

## **CHAPTER 12: IMPLEMENTATION PROCEDURES**

### **A. Overview**

A core principle of the Coastal Act is to maximize the public's ability to participate in planning and regulatory decisions. To facilitate such participation, the Coastal Act and the California Code of Regulations establish specific procedures for processing coastal development permits (CDPs) at the local level following LCP certification, as well as for administering amendments to the certified plan. This includes specific procedures regarding the provision of public notices and hearings, and opportunities to appeal certain local decisions on CDPs to the Coastal Commission.

Another important objective is to ensure that the development review process provides adequate information to identify potential impacts to coastal resources and analyze LCP consistency. At the same time, these procedures should be structured in a way that maximizes efficiency. Thus, processing requirements may vary depending on the type, extent, and significance of the development, or plan change, being proposed. The Coastal Act, California Code of Regulations, and the LCP all provide a range of procedures to account for this.

This chapter provides a preliminary evaluation of whether LCP procedures, and the way in which they are implemented in San Luis Obispo County, conform to the Coastal Act and the California Code of Regulations. Many of the identified procedural issues require further investigation and coordination with County staff, as well as public input, and will therefore be addressed in a subsequent report.

### **B. Analysis of LCP Coastal Development Permit Procedures**

### **Coastal Zone Boundary and Permit Jurisdiction**

An equally important step is identifying whether the development is located in the coastal zone, and if so, whether it is in the permit jurisdiction of the County or the Coastal Commission. In general, the County uses LCP Maps to identify whether a project is located within the coastal zone established by the state legislature. To the knowledge of the Commission staff, no problems have been encountered regarding the use of these maps. Nevertheless, it would be appropriate to review these maps to confirm that they accurately reflect the coastal zone boundary.

Most development within the San Luis Obispo coastal zone falls within the CDP jurisdiction of the County. However, some development falls within the original jurisdiction of the Coastal Commission. This includes all development seaward of the mean high tide line, on tidelands and historic public trust lands (e.g., filled tidelands), and within Areas of Deferred Certification (ADCs)<sup>1</sup>.

Overall, the County appears to be accurately informing applicants when a development project requires a CDP from the Coastal Commission. Sometimes, however, the determination of permit jurisdiction is a difficult task. For example, when reviewing a proposed shoreline protection device, it is not always clear if the development may extend seaward of the Mean High Tide line, due to the dynamic nature of shoreline profiles and the way this affects the intersection between the mean high tide line and the land. In instances such as these, it is important for the County and Commission staffs to coordinate on the determination of permit jurisdiction. It also may be appropriate to develop a coordinated permit review procedure when development straddles permit jurisdictions to avoid, where feasible, the need for separate coastal development permits from the County and the Commission. Implementation of this measure may require a revision to the Coastal Act.

With respect to ADC's, many of the issues that were the basis for deferred certification have since been resolved. For example, both the Sweet Springs and Otto (Elfin Forest) whiteholes in the South Bay Urban Area have been acquired for open space preservation, thereby eliminating the potential for residential development that was the basis of deferred certification. The County should be encouraged to update the LCP to reflect such changed circumstances, eliminate the whiteholes, and establish local permit jurisdiction over future development in such areas.

### **Exemptions and Exclusions**

All development in the coastal zone requires a CDP unless exempted or excluded by the Coastal Act and/or LCP. Both the LCP and Coastal Act identify specific types of development that are *exempted* from CDP requirements. *Exclusions*, most commonly in the form of *Categorical*

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<sup>1</sup> ADCs or "whiteholes" are specific geographic regions that were excluded from the Commission's original certification of the San Luis Obispo County LCP.

*Exclusions*, differ from exemptions in that they refer to a process under which the LCP can exclude certain types of development in specific geographic regions from the requirement to obtain a CDP. Such exclusions cover development that is not otherwise exempted by the Coastal Act from CDP requirements, and requires Coastal Commission approval by a two-thirds majority in order to be incorporated into the LCP. Categorical exclusions typically eliminate the need for new residential development within urbanized areas to obtain a CDP, although any category of development within a specified geographic region can be excluded from CDP requirements. In order to approve an exclusion, the Commission must find that there is no potential for significant adverse effect, either individually or cumulatively, on coastal resources or on public access to or along the coast.

Development that is exempted by the LCP from CDP requirements can be found in Section 23.03.040d of the CZLUO. However, the types of projects that are exempted from CDP requirements by this LCP section are, in some cases, significantly different from the exemptions provided by the Coastal Act.

For example, both the Coastal Act and the LCP exempt repair and maintenance activities that do not add to or enlarge the object being repaired/maintained. However, the Coastal Act conditions such exemptions on certain criteria that can be found in Section 13252 of the California Code of Regulations. These criteria, which require a permit for certain types of repair and maintenance activities that pose potential adverse impacts to coastal resources, are not reflected in the LCP's exemptions. Thus, repair and maintenance activities that should require a permit pursuant to the Coastal Act and California Code of Regulations are exempt pursuant to CZLUO Section 23.03.040.

Similarly, Section 30610 of the Coastal Act exempts only those temporary events that do not pose significant adverse impacts on coastal resources, as further specified by guidelines adopted by the Commission. The Commission recently evaluated the LCP's provisions regarding temporary events as part of the LCP Amendment that incorporated the Avila Beach Specific Plan into the LCP. Coordination on this issue between the county and the Commission led to an update of LCP provisions regarding temporary events, consistent with the Commission's guidelines, in the San Luis Bay Area Plan. A similar update should occur within the CZLUO so the updated permit requirements for temporary events apply countywide.

Finally, the range of development types exempted from CDP requirements by the LCP is much broader than the exemptions provided by the Coastal Act. Bringing these exemptions into conformance with the Coastal Act should therefore be pursued.

With respect to Categorical Exclusions, additional research is needed to determine if any such exclusions have been approved by the Commission within the San Luis Obispo Coastal Zone, and if so, how they are being implemented by the County and what affects they may be having on coastal resources.

## **Types of Coastal Development Permits**

The San Luis Obispo County LCP divides CDPs into various subsets. The most common are the Land Use Permits, which take the form of Plot Plans, Minor Use Permits, and Development Plans. Plot Plans are processed for projects that do not raise significant resource issues and are located outside of the geographic regions where development is appealable to the Coastal Commission. Minor Use Permits, which make up the majority of Land Use Permits/CDPs approved by the County, are processed for any development within an appealable area, and for non-appealable projects that raise significant resource issues. Development Plans are processed for the larger, more complex projects that necessitate the most rigorous form of permit review.

Other types of CDP's issued by the County include: land division approvals, which can take the form of Subdivisions/Tentative Maps, Lot Line Adjustments, and Conditional Certificates of Compliance; grading permits; and emergency permits. In most instances, grading activities are associated with new development that is processed as a whole via the Land Use Permit process, thereby negating the need for a separate grading permit. However, there are some cases where grading is the only development proposed on the site. In such situations, the Grading Permit constitutes the CDP for the grading activity.

Most of the different types of CDP's described above have specific application, noticing, hearing, and appeal procedures established by the CZLUO (Title 23 of the County Code). Exceptions to this include the procedures for land divisions, which are specified by a separate Title of the County Code (Title 21).

## **Amendments and Extensions of Locally Approved CDP's**

The CZLUO also establishes provisions for amending and extending the various types of CDP's described above. Problems that have been encountered with respect to amendments and extensions, and require further coordination with San Luis Obispo County as well as potential changes to the LCP include:

- The appealability of amendments and extension;
- What types of changes to an approved project require an amendment and what changes can be accommodated administratively; and
- Noticing requirements for amendments and extensions.

## **Allowable Uses**

The fundamental tool for determining whether a certain type of development is allowable within a specific land use designation is Table O, which can be found in the LCP's Framework for planning. A significant problem with this table, as described in the Chapter regarding Environmentally Sensitive Habitat Areas, is that it does not acknowledge that LCP Combining Designations that overlay land use designations further restrict the types of uses that may be allowed on a particular development site. This has the potential to cause problems at the review

stage (e.g., if the proposed use is not analyzed for conformance with Combining Designation standards), but also may create false expectations for property owners regarding the type of development allowed on a site.

Additional problems with Table O are: 1) it is silent on the appeal status of land divisions (i.e., it does not, but should, identify that land divisions are conditionally permitted); and, 2) it does not clearly differentiate between other listed development as to what is the principally permitted use and what is conditionally permitted. This creates difficulties in determining the appealability of projects, as further discussed in Part III of this Chapter.

### **Application Requirements**

The information obtained at the permit application stage plays a crucial role in the ability of County staff and the decision making bodies to effectively assess the potential impacts of the proposed development on coastal resources. The LCP provides adequate flexibility for the County Planning Director to require the information necessary to complete such an assessment. However, it is unknown how frequently additional information, beyond what is established by the LCP as the minimum requirements, is requested by County planning staff. While this is an essential tool for addressing unique circumstances that may arise, it is preferable, where feasible, to have the full range of information that is required to accompany CDP applications identified by the application requirements.

Recognizing that the extent of information needed at the application stage depends on the type location, and intensity of development being proposed, the LCP appropriately establishes different application requirements for each type of CDP. Other chapters of this report indicate where additional information, beyond what is required or being obtained at the application stage, is needed to address particular coastal resource issues. This will be supplemented with additional research, analysis, and coordination with County staff and interested parties to distinguish more the specific information needs that might not be adequately addressed by current application requirements or implementing procedures.

In general, the Commission staff's experience in tracking locally approved permits indicates that a potential problem with the County's implementation of application requirements is that some of the information required by the LCP at the application stage is instead being obtained as a condition of approval. It is typical to see conditions of permit approval that require grading plans, landscape plans, drainage plans, and erosion control plans to be submitted for the review and approval of County staff before construction commences.

The potential problem with this approach is that the information may be needed to effectively evaluate project consistency with LCP standards. For example, until the full extent of grading and site preparation are known, it may be difficult to determine consistency with LCP standards such as those that establish minimum setbacks from sensitive habitats. Similarly, until the necessary drainage infrastructure is identified, it is difficult to assess conformance to water quality protection requirements. For the development of bluff top lots, unresolved drainage issues can lead to potential impacts to coastal access and recreation if it is determined at a later date that rip-rap or other energy dissipation devices must be installed on the beach to prevent erosion of the bluff by project drainage.

## **Noticing**

As noted above, the different types and levels of CDP's have different processing requirements and noticing standards. The minimum requirements for noticing local CDP applications and approvals are established by Sections 13560 – 13572 of the California Code of Administrative Regulations. However, the noticing requirements of the LCP, and the local methods for implementing them, raise question regarding the LCP's conformance with these statewide standards. Potential inconsistencies include, but are not limited to, the following:

- Grading permits authorizing development activities that are not otherwise covered by a Land Use CDP are not being noticed and processed as a CDP;
- The Commission is not consistently provided notice of pending CDP applications, particularly those that are not appealable to the Commission;
- The Commission is not being mailed Final Local Action Notices (FLANs, also referred to as Notices of Final Local Action, or NOFAs) for all locally approved CDPs, particularly those that are non-appealable;
- The Commission occasionally receives FLANs/NOFAs prior to the expiration of the local appeal period;
- Notices of pending applications and final local action do not always identify whether the project is appealable to the Coastal Commission, or provide the correct timeline for such an appeal;
- While the findings for the local approval are consistently included with FLANs, these findings are not always complete. For example, a finding of project consistency with Coastal Act access and recreation policies is not always made for projects between the first public road and the sea.
- The Commission may not always be receiving notice of emergency permits granted by the County.

Additional coordination with the County is needed to resolve these noticing problems and, where necessary, bring LCP noticing provisions into conformance with the California Code of Administrative regulations.

## **Open Space Easements and Public Access Documents**

Better coordination between the County and the Commission regarding the format and content of legal documents related to open space and public access easements is needed to carry out Section 13574 of the California Code of Administrative Regulations. Changes to the LCP that would enhance such coordination should also be considered.

### **Condition Compliance and Enforcement**

Ensuring effective compliance with permit conditions, and responding to violations of permit requirements, is an essential component to implementing successful coastal resource protection. Actions that could enhance this aspect of the County's coastal program may include:

- developing a tracking system for condition compliance review that could be available to all County departments and Commission staff; and,
- coordinating responses to violations with Commission staff and other involved regulatory agencies.

### **Emergency Permits**

The procedures for emergency permits provided by Section 23.03.045 of the CZLUO are generally conform to Section 13329 of the California Code of Regulations. However, as noted above, there appears to be room for improving the noticing of emergency permits approved by the County to the Commission.

In addition, it is also often difficult to determine whether a certain situation qualifies as an "emergency" as defined by the Coastal Act. County staff should be encouraged to consult with the Commission in making such determinations, as they often do. This is critically important when the emergency action may result in development on lands that are within the permit jurisdiction of the Coastal Commission.

### **Variances**

Section 23.01.045 of the CZLUO allows the local decision making body on a CDP application to grant a variance from a strict application of LCP requirements. As discussed in the Environmentally Sensitive Habitats Chapter of this report, the approval of variances has, in some cases, undermined important coastal resource protection provisions of the LCP. Therefore, incorporating additional limitations regarding the use of variances into the LCP should be considered. One such limitation could be to prohibit the use of variances where the project will adversely impact Environmentally Sensitive Habitats.

### **Non-conforming Uses, Structures, and Parcels**

Chapter 9 of the CZLUO provides standards for development on sites that have existing uses, structures, or signs that do not conform to current LCP standards. Various issues regarding the interpretation of these standards have been raised during recent appeals, giving rise to the need to clarify the application of these standards.

A non-conforming situation often encountered that not addressed by Chapter 9 of the CZLUO, is the development of existing parcels that do not conform to minimum parcel sizes. Incorporating new standards for building on and adjusting such parcels could help minimize the cumulative impacts to coastal resources posed by future development, relocation, or expansion of these sub-standard lots.

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## **C. Analysis of LCP Appeals Procedures**

### **Determining What Projects are Appealable**

In carrying Coastal Act Section 30603(a)(4), the LCP states that any development not listed in Table O as a Principle Permitted (PP) is appealable to the Coastal Commission (CZLUO Section 23.01.043c(4)). Table O, however, does not include all development – most notably land divisions. This has resulted in uncertainty regarding the appeal status of this development. Table O also does not clearly identify what constitutes the principally permitted use within a certain land use designation for two reasons: 1) it includes more than one principally permitted use per land use designation; and, 2) uses that are subject to special standards, and therefore conditional, are in some cases listed as being principally permitted. Thus, it is difficult to determine when a project is appealable because it does not constitute the principally permitted use. Table O should therefore be revised to indicate a single principle permitted use per land use designation (with all other uses being conditional) and should list all development anticipated in each land use designation, particularly land divisions.

A related issue that is not addressed by the LCP is the appealability of a project that involves both conditional use(s) and a principally permitted use (i.e., is the whole project or just the portion involving the conditional use appealable?) To ensure that the cumulative impacts to coastal resources posed by projects involving conditional uses are addressed in a comprehensive fashion, it is recommended that the LCP clarify that if any component of a proposed development constitutes a conditional use, the entire project shall be appealable to the Coastal Commission.

Finally, the use of LCP maps to determine appealability presents another set of problems. Currently, the LCP designates any development within a “Sensitive Resource Area” (SRA) as appealable. As detailed in the Chapter of this report regarding Environmentally Sensitive Habitats, the delineation of such SRA’s provided by LCP maps do not always accurately reflect on the ground resources. As recommended in the Chapter of this report regarding Environmentally Sensitive Habitats, a combined approach of updating these maps, and determining the presence and extent of SRA’s in the field, is recommended.

Similarly, the LCP refers to the adopted post-certification appeals maps to determine where development is appealable because it is located between the first through public road and the sea or within 300 feet of any beach.. These maps also need to be updated. Thus, a conclusion regarding appealability under these criteria should be based on the configuration of roadways and landforms as they currently exist, rather than as shown on the maps. An exception to this is that roads constructed without the proper permits should not be considered as the first public road.

### **Minimizing the Number of Appeals**

Particular changes to local permit processing procedures may help minimize the number of CDP’s being appealed to the Commission. These include:

- Providing Commission staff with a copy of the County staff report/recommendation prior to the local action;
- Making better use of LCP provisions that allows the County to modify or reverse a local decision on a CDP that is appealed by two Coastal Commissioners; and
- Establishing procedures that would allow the County to expeditiously incorporate additional mitigation measures or minor project revisions within an appealed CDP. The additional mitigation measures or project revisions would be determined in coordination with the applicant and County and Commission staff, and would be designed to resolve the issues that were the basis of the appeal.

### **Processing Appeals**

When projects are appealed to the Commission, various problems have been encountered in providing the Commission with the relevant information developed during local review. Locating and reproducing this material can be difficult for many reasons, including other workload demands, the size of the materials, and the County's process of filing information provided at public hearings. Nevertheless, the Commission's ability to obtain all relevant information in a timely manner is essential to the efficient processing of appeals.

A potential means of addressing this issue is for the County to have a complete summary of all information that is submitted and developed during the project review. This could be a running tally, started at the initial application, and added to as the local review process proceeds. Upon appeal to the Commission, the list would be forwarded to the Commission staff, along with all relevant staff analyses, technical reports, and correspondence. Commission staff could request the additional materials at a later date, on an as need basis.

### Preliminary Procedural Alternatives

#### **Preliminary Recommendation 12.1: Update LCP and Post-Certification Maps**

- The County and the Commission staff should coordinate a review of LCP Maps for accurate delineations of coastal zone boundary and sensitive resource areas and update as necessary.
- The Coastal Commission staff, in coordination with the County, should update the Post-Certification maps to accurately reflect permit and appeal jurisdictions.
- Recognize that the appealability of development based on geographic criteria (e.g., the presence of an SRA, a location between the first public road and the sea) should be determined according to what is on the ground as opposed to what is shown on the LCP and Post-Certification Maps. An exception to this is that roads constructed without the proper permits should not be considered as the first public road.

