

Legal Issues & Opportunities for Sea Level Rise Planning

Sean B. Hecht & Megan M. Herzog

Emmett Institute on Climate Change & the Environment

UCLA School of Law

Santa Barbara-Ventura Regional Sea Level Rise & Coastal Impacts Planning
Workshop | April 14, 2015 | Carpinteria, CA

THE EMMETT INSTITUTE
ON CLIMATE CHANGE AND THE ENVIRONMENT



UCLA | SCHOOL OF LAW

THE EMMETT INSTITUTE

ON CLIMATE CHANGE AND THE ENVIRONMENT



UCLA | SCHOOL OF LAW

The [Emmett Institute on Climate Change and the Environment](#) is dedicated to studying and advancing law and policy solutions to the climate change crisis and to training the next generation of leaders in creating these solutions.

The Institute works across disciplines to develop and promote research and policy tools useful to decision-makers locally, state-wide, nationally, and beyond.

Roadmap



Malibu, CA

- 1) Understanding the role of law in the adaptation process
- 2) Public and private rights on the coast
- 3) CEQA and sea level rise
- 4) Legal tools and recommendations

Law & Adaptation

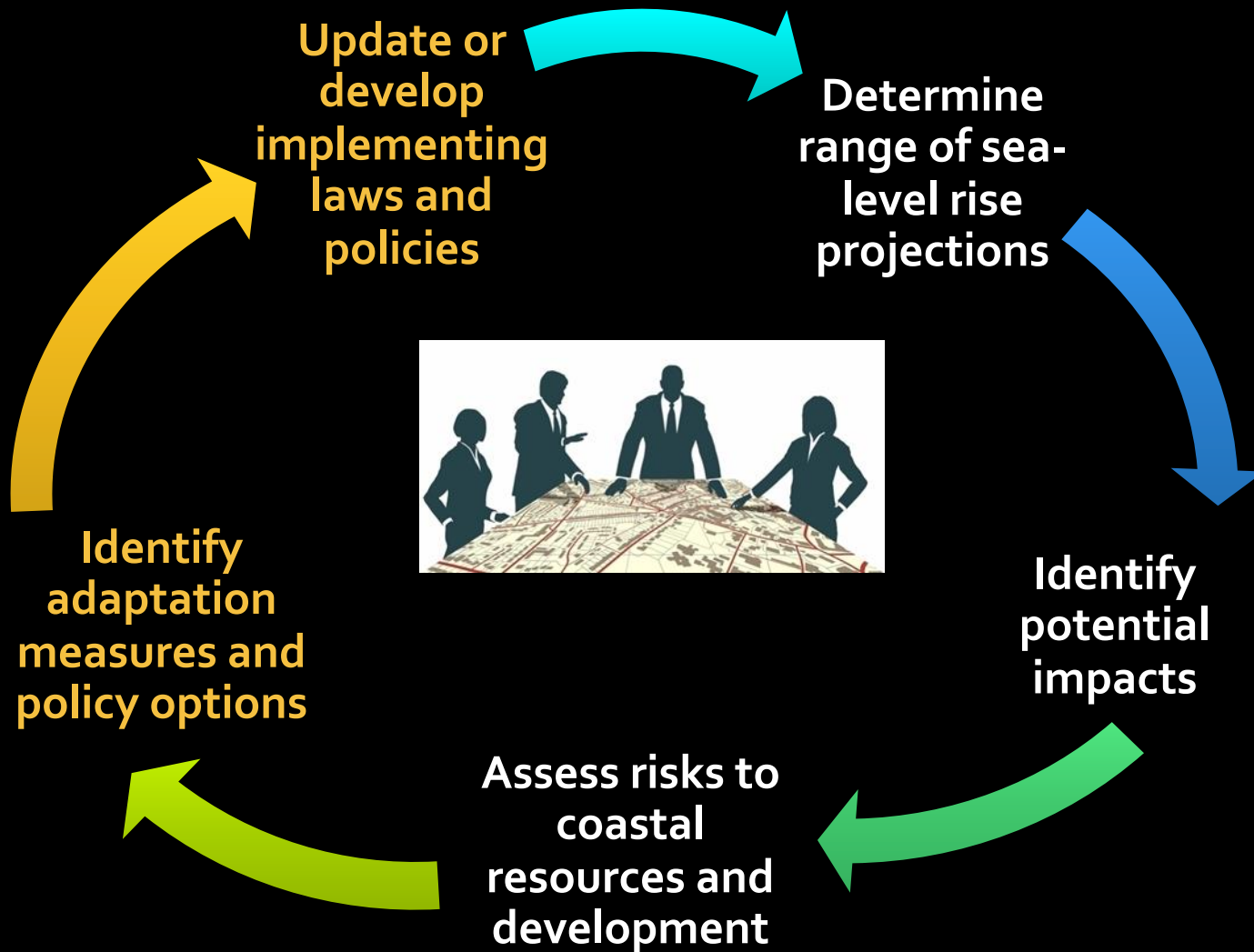
KEY PRINCIPLES

1. Law is **living**, and therefore, sometimes **uncertain**
2. Law can create **opportunities**
3. Local governments exercise **broad powers**



Mission Bay, CA

Law & Adaptation



Law & Adaptation

RELEVANT LAW INCLUDES:

- CA & US Constitutions
- National Flood Insurance Program
- State legal principles re: public/private property boundaries
- The California Coastal Act
- CEQA
- Local zoning ordinances
- Building codes

...and more



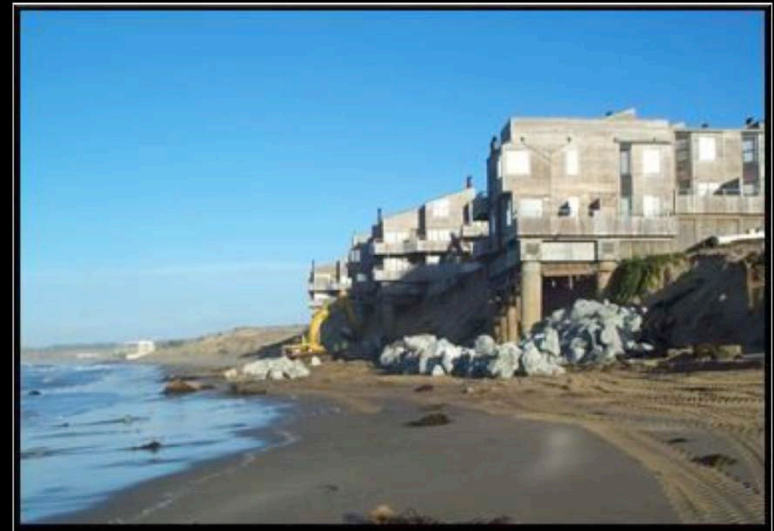
Venice Beach, CA



San Pedro, CA (2010)

Public & Private Rights

