



November 7, 2018

Chair Dayna Bochco
Honorable Commissioners
Executive Director John Ainsworth
California Coastal Commission
Via email to Commissioners and Staff

RE: Coastal Justice and the Coastal Commission's Environmental Justice Policy Statement - 9/12/18 Public Review Draft

Dear Chair Bochco, Honorable Members of the Commission, Director Ainsworth, and Staff:

1. Overview

We submit these public comments to improve the California Coastal Commission ("CCC") Environmental Justice Policy Statement ("Draft Policy Statement") - 9/12/18 Public Review Draft ("Draft"). Our purpose is to promote equal access to the coastal zone and beaches for all, in compliance with state and federal equal opportunity, antidiscrimination, and environmental justice laws and policies.

Thank you for this opportunity to address these concerns. We applaud CCC's efforts to improve the original March 2017 draft. We will not dwell here on the strengths of current Draft. We are eager to meet with Commissioners and Staff again to discuss the following matters to achieve coastal justice for all.

The following is a summary of our concerns:

1. California equal opportunity and antidiscrimination law under Section 11135 et seq. applies to all programs and activities administered by CCC, and by recipients of CCC financial assistance. Protections, prohibitions, and sanctions under section 11135 are in addition to any others imposed by law. Section 11135 is not limited only to staff and work force requirements, as the Draft Policy Statement incorrectly implies.
2. The Draft Policy Statement ignores compliance with federal equal opportunity and antidiscrimination laws, including Title VI of the Civil Rights Act of 1964 and its regulations. Those federal laws apply independently of the cited state laws.
3. The cited state and federal laws are mandatory. These laws are not merely "aspirational." It is not enough for CCC to be "committed to consideration" of those laws, as the Draft Policy Statement states.
4. The cited state and federal laws apply over and above the definition of "environmental justice" in the Coastal Act Section 30013 and Government Code Section 65040.12(e).

We summarize best practices and our recommendations below, as we have consistently raised these concerns before in meetings, conversations, and written submissions to CCC Commissioners and Staff beginning in 2016 and earlier. Please distribute these comments to all Commissioners.

2. The Draft Policy

The actual Draft Policy Statement is one paragraph and states as follows:

*The California Coastal Commission's commitment to diversity and environmental justice recognizes that the Coastal Act is an inherently equitable law, designed to protect California's coast and ocean commons for the benefit of all the people. In keeping with that **aspirational** vision, the Commission as an agency is committed to protecting coastal natural resources and providing public access and lower-cost recreation opportunities for everyone, and ensuring that those opportunities shall not be denied on the basis of race, ethnicity, gender, socio-economic status, or place of residence. The Commission recognizes that our conservation mission is best advanced with the participation and leadership of people from diverse backgrounds, cultures, races, color, religions, national origins, ethnic groups, ages, disability status, sexual orientation, and gender identity. The Commission is committed to **consideration of environmental justice principles, as the term "environmental justice" is defined in Government Code Section 65040.12(e), consistent with Coastal Act policies, during the planning, decision-making, and implementation of Commission actions, programs, policies, and activities. It is also the California Coastal Commission's goal, consistent with Government Code Section 11135, to recruit, build, and maintain a highly qualified, professional staff that reflects our state's diversity.***

Draft at pages 3, 12 (emphasis added).¹ The remainder of the Draft appears to be only commentary, and not part of the Draft Policy.

3. Coastal Justice and the Law

A principle purpose of the Coastal Act is to maximize public access and recreational opportunities along the beach and coastal zone for "*all the people*." (Pub. Res. Code §§ 30001.5, 30210 (emphasis added); Pub. Res. Code § 30013; *Remmenga v. Cal. Coastal Com* (1985) 163 Cal.App.3d 623, 629-630; *see also* Cal. Const., art. X, § 4.) The public trust doctrine protects coastal access, recreation, health, aesthetics, and ecology. (*National Audubon Society v. Superior Court* (1983) 33 Cal. 3d 419.)