**Preliminary Recommendation 12.2: Increase Coordination for Projects that Cross Jurisdictional Boundaries**

- Coordinate permit jurisdiction determinations when projects may involve development within the Commission's original jurisdiction.
- Develop a coordinated permit review procedure for development that straddles permit jurisdictions to avoid, where feasible, the need for separate coastal development permits from the County and the Commission.

**Preliminary Recommendation 12.3: Resolve Areas of Deferred Certification**

Update the LCP to eliminate Areas of Deferred Certification (e.g., Sweet Springs Marsh and the Otto property) and establish local permit jurisdiction over future development in such areas.

**Preliminary Recommendation 12.4: Revise LCP Permit Exemptions**

LCP permit exemptions (Section 23.03.040 of the CZLUO) should be revised so they conform to Coastal Act Section 30610 and associated sections of the California Code of Regulations.

**Preliminary Recommendation 12.5: Update LCP Provisions Regarding Temporary Events**

LCP provisions regarding temporary events, should be updated consistent with the Commission's guidelines, and as recently incorporated into the San Luis Bay Area Plan, so they apply countywide.

**Preliminary Recommendation 12.6: Identify and Review Categorical Exclusions**

Clarify where Categorical Exclusions may have been previously approved and how they are being implemented. The Commission staff, in coordination with the County, should evaluate whether these exclusions may be impacting coastal resources and therefore may warrant rescission.

**Preliminary Recommendation 12.7: Improve Noticing and Processing Procedures**

The Commission staff should coordinate with the County to resolve noticing and processing issues related to CDPs, CDP amendments and extensions, grading permits, emergency permits, and appeals. In some cases, changes to the LCP may be needed to bring LCP noticing and processing requirements in conformance with the Coastal Act and the California Code of Regulations.

**Preliminary Recommendation 12.8: Clarify Allowable and Principally Permitted Uses**

- Revise Table O to identify that allowable uses are further limited by Combining Designations (e.g., resource dependent development is the only principally permitted use in ESHA).

- Update Table O to differentiate the principally permitted land use within each land use designation from conditionally permitted uses. All uses currently subject to special standards and criteria should be identified as a conditional use (i.e., all uses currently listed as “S-#-P”).
- Table O should also list Land Divisions, Certificates of Compliance, and Lot Line Adjustments as conditionally permitted development within the particular land use designation that they may be allowed.

**Preliminary Recommendation 12.9: Update Permit Application Requirements**

Review permit application requirements and current methods for implementing these requirements to ensure that all information necessary to evaluate project consistency with LCP standards is being obtained at the application stage rather than as a condition of approval.

**Preliminary Recommendation 12.10: Provide Legal Documents for Executive Director Review and Approval**

Enhance coordination regarding the format and content of legal documents related to open space and public access easements and consider changes to permit procedures that would facilitate such coordination.

**Preliminary Recommendation 12.11: Clarify Appealability of Projects Involving Conditional Uses**

Section 23.01.043c4 should identify that if any component of a proposed development constitutes a conditional use, the entire project shall be appealable to the Coastal Commission.

**Preliminary Recommendation 12.12: Improve Methods for Ensuring Compliance with Permit Conditions**

Among other means available to achieve effective compliance with permit conditions, develop a tracking system that would be available to all relevant County departments and Commission staff.

**Preliminary Recommendation 12.13: Increase Coordination of Enforcement Actions**

Coordinate responses to violations with Commission staff and other involved regulatory agencies.

**Preliminary Recommendation 12.14: Improve Coordination Regarding Emergency Actions**

When time allows, consult with the Commission regarding alleged emergencies. This is critically important when a proposed emergency action may result in development on lands that are within the permit jurisdiction of the Coastal Commission.

**Preliminary Recommendation 12.15: Further Restrict the Use of Variances**

Incorporate additional limitations regarding the use of variances into the LCP (e.g., prohibit the use of variances where the project will adversely impact Environmentally Sensitive Habitats).

**Preliminary Recommendation 12.16: Clarify LCP Provisions Regarding Nonconforming Uses**

Clarify LCP provisions regarding nonconforming uses and structures, and consider incorporating new standards for the development/adjustment/certification of non-conforming parcels as addressed earlier in this report.

**Preliminary Recommendation 12.17: Provide Additional Opportunities to Efficiently Resolve Appeals**

- Incorporate new procedures into the LCP that would provide additional opportunities to resolve appeals at the local level.
- Improve procedures for providing Commission staff with all information relevant to appealed projects.