



Assessing Legal Risk: Lessons Learned from a California Analysis of Climate Adaptation Strategies

Photo Credit: NOAA

Great Lakes & St. Lawrence Cities Initiative Annual Meeting
June 14, 2018

About ELI

The screenshot shows the homepage of the Environmental Law Institute (ELI). At the top, there is a search bar with the text "Search ELI.org" and a magnifying glass icon. To the right of the search bar are links for "ADVANCED SEARCH", "FOR MEMBERS", "ENVIRONMENTAL LAW 101", "RECOGNIZING EXCELLENCE", "BLOG", and a red "DONATE" button. Below the search bar is the ELI logo, which consists of a stylized column and leaves, with the text "ENVIRONMENTAL LAW • INSTITUTE" underneath. To the right of the logo is the tagline "ELI makes law work for people, places, and the planet". Below the tagline is a navigation menu with five items: "WHO WE ARE", "EXPLORE OUR PROGRAMS", "ACCESS OUR RESOURCES", "ATTEND AN EVENT", and "GET INVOLVED". The main content area features a large image of a flooded field with trees. Overlaid on this image is the text "Learn About ELI's Work on Floodplain Buyouts and Community Resilience" and a "CLICK HERE" button. To the right of the flooded field image is a smaller image of a dirt path through a green field. Below this path image is the text "Floodplain Buyouts: An Action Guide for Local Governments on How to Maximize Community Benefits, Habitat Connectivity, and Resilience" and a right-pointing arrow. At the bottom of the page, there are logos for the Environmental Law Institute and the UNC Institute for the Environment.

www.eli.org



About Our Climate Resilience Work

**Getting People and
Property Out of
Harm's Way**



**Helping
Governments
Create Resilient
Communities**

**Creating Resilient
Ecosystems**



**Helping
Communities
Become Resilient**

Today's Discussion

- Resilient Coastlines of Greater San Diego project
- Our Focus and Approach
- Lessons Learned



Resilient Coastlines Project



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An aerial photograph of a coastal highway (likely Highway 56) running along a sandy beach and the ocean. The highway is filled with cars, and there are some buildings and greenery on the right side. The ocean is blue with white waves crashing onto the shore. The sky is overcast.

RESILIENT COASTLINES
OF GREATER SAN DIEGO

www.resilientcoastlines.org

Project Partners

The following partners are actively engaged in the Resilient Coastlines Project

Local Government Partners

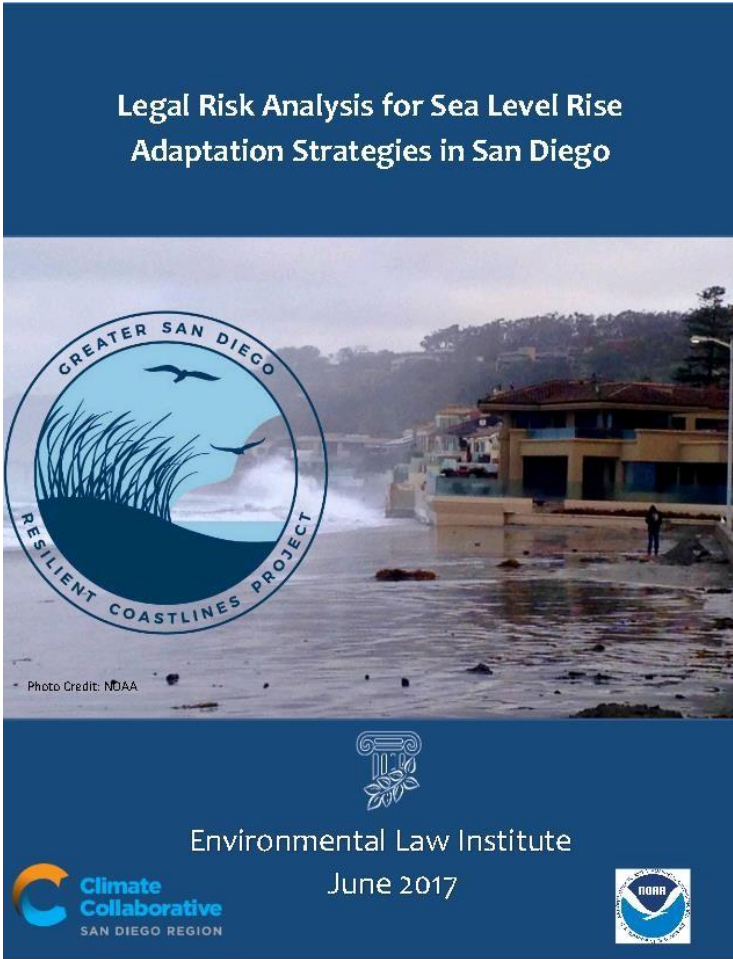
California Department of Fish and Wildlife
City of Carlsbad
City of Coronado
City of Chula Vista
City of Del Mar
City of Encinitas
City of Imperial Beach
City of Oceanside
City of San Diego
City of Solana Beach
San Diego Association of Governments
San Diego County
San Diego International Airport Authority
San Diego Port Authority
Tijuana River National Estuarine Research Reserve
US Navy