Advocates and activists have long fought for coastal justice along the California coast. *See generally* GreenLatinos, California LULAC (League of United Latin American Citizens Robert Bracamontes (Bob Black Crow, Yu-va'-tal 'A'lla-mal, Acjachemen Nation, Juaneno Tribe) & The City Project, *Free the Beach! Coastal Access, Equal Justice, and Hollister Ranch* (The City Project Policy Report 2018), www.cityprojectca.org/blog/archives/45719; Robert García, Cesar de la Vega, and Erica Flores Baltodano, *Coastal Justice and the California Coastal Act: Equity Mapping and Analysis* (The City Project Policy Report 2016), www.cityprojectca.org/blog/archives/44071; Robert García & Erica Flores Baltodano, *Free the Beach! Public Access, Equal Justice, and the California Coast* (2005) 2 Stan. J. C.R. & C.L. 143, goo.gl/RVgbJ.² *See also* Spencer Robins, *The Long Battle over Coastal Access at Hollister Ranch* (KCETLink 2018) www.kcet.org/shows/earth-focus/projects/hollister-ranch-the-last-beach-in-southern-california. "Coastal justice" recognizes "access to the coastal zone is about equal justice and human dignity and freedom." *Id.*

The Coastal Act as amended in 2016 underscores equal access, antidiscrimination, and environmental

¹ The Draft Policy Statement without explanation omits text from sections 30013 and 11135 (ancestry, medical condition, genetic information, marital status), and income from Section 30107.3 of the Coastal Act.

² The City Project has previously presented each of these written submissions to CCC Commissioners and Staff.

protections apply, as follows. Section 30013 provides:

[N]o person in the State of California, on the basis of race, national origin, ethnic group identification, religion, age, sex, . . . color, . . . or disability, shall be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination, under any program or activity that is conducted, operated, or administered pursuant to this division, is funded directly by the state for purposes of this division, or receives any financial assistance from the state pursuant to this division.

The 2016 Coastal Act amendments reiterate the language of Section 11135(a).³ (*See* Pub. Res. Code § 30013 (“In order to advance the principles of environmental justice and equality, subdivision (a) of Section 11135 of the Government Code and subdivision (e) of Section 65040.12 of the Government Code apply to the commission and all public agencies implementing the provisions of this division.”).) Thus any program or activity that is conducted, operated, or administered by CCC, is funded directly by CCC, or receives any financial assistance from CCC is covered under sections 30013 and 11135.

Furthermore, protections, prohibitions, and sanctions under section 11135 et seq. are in addition to any others imposed by law. (Gov. Code § 11139.) In other words, Section 11135 protections apply independently of Section 30013.

In addition, Section 30107.3 of the Coastal Act provides: “‘Environmental justice’ means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”⁴ While the Draft Policy Statement focuses on “environmental justice,” that is not enough to satisfy Sections 30013, 11135, and 11139. The Draft does not provides standards to measure equity and progress and hold officials accountable for “environmental justice.” Sections 30013 and 11135 et seq. provide such standards, as discussed below.

The public has a right to fully participate in decisions affecting coastal planning, conservation, and development under the Coastal Act.⁵

Federal equal access laws and principles apply independent of the cited state laws. These laws include Title VI of the Civil Rights Act of 1964 and its regulations, as well as the President's Executive Order 12898 on environmental justice and health. *See generally* Robert García & Erica Flores Baltodano, *Free the Beach! Public Access, Equal Justice, and the California Coast* (2005) 2 Stan. J. C.R. & C.L. 143, goo.gl/RVgbJ. The Draft Policy Statement is silent on these laws. The final Policy Statement needs to address compliance with these federal laws.

4. Discussion

CCC recognizes coastal injustice, climate change, and sea level rising disproportionately harm low income people, people of color, and Native Americans. Draft, p. 14.⁶ The final Policy Statement must fully address, in order to alleviate, this injustice.

³ Pub. Res. Code § 30013, added by Stats. 2016, Ch. 578, Sec. 1, effective Jan. 1, 2017.

⁴ Pub. Res. Code § 30107.3, added by Stats. 2016, Ch. 578, effective Jan. 1, 2017 (reiterating Gov. Code § 65040.12(e)).