- Public/private coastal boundary is **dynamic, ambulatory**
 - **Old state legal doctrines** are relevant (e.g., public trust, accretion, avulsion)
 - **CA Legislature & agencies** play important roles
- Localities have **broad powers**, but court outcomes are always **uncertain**



Monterey Bay, CA via sanctuaries.noaa.gov

Public & Private Rights

Takings



Solana Beach, CA (2013)

- Federal & CA Constitutional law
- Gov't may not **seize private property** for public use without providing **just compensation**
- Extends to permit conditions, land use regulations that **“go too far”**

CEQA & Sea Level Rise

- *Ballona Wetlands Land Trust v. Los Angeles* (CA Court of Appeal 2011)
 - Purpose of EIR is to identify significant effects of **project on the environment**—not effects of the **environment on project**
- ***BUT*, still valuable to address sea level rise in EIRs**
- New law forthcoming from CA Supreme Court?



Buena Vista Lagoon, Carlsbad, CA

Tools & Recommendations

- Initiate a **participatory planning process** as soon as possible
- Include **legal assessment, consultation** early in planning
- **UCLA's Model Ordinance Project**



Balboa, CA via [wikimedia.org](https://commons.wikimedia.org/wiki/File:Balboa_Pier.jpg)

FOR MORE INFORMATION

herzog@law.ucla.edu | hecht@law.ucla.edu

Megan Herzog & Sean Hecht, *Combatting Sea-level Rise In Southern California: How Local Governments Can Seize Adaptation Opportunities While Minimizing Legal Risk*, 19 HASTINGS WEST NORTHWEST J. ENVTL. L. & POL'Y 463 (2013),

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2254069

THE EMMETT INSTITUTE
ON CLIMATE CHANGE AND THE ENVIRONMENT



UCLA | SCHOOL OF LAW