

CALIFORNIA COASTAL COMMISSION

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JUNE 2, 2003

TO: COMMISSION AND INTERESTED PERSONS

FROM: PETER DOUGLAS, EXECUTIVE DIRECTOR

SUBJECT: HEARINGS RELATING TO STATUS OF CERTIFIED LCPS

The Coastal act does not contain provisions that ensure the timely review and regular updating of previously certified LCPs. Instead, the Act allows, and indeed requires the processing of LCP amendments generated at the local level or initiated under narrow circumstances by a third party¹ irrespective of their interaction with other LCP elements. Many LCPs previously certified were approved by the Commission more than fifteen years ago and have not been reviewed on a comprehensive basis to determine whether they continue to offer the appropriate level of coastal resources protection envisioned by the Coastal Act. LCP amendments initiated at the local level usually are project driven and do not result from a concern about the need for a general update. The Coastal Act does contemplate periodic LCP reviews that are initiated and carried out by the Commission at least every five years to determine if the LCP is being effectively implemented to carry out coastal resource protection policies. (See section 30519.5 PRC) Due to funding constraints and other reasons, only three periodic reviews have been initiated and carried out by the Commission. Where periodic reviews have been conducted, there has been only limited success in accomplishing LCP revisions in accordance with Commission findings and recommendations.

At the request of members of the public and some environmental organizations, the Commission held a series of hearings throughout the state on the status of LCPs and Periodic Reviews during the past year and a half. Status reports and public testimony highlighted the fact many LCPs are substantially outdated and have not been reviewed or revised since certification. Also underscored was the fact many coastal issues remain unresolved and others continue to emerge in the absence of timely reviews and updated plans. At these hearings hundreds of people testified on key emerging issues in their communities and about coastal areas and resources that lack adequate protection due to out of date LCP land use and development standards. Testimony clearly demonstrated strong public support for periodic reviews of LCPs and the need to maintain strong, up to date coastal protection standards that reflect changed conditions and current information about threats to coastal resources.

More than 20 years have passed since the first LCP was certified and local government pursuant to certified LCPs now regulates more than 85% of coastal zone land area. However, many of these LCPs have not been updated and contain policies and standards that do not reflect current needs or new scientific information. Conditions in many areas of the coastal zone have changed

¹ Section 30515 PRC allows for a special amendment process under certain circumstances.

significantly in the years since LCP planning was completed. Population has grown significantly. Loss of habitat has resulting in listing of new species for higher levels of protection and the emergence of new environmentally sensitive habitat areas. New scientific information has been promulgated and new development trends have occurred. Changes in the economy have given rise to different development patterns as well as new industries and activities that have resulted in unanticipated adverse effects on coastal resources and public access.

A lack of staffing and support resources has impaired the Commission's ability to meet Coastal Act Section 30519.5 requirements to periodically review the implementation of certified LCPs to ensure that they continue to carry out policies consistent with Coastal Act. In addition to a lack of resources available to the Commission, the Coastal Act contains no incentives or requirements that local governments respond to and comply with periodic review findings and recommendations and be routinely updated. Failure by the Commission to carry out its legal responsibilities to conduct periodic reviews has resulted in litigation. Additional litigation in the future is a distinct possibility.

Recently, considerable attention has been focused on this problem. Commission staff outlined a work program and strategy for eliminating the backlog of periodic reviews to the Joint Legislative Budget Committee.¹ The Legislative Analyst's Office called for strong, new incentives for local governments to incorporate Coastal Commission Periodic Review recommendations as amendments to LCPs and recommended that implementation of Commission recommendations be given more teeth through statute.² In 2001, Assembly member Hannah-Beth Jackson introduced AB 640, which proposed a series of measures to address Coastal Act deficiencies relative to periodic reviews. That legislative effort died. More recently, the Commission is reviewing San Luis Obispo County's response to the Commission's recommendations for revisions to the county's LCP based on a period review. The Commission is considering its options for assuring implementation of the Periodic Review recommendations in light of statutory limitations.

