (BBC), continued the power point. He stated that they participated in the community effort to develop a plan, that they placed their trust in the City, and that they became alarmed when the CCC hit them with 143 changes a week before the meeting. He stated that their trust in the City was shaken when the City felt these changes were acceptable, that they were not the cause of the problem, that they were the victim of the problems, and that they were spending lots of money to build seawalls. He stated that the LCP was bad for property owners and bad for the city, that reasons to reject the seawall included 1) would reduce the property tax base as properties would diminish in value, 2) there would be increased risk to the public infrastructure without seawalls, 3) the city would have to defend the LCP, 4) the LCP would preclude the city from addressing hazardous conditions at Fletcher Cove, and Tide Park. He stated that the BBC recommended rejection of the LUP.

Doug Harwood continued the power point. He stated that he had been to Council many times regarding the real estate impacts of various ordinances, that he wanted to speak about planned retreat, and that it was condemned retreat. He stated that it would lead to a beach walk where there would be ragged foundations of homes that would be eroded due to lack of a seawall, and that there could not even be geological improvements due to creating a negative set back. He stated that public safety would be an issue and houses would have to be condemned, that lenders would no longer lend and insurers would no longer insure, that there would be no buyers, and that the tax base would decline which would result in the city being able to provide less services.

Tom Ryan stated that lived in the City for over 40 years, that private stairways at condo associations would be made public at some time in the future, and that this would create security and maintenance problems at the condos. He stated that the public would be walking through condo areas near peoples doors, and families in the pools, that it would not work to make them public, and that the condo owners had a vested right in the stairways. He stated that the stairways were built before the Coastal Act took place, that the owners would have to tell prospective buyers that the stairway could become public,

and that this would diminish their ability to sell their units.

Tom Dinoto stated that Coastal Commissioner Zimmer stated that she wanted homes to whither away, that the Coastal Commission would achieve that the goal by prohibiting the ability to modify or amend over 50% of exterior walls and load bearing interior over the life of the home from the time of the LUP adoption. He stated that this ensured that homes would whither away, that the property tax base would be decimated, that every home on Pacific Ave had no area to expand, and that this was fiscally irresponsible. He stated that the 50% rule was never in the agreement by the citizens, that it was a complete surprise, and that they wanted a safe accessible beach and property protected.

Mayor Kellejian recessed the meeting at 9:05 p.m. for a break and reconvened the meeting at 9:15 p.m.

David Ott, City Manager, clarified some statements made by the BBC speakers. He stated that the 50% provision was in the approved June 2011 LCP, and that the only disagreement on this issue was regarding how the 50% would be measured.

Johanna Canlas, City Attorney, clarified some statements made by the BBC speakers. She stated that a reference was made regarding the city's jurisdiction after the LCP was certified, that the entire city was in the coastal zone, and that there were two distinctions regarding jurisdiction. She stated that the Coastal Commission kept jurisdiction over the mean high tide line, that most of the bluff retention devices remained under the Coastal Commission's jurisdiction, that the other distinction was an appealable jurisdiction area which was the green line which included any development between the sea and the first public road, and that this area remained within the Coastal Commission's appealable jurisdiction even after the LCP was certified.

Jim Moriarity, CEO of the Surfrider Foundation, (5 minute rebuttal time) stated that there were an estimated 13,000 residents of the city, that a lot of time had been spent on the coastal area, that 1.5% of the residents were taking public lands, and that all 13,000 residents owned that public land. He stated that during a Coastal Commission meeting staff stated that all the bluffs were on public property, that he once lived on the bluffs, and that it came down to the fact that there was taking of public property.

Jim Jaffe (rebuttal time) stated that he wanted the LUP approved, that rejecting the document would start the process again, and that if change was desired the BBC should participate in the process with the Coastal Commission on amending the 18 points. He stated that the BBC should work towards an amendment to an approved LUP, that a law suit could not be filed against the city without an approved LUP, that rejection would be a step backwards, and that the permits currently being processed would be subject to the conditions in the current LUP. He stated that there was 95% consensus on the document, that Mr. Corn stated that section 30235 of the Coastal Act stated that all permits including a seawall had to comply with the Recreation and Access Policies of the Coastal Act, that this was why there was mitigation and other permit review for a seawall, and he urged the Council to approve the LUP and have BBC go through an amendment process.

Jon Corn (rebuttal time), stated that the BBC was accused of a delay tactic, and that waiting was not a good tactic. He stated that rejecting the LUP showed the Coastal Commission that the city was doing what was good for the city, that he understood that all the bluffs on south side of town were on private land, and that on north side 75% of the bluffs were on public land and 25% were private. He stated that a lot of seawalls were put in a long time ago, that each bluff owner who put in a seawall put up huge fees, that there was an idea that no fees had been paid, that fees could cost up to \$150 to \$200,000, and that the funds should be released and spent. He stated that the LUP should be rejected tonight, and that going back to the Commission with 18 changes should not be negotiated but the city should insist on the changes since the points complied with the Coastal Act.

Tom Dinoto (continued rebuttal) stating that he had 40 statements by others who attended the meeting that did not speak, that they wanted the statement as part of the record, that he thought that the 50% language never included interior load bearing walls, and that the language regarding alternations had changed. He stated that no Council members voted for the language by the Coastal staff that Council would have to approve, that the city was getting run over, and that sending the LUP back to Coastal without changes put the owners on the Commission. He stated that time and money was being wasted, that the line should be drawn in the sand, that time should not be wasted, and that the Council should stand up for the LUP that was approved.

Council and Staff discussed that bluffs on the south side were primarily private, that a majority of the bluffs to the north were public, and that prior seawall approvals by the Council had also been approved by the Coastal Commission.

Councilmember Campbell stated that he did not support the modifications made by the Coastal Commission, that he supported rejection of the LUP, and that he wanted to hear from other Councilmembers prior to making that motion.

Councilmember stated that he and Councilmember Campbell had worked on this issue for 8 years, that that there was consensus on 95% of the document, that community input was important, that the Coastal Commission had surprised the city with some items at the last meeting, that there were some issues in the plan that he could not support, and that it did not mean that he wanted to reject it. He stated that there had been progress made so far with the CCC, that option 2, to try and resolve the 18 points was the way to go, that the plan approved in June 2011 was still the plan that Council decisions would be based on, that if the plan was rejected Council could not approve projects on the bluff because there would be no plan to go by, that his concerns regarding the modifications included, 1) that the geologic set back line was not feasible, 2) regarding that studies had to occur to determine if moving a structure was feasible, and 3) regarding the provisions of rebuilding homes in the event of natural disaster. He stated that if the document was rejected the city would go to the end of the line in the process.

Councilmember Nichols stated that the plan should not be adopted, that a plan that worked for the community should be adopted, and that he did not believe in the plan

provided by the Coastal Commission. He stated that there would be no plan to approve projects if this LUP was rejected, and that June 2011 adopted plan could be used until there was consensus on the additional items. He stated that some of his concerns of the 18 points included 1) use of the terms "minimize and avoidance," 2) the geological set back condition, 3) clarification of the renewal of the 20 year permit, 4) regarding the language of moving the structure as presumed, that a study was needed, 5) regarding the provisions of rebuilding a home in the event of a natural disaster and 5) clarification to the term "minor addition."

Councilmember Heebner stated that she agreed with both sides on some issues, that she had been surprised by the additions, and that there was a problem with rejecting the plan due to having no plan at all. She stated that continued discussions with Coastal Commission staff should happen, that option 2 was the prudent thing to do, that her concerns out of the 18 points included 1) clarifying the use of the terms "avoid" and minimize 2) the geologic set back line 3) that the public recreation/mitigation fee was needed for beach access and sand fees for sand, 4) that the 20 year permit time should begin at the certification of the completion of the seawall, 5) language regarding the presumption that a structure could be moved inland, that a study was needed and could not be presumed, 6) the provisions to rebuild a home in the event of a disaster, that the owners should be able to retain the rights they previously had, and 7) clarifying the language regarding renewal of the 20 year permit.

Council and Staff discussed that if this LUP was rejected there would be no plan for the Council to base decisions off of regarding bluff top developments, that at some point the plan would be rejected and a new plan would be resubmitted, and that there could be legal implications if the city did not have a plan to base decisions off of.

Councilmember Campbell stated that he did not trust the Coastal Commission, that in the past 10-12 years they had given last minute changes and had threatened the city. He stated that he doubted that progress would be made with them, that he believed the LUP should be rejected, and that he would not support option 2.

Councilmember Kellejian stated that he would not support the motion. He stated that he had been on the Council for 20 years, that he had served on the Sandag Shoreline Preservation Committee, had worked on the League of California Coastal Cities Issues Group that was put in place by the Board of Directors of all California cities for the purpose the LCP problem, and that they had been trying to work out LCP problem for 3 years with no progress. He stated that did not have the confidence that the city would get to the end goal, that the LUP should be rejected, and that the bluff top owners were taking their money to protect their homes and the community.

Councilmember Campbell stated that the Ad Hoc Committee on this issue should be disbanded, that this issue should be heard by the full Council with full Council participation, and that if the Ad Hoc did not disband he no longer wanted to participate on the committee. Councilmember Nichols stated that he would participate on the Ad Hoc if it continued.

MOTION: Moved by Nichols and seconded by Roberts to approve directing City Staff to

work with the Commission staff during the extension period to reach consensus on any newly revised policy language so as Commission staff can support the revisions for future Commission approval. If the Council adopts alternative policies, then the new language would be noticed for public comment at a subsequent hearing with at least 6-weeks' notice pursuant to 14 C.C.R. Section 13515(c). After that hearing, the new language would be submitted to the Commission for review. **Motion carried 3/2** (Noes: Kellejian, Campbell.)

C.2. Adoption (2nd Reading) of Ordinance 440 Regarding the Storage and Handling of Hazardous, Flammable, and Toxic Materials or Chemicals. (File 0610-10)

Recommendation: That the City Council

1. Adopt (2nd reading) Ordinance 440 amending Section 17.60.080(D)(3) of the Solana Beach Municipal Code, relating to the Storage and Handling of Hazardous, Flammable, and Toxic Materials or Chemicals.

Johanna Canlas, City Attorney, introduced the item and read the title of the Ordinance.

MOTION: Moved by Roberts and seconded by Heebner. **Motion carried unanimously.**

WORKPLAN COMMENTS:
(Adopted June 23, 2010)

COMPENSATION & REIMBURSEMENT DISCLOSURE:

GC: Article 2.3. Compensation: 53232.3. (a) Reimbursable expenses shall include, but not be limited to, meals, lodging, and travel. 53232.3 (d) Members of a legislative body shall provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

COUNCIL COMMITTEE REPORTS:

Regional Committees: (outside agencies, appointed by this Council)

- a. City Selection Committee (meets twice a year) - Roberts, Kellejian (alternate).
- b. County Service Area 17 - Campbell, Nichols (alternate).
- c. Escondido Creek Watershed Authority - Nichols, Roberts (alternate).
- d. League of Ca. Cities' San Diego County Executive Committee - Roberts, Kellejian (alternate) and any subcommittees.
- e. League of Ca. Cities' Local Legislative Committee - Roberts, Kellejian (alternate).
- f. League of Ca. Cities' Coastal Cities Issues Group (CCIG) - Kellejian, Roberts (alternate).
- g. North County Dispatch JPA - Nichols, Campbell (alternate).
- h. North County Transit District - Roberts, Nichols (1st alternate), Heebner (2nd

- alternate)
- i. Regional Solid Waste Association (RSWA) - Nichols, Kellejian (alternate).
- j. SANDAG - Heebner (Primary), Nichols (1st alternate), Roberts (2nd alternate) and any subcommittees.
- k. SANDAG Shoreline Preservation Committee - Kellejian, Roberts (alternate).
- l. San Dieguito River Valley JPA - Heebner, Nichols (alternate).
- m. San Elijo JPA - Campbell, Roberts (both primary members) (no alternates).
- n. 22nd Agricultural District Association Community Relations Committee - Heebner, Roberts.

Standing Committees: (All Primary Members) (Permanent Committees)

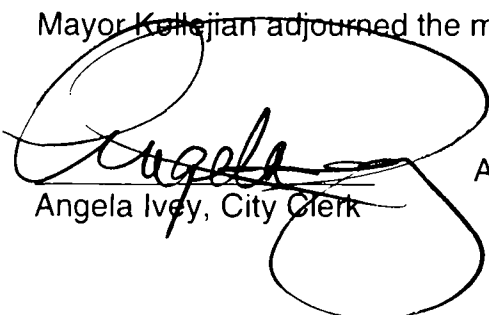
- a. Business Liaison Committee - Roberts, Campbell.
- b. Highway 101 / Cedros Ave. Development Committee - Nichols, Heebner.
- c. I-5 Construction Committee - Heebner, Roberts.
- d. Parks and Recreation Committee - Heebner, Nichols
- e. Public Arts Committee - Roberts, Nichols.
- f. School Relations Committee - Roberts, Nichols.

Ad Hoc Committees: (All Primary Members) (Temporary Committees)

- a. Army Corps of Engineers & Regional Beach Nourishment - Kellejian, Campbell. Expires December 6, 2012.
- b. Development Review - Nichols, Heebner. Expires November 15, 2012.
- c. Environmental Sustainability - Roberts, Heebner. Expires December 6, 2012.
- d. Fire Department Management Governance-Kellejian,Roberts. Expires July 12, 2012.
- e. Fiscal Sustainability - Campbell, Roberts. Expires June 12, 2013.
- f. General Plan - Campbell, Nichols. Expires July 12, 2012.
- g. La Colonia Park - Nichols, Heebner. Expires June 12, 2013.
- h. Local Coastal Plan Ad-Hoc Committee - Roberts, Campbell. Expires February 7, 2013 or at the California Coastal Commission adoption.
- i. NCTD / Train Station Site Project Ad Hoc Committee - Heebner, Nichols. Expires January 10, 2013
- j. View Assessment - Nichols, Heebner. Expires October 21, 2012

ADJOURN:

Mayor Kellejian adjourned the meeting at 10:15 p.m.


Angela Ivey, City Clerk

Approved: November 28, 2012