⁵ “The Legislature . . . finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.” *Surfrider Fdn. v. Martins Beach* (2017), 221 Cal. Rptr. 3d 382, 393 (Ct. App. 1st Dist.), *quoting* Pub. Res. Code § 30006, *cert. denied*, Oct. 1, 2018, www.scotusblog.com/case-files/cases/martins-beach-1-llc-v-surfrider-foundation.

California equal opportunity and antidiscrimination law under Section 11135 applies to all programs and activities administered by CCC, and by recipients of CCC financial assistance. Protections under 11135 et seq. are in addition to any others imposed by law. Gov. Code § 11139. Compliance with Section 11135 and 30013 is not limited only to staff and work force requirements and is not “aspirational.” The final Policy Statement must explicitly address this.

The cited state and federal laws apply over and above the definition of “environmental justice” in the Coastal Act section 30013 and Government Code Section 65040.12(e). The final Policy Statement must explicitly address this.

According to a Stanford Law School study, wealthy, white, senior residents enjoy greater coastal access compared to people of color and low-income people in California. There are roughly 25% more non-Hispanic white people and 30% more senior citizens compared to proportionate representation along the coast, and 52% fewer Hispanic or Latino people, 60% fewer Black or African American people, 57% fewer American Indians, and 18% fewer households below the poverty line.⁷

These coastal inequities are due in part to a continuing history, legacy, and pattern of discriminatory public and private beach, land use, and housing policies.⁸ Equal access to beaches, pools, and public waters is a compelling civil rights and environmental justice interest in California and beyond, and has been for decades. Coastal justice is not just about fun in the sun and surf; it's about equal justice, human dignity, and freedom. The Supreme Court struck down discriminatory public parks and beaches on those grounds in 1963. Civil rights workers held “wade ins” at beaches, “swim ins” at pools, and sits at lunch counters.⁹ In 2016, the “gang of 100” that demanded coastal justice from CCC included civil rights, environmental justice, health equity, education, housing, art, social justice, and other allies.¹⁰ This led to the 2016 coastal justice amendments to Coastal Act section 30013 discussed above.

While CCC has a documented history of refusing to consider environmental justice in its decision-making,¹¹ the Draft ignores that fact. The failure to implement cited state and federal laws would perpetuate this discriminatory history and pattern.

⁶ CCC, *Sea Level Rise Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits* (2015) 59-60. Available at https://documents.coastal.ca.gov/assets/slr/guidance/August2015/0_Full_Adopted_Sea_Level_Rise_Policy_Guidance.pdf.

⁷ Dan R. Reineman et al., *Coastal Access Equity and the Implementation of the California Coastal Act*, 36 Stan. Env't L.J. 89 and 96, 105-08 (2016). Available at www-cdn.law.stanford.edu/wp-content/uploads/2017/11/reineman.pdf. *Accord*, García, de la Vega, & Flores Baltodano, *Coastal Justice and the California Coastal Act: Equity Mapping and Analysis*, supra. CCC should rely on US EPA EJASCREEN, which includes park and beach data based on race and ethnicity, and not CalEnviroScreen, which does not. Draft 9, 14.

⁸ See *Texas Dep't of Hous. & Comty. Affairs v. Inclusive Communities* (2015) 576 U.S. ___, 135 S. Ct. 2507, slip op. at 5-7; García & Baltodano, supra, at 154; Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017); Ira Katznelson, *When Affirmative Action Was White* (2005); Manuel Pastor, *State of Resistance* (2018) 5, 37-38 (segregation in California).

⁹ *Watson v. City of Memphis*, 373 U.S. 526 (1963). See, e.g., Andrew W. Kahrl, *The Land Was Ours: How Black Beaches Became White Wealth in the Coastal South* (2012); Andrew W. Kahrl, *Free the Beaches: The Story of Ned Coll and the Battle for America's Most Exclusive Shoreline* (2018); Andrew W. Kahrl, *America's segregated shores: beaches's long history as a racial battleground*, *The Guardian* (June 12, 2018), www.theguardian.com/world/2018/jun/12/americas-segregated-shores-beaches-long-history-as-a-racial-battleground.

¹⁰ Allies submitting public comments to CCC included Dean Robert Bullard, widely considered the “father of environmental justice,” Black Surfers Collective, the Native American Wishtoyo Foundation, Asian Pacific Policy and Planning Council, Venice Community Housing, Concerned Citizens of South LA, Diverse Environmental Leadership, Hispanic Access Foundation, Social and Public Arts Center, Anahuak Youth Sport Association, Sugar Law Center for Economic & Social Justice, Azul, Social Justice Consultants, GreenLatinos, The City Project, and mainstream environmentalists. The comments are available www.cityprojectca.org/blog/wp-content/uploads/2016/02/NGO-Ltr-Supporting-LesterFINAL_Logos.compressed-3.pdf.

¹¹ Peter Douglas, the late CCC Executive Director, declared without legitimate basis that the Commission and Staff could not consider environmental justice: “[O]ur standard of review, your standard of action in this matter, is the [Local Coastal Program], and the statutory requirements for the Coastal Commission are the policies of Chapter 3, and the provisions of the Local Coastal Program, that is our standard, and neither of those include any considerations of environmental justice.” Coastal Commission McGrath power plant hearing transcript at 2009 04 09 b page 142 (using page numbers on upper right corner of each page). See also *id.* at pages 147-51, 168-70. The transcript obtained under a public

5. Best Practices and Recommendations

A 2017 committee report by the National Academies of Sciences, Engineering, and Medicine (NASEM) recommends implementing civil rights laws and strategies to alleviate environmental justice and health disparities. NASEM, *Communities in Action: Pathways to Health Equity* (2017).¹² Underestimating the concerns of people of color and low income people impedes alleviating inequities and broadening participation in environmental justice and environmental quality solutions, according to a 2018 study published by NASEM.¹³

The National Park Service Gaviota Coast study provides a best practice for CCC to draft and implement a final Policy Statement in compliance with equal opportunity, antidiscrimination, and environmental justice laws and policies. NPS emphasizes “coastal land below the mean high tide line, and the first three miles of ocean, are considered public trust resources, and thus belong to all the people of California. . . . [A]ccess and opportunities for people of all races, cultures and incomes” must be provided.¹⁴ The NPS Rim of the Valley study also provides a best practice for compliance and the final CCC statement.¹⁵

We have presented recommendations to CCC for compliance with equal opportunity, antidiscrimination, and environmental justice laws and policies. We fully incorporate those recommendations by reference here. See García, de la Vega, & Flores Baltodano, *Coastal Justice and the California Coastal Act: Equity Mapping and Analysis*, supra, at pages 2-4 (compliance, framework, data); GreenLatinos, California LULAC, Bracamontes & The City Project, *Free the Beach! Coastal Access, Equal Justice, and Hollister Ranch*, supra, at pages 9-10; García & Flores Baltodano, *Free the Beach! Public Access, Equal Justice, and the California Coast*, supra, at 203-08.

CONCLUSION

The City Project is eager to meet with Commissioners and Staff to achieve coastal justice for all, and compliance with state and federal equal opportunity, antidiscrimination, and environmental justice laws.

Respectfully submitted,

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record act request is on file with The City Project.

On the intentional discrimination and discriminatory impact standards, see generally GreenLatinos, California LULAC, Bracamontes & The City Project, *Free the Beach! Coastal Access, Equal Justice, and Hollister Ranch*, pages 8-9, supra, and authorities cited.

¹² www.nationalacademies.org/promotehealthequity. See pp. 11-12, 40-42, 102-105, 351-62, 464-69, 306-308, 360-62, 385-89, 429, 461-63.

¹³ Pearson et al., www.pnas.org/content/early/2018/10/23/1804698115; www.cityprojectca.org/blog/archives/45755.

¹⁴ Errata at 60. NPS, *Gaviota Coast Feasibility Study & Environmental Assessment* (2004) (NPS Study). The final, draft, errata, and transmittal letter are available at parkplanning.nps.gov/document.cfm?parkID=422&projectID=72730&documentID=80018.

¹⁵ NPS, *Rim of the Valley Corridor: Draft Special Resource Study and Environmental Assessment*, April 2015 (*Santa Monica Mountains*).

Highlighted excerpts are available at www.cityprojectca.org/blog/wp-content/uploads/2015/05/NPS-ROTV-draft-study-April-relevant-excerpts-20150629.pdf.