In light of pending major budget cutbacks at the state and local levels, meaningful initiatives to ensure timely review and updates of LCPs are unlikely to occur. The Commission's Local Assistance Grant Funds program that provided funds to help local government update and amend old LCPs was eliminated from the Commission's budget. Aside from one periodic review the Commission is bound by settlement of litigation to complete, efforts to initiate additional periodic LCP reviews are threatened by limited Commission resources and the continued state-hiring freeze. While the need and public support for reviews and updating of LCPs is strong, unless the Legislature provides necessary resources and statutory changes to make required reviews and updates meaningful and effective the current trend of outdated LCPs determining coastal resource management will continue.

¹ CCC, *Supplemental Report of the 2000 Budget Act: Item 3720-001-0001 California Coastal Commission Required Report 3. Local Coastal Program Reviews*, January 10, 2001.

² Legislative Analyst's Office, *Analysis of the 2000-01 Budget Bill*, Pages 93-94.

APPENDIX A

The summary below highlights some of the major items of concern raised by the public in testimony at the hearings:

NORTH COAST

- One 1 out of 20 LCPs is current.
- Issue of buildout of paper subdivisions, McKerricher Dunes, Georgia Pacific area in Ft. Bragg, water quality Humboldt Bay, private purchase of land at mouth of Mad River.
- More acquisitions needed.
- Impacts of projects to extend road through wetlands mitigation site.
- McKinleyville Area Plan
- Help local governments have simultaneous updates and internal consistency in plans.
- Impacts from total impervious surface in watersheds.
- Neighborhoods of special concern in Mendocino
- Impacts of certificates of compliance
- Uncertified areas in Del Norte County
- Pt. St. George areas used for birding and as local parks and impacted if developed as 5 acre ranchettes
- Protection of resources at Lake Earl/ Pacific Shores Subdivision. Special Study never completed. Evaluate Permit and Assessment District permit conditions for Lake Earl
- Oyster industry not in compliance with Humboldt Bay Management Plan
- Elk River Management Plan and Trail system
- Eureka Marsh Management Enhancement Project/ easement and properties conflict-
Broadway Relief Project road development project
- King road Roadless Area
- Railroad from SF for lumber industry
- Eel River impacts
- Development of Humboldt Bay as Port/Industry
- Public Access needed but not OHV
- Agriculture waster water and diversion impacts on Klamath River

NORTH CENTRAL COAST

- LCPs certified before emergence of “sprawl” :monster homes” and ten times more people
- Need to acquire more lands to provide more access and to preserve larger areas and systems
- Impacts of armoring of shoreline
- Policies need to reflect new information such as new abalone diseases spread by farms
- Need to acquire last open space link to Estero Americano
- LCPs need more emphasis on protection of visual resources
- CCC needs to help local governments revise plans and give local assistance
- Impacts of development on wetlands in half Moon Bay
- Wavecrest development in Half Moon Bay
- Wetlands and ESHA in rural San Mateo Coast
- Pescadero Marsh and concerns about dredging in Butano Creek
- Visual impacts of large house sizes
- Need to have LCPs incorporate Coastal Act policies
- Caltrans piecemealing the widening of PCH
- Substandard lots are overbuilt and should require consolidation to minimum lot size
- Impacts of domestic wells on salt water intrusion

- Water should be provided by public purveyors
- In San Mateo property owners opted out of assessment district and now want wells.
- Half Moon Bay Plan out of date
- Need update of water, sewer, traffic capacity and resource availability and buildout projections to reflect actual resources in San Mateo Mid Coast
- Need better Public Notice
- Protect water quality for swimming
- Scenic views are disappearing (e.g. Ritz hotel)
- Protect public wild spaces in Marin headlands
- Provide carrot and stick approaches to local governments- give rewards to locals who update plans and penalize those dragging
- Lawson's Landing Tomales Bay septic systems in dunes and inadequate permits
- Stream protection inland affects coastal fisheries
- Extent of seawalls
- Need to make legislators aware of problem of old LCPs

CENTRAL COAST

- Hearst project and negotiation with Land Trust
- Hotels in Marina
- Sand Dune habitats
- Protection of Monterey Pines
- Water overdrafts on Peninsula
- Prohibit more seawalls
- Urban Boundary Lines are being violated in San Luis Obispo
- Restrict OHV use in Oceano Dunes; close for temporary emergency measure to protect plovers