Technical Assistance Partners

Center for Blue Economy
Climate Science Alliance - South Coast
Coastal Frontiers
Environmental Law Institute
ESA
Moffat & Nichol
Nexus Planning
Revell Coastal
Scripps Institution of Oceanography
State Coastal Conservancy
US Geological Survey
USC Sea Grant


Our Focus

Legal Risk Analysis for Sea Level Rise
Adaptation Strategies in San Diego





GREATER SAN DIEGO
RESILIENT COASTLINES PROJECT

Photo Credit: NOAA



Environmental Law Institute
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Our Approach

- Looked at legal risks for:
 - No action (i.e., do not implement adaptation strategies)
 - Action (i.e., implement adaptation strategies)

Our Approach: No Action

Local government fails to act,
leading to the flooding of
private property

City's stormwater drainage system
can no longer keep up, leading to
the flooding of private property

Rising waters submerge land
where the government has
negotiated easements with private
property owners for public access



Analysis

Local government fails to act,
leading to the flooding of
private property

- **Unlikely to give rise to takings, but law continues to evolve. May be more vulnerable to other takings claims.**

Rising waters submerge land
where the government has
negotiated easements with private
property owners for public access

- **Easement unlikely to migrate**

City's stormwater drainage system
can no longer keep up, leading to
the flooding of private property

- **Unlikely to give rise to a takings if adaptation measures considered an upgrade (as opposed to maintenance) of the system**

Our Approach: Action

Beach Nourishment

Dune Restoration & Enhancement

Offshore Protections

**Hard Armoring
(Seawalls or Revetments)**

Zoning and Land Use

How Defined Risk

! High Risk

At least two applicable: difficult CEQA process, Coastal Act provision at issue is involved in litigation or uncertain in application, high probability of takings lawsuit and uncertain risk of losing case, other major legal issues

! Moderate Risk

At least two applicable: some CEQA hurdles, Coastal Act ambiguous on permitting, moderate probability of takings lawsuit but low probability of losing case, other possible legal issues

! Low Risk

All applicable: no major CEQA or Coastal Act hurdles beyond obtaining permits, takings lawsuit unlikely, no major legal uncertainty about application of Coastal Act or takings law, no other clear legal issues



Analysis

Beach Nourishment

- **Low-moderate**

Offshore Protections

- **Low-moderate to High**

Zoning and Land Use

- **Low to High**

Dune Restoration & Enhancement

- **Low**

Hard Armoring (Seawalls or Revetments)

- **Moderate to High**

Lessons Learned

- Not much attention focused on legal aspects of climate adaptation
- Fact-specific, depends on law
- Likely to see increase in litigation
- Not clear how law will evolve
- Risk everywhere (good to understand risks, but not be paralyzed by it)



And....

- Aside from potential legal liabilities, many other good reasons to implement adaptation strategies



Thank you!

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