SOUTH CENTRAL COAST

- Preserve Gaviota Coast
- Lack of contemporary planning policies and strategies
- Seawalls at Goleta Beach and Southern Pacific
- Need policies to implement planned retreat
- Plant species thought extinct being rediscovered and need protections
- LNG/Marine Terminal proposal in Ormond Beach; Occidental Petroleum has option to buy 261 acres owned by SCE that is same property Conservancy tried to purchase
- Transport of nuclear materials through Ormond Beach
- Concerns for Carpinteria Bluffs, Douglas Preserve Santa Barbara, Monarch Grove Goleta
- Concern for island-like species. Mission Creek River system streams into ocean and is unique; new species discovered; 1 of 5 Mediterranean regions in the world
- Protect wetlands and Agricultural lands;
- Control urban runoff
- Preserve rural character of coast.
- Ranchers need help to preserve lands, maintain local and private stewardship of Gaviota coast
- Density rather than sprawl

SOUTH COAST

- LCPs do not reflect current conditions where initiatives have passed affecting development
- Shoreline armoring in Malibu, Ballona, So. Orange County
- Colorado Lagoon and Alamitos Bay water and wetlands threatened by poor water quality; consider alternative design for storm drains.
- Wetlands in Ballona/Playa Vista need to be protected.
- Impacts of development of Soka Univ, and Ahmanson ranch on Malibu watersheds.
- Marina del Rey traffic not studied, updated or mitigated
- Public Participation lacking at local level in coastal permitting
- Impacts of development and runoff on ocean waters off Orange County.
- Impacts of Foothill toll road on San Onofre State Park, Trestles and San Mateo Creek
- Impacts of San Joaquin Hills Transportation on water quality
- Ocean pollution in Capistrano Bay
- Impacts of proposed redevelopment plans in Redondo Beach, including increased density, transportation changes and traffic, water quality impacts from old storm drains, impacts to public access and scenic views, lack of cycling path
- Need to restore degraded resources areas and flood plains in Malibu
- Bolsa Chica Court decision needs to be reflected in LCPs
- Ballona Wetlands needs to reflect changes in private to public land ownership.
- Endless LCP amendments and incremental nonappealable permits dilute LCP protections of parks and open spaces in Long Beach.
- Cerritos Wetlands need protection.
- Water quality impacts and loss of sand resources at Santa Monica Bay and Will Rodgers State Beach.
- Protection of park and open spaces on Palos Verdes Peninsula.
- Hazards to humans from oilfield gas migration in Venice/Playa del Rey, Marina Del Rey
- New seismic information concerning faultlines.
- Public Access close to water's edge in Hermosa Beach, Marina Del Rey, Ballona, Playa Vista.
- Coordinate LCPs in region to facilitate California Coastal Trail implementation.
- Help locals update LCPs by providing funds, find different ways to review and update and lower the bar. Consult early and expedite review.
- Outdated wetlands delineation of Ballona. Ballona Plan is outdated
- Protect highway 1 views and public access
- Concern about 301 h Waivers

SAN DIEGO COAST

- Development of tidelands and seawalls
- Land Use and Water Quality of Mission Bay; development and redevelopment of commercial projects on Mission Bay
- Impacts of beachfront development in Oceanside
- Impacts of golf courses on inland habitat
- Maximize protection of biodiversity in LCPs
- Protecting sea turtles and wetland habitat and eelgrass/seagrass
- Protection of South San Diego Bay and commercial development
- Impacts of South Bay Power Plant and pursuit of dry cooling
- Chula Vista Bayfront and protection of Sweetwater Marsh and update to reflect Port District revisions.

- Achieve public access, clean beaches, healthy biodiversity, open vistas, open beaches, swimable and fishable waters, natural coastline and sand replenishment
- Protect remaining wetlands and restore wetlands; Limit uses in ESHAs
- San Diego River dredging
- Tijuana River Valley Plan; Tijuana Estuary modifications
- Impacts of personal watercraft in surf zone
- Destruction of north county grasslands
- Seawall development in Encinitas
- North Bay Redevelopment Plan
- Protections for all the lagoons of San Diego from development and open lagoons for habitat
- Beach pollution and health impacts in Coronado
- Paving of sand for parking and impacts of access from closing of streets and bluffs
- Protection of Mission Hills canyons and open spaces
- Protection of lands adjacent to San Elijo Lagoon in Solano Beach
- Impacts of Solano Beach bluff armoring
- Impacts of invasive species
- Intensive development next to Sweetwater Marsh
- Impacts of development and failure to protect historic resources at Naval Training Center
- Impacts of redevelopment on Peninsula and water quality
- Conversion of public park space to commercial uses
- Landscaping with native landscape on bluffs
- Cumulative impacts from traffic and air quality impacts

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June 3, 2003

To: Commission

From: Peter Douglas

Re: Draft Resolution

The following draft resolution is recommended for Commission discussion and adoption. It is based on the testimony and information gathered during a series of public hearings relative to the importance of and need for the periodic review and updating of previously certified LCPs.

**PROPOSED RESOLUTION BY THE CALIFORNIA COASTAL COMMISSION
REGARDING THE PERIODIC REVIEW AND UPDATING OF PREVIOUSLY
CERTIFIED LOCAL COASTAL PROGRAMS
(June 12, 2003)**

WHEREAS, the California Coastal Act (the Act) requires local governments within the coastal zone to prepare and submit for certification by the California Coastal Commission local coastal programs (LCPs) that effectively carry out coastal resource and coastal environmental quality protection policies set forth in Chapter 3 of the Act;

WHEREAS, there are seventy-five cities and counties located in whole or in part in the coastal zone that have divided their LCPs into 128 segments and of these 90 LCP segments have been fully certified and local governments have been delegated coastal development permit issuing authority while 38 LCP segments remain to be completed and fully certified;

WHEREAS, the Act recognizes that previously certified local coastal programs must be reviewed and updated from time to time in order to adequately address changing needs and circumstances, including new scientific information about flora and fauna and their habitat, as well as changing human community needs;

WHEREAS, the Act requires that the Commission initiate and carry out “periodic reviews” of certified LCPs at least once every five years to determine whether the LCP is being implemented in a manner that continues to be fully consistent with resource protection policies of the Act;

WHEREAS, the Act permits local governments to prepare and submit for approval by the Commission up to three LCP amendments per year which the Commission must review and act upon with specified time limits;

WHEREAS, local government initiated LCP amendments are usually driven by specific proposed development projects or by property owners and do not constitute a comprehensive review and update of the LCP;

WHEREAS, the Commission recently held a series of public hearings in coastal locations throughout the state during which extensive public testimony focused on the need to update LCPs that no longer reflect current community needs as well as the fact LCPs have not been revised to address changed circumstances which in turn has resulted in an increase in permit appeals to the Commission and new litigation;

WHEREAS, during these hearings while public testimony underscored the need to update LCP provisions considered inadequate to deal with important coastal resource protection issues such as coastal public access and recreation, adverse effects of seawalls, conservation of environmentally sensitive habitat areas, and the need for improved marine water quality, the overarching theme emanating from these hearing was the need to strengthen Coastal Act provisions to makes meaningful and effective the periodic review of certified LCPs by the Commission and to ensure that local governments actually implement LCP modifications recommended by the Commission based on such periodic reviews; and

WHEREAS, the Act lacks effective provisions to ensure that periodic reviews of LCPs are actually conducted by the Commission and that local government subsequently implements Commission recommendations;

NOW THEREFORE, BE IT RESOLVED, that the California Coastal Commission hereby respectfully requests that the California Legislature and the Governor enact legislation that would have the following components:

I. Periodic Reviews:

- a. Restate the mandate in the Act that the Commission must carry out periodic reviews and modify the time period for such reviews from once every five years to no less than once every ten years.
- b. Substantially increase coastal development permit fees and specify the use of the increased revenues (retaining current fees going to the Coastal Conservancy) for grants by the Commission to local governments solely for the purpose of implementing Commission recommendations for LCP modifications resulting from periodic reviews.
- c. Appropriate funds to the Commission specifically for the conduct of periodic reviews;
- d. Amend the Act to modify coastal development permit appeals provisions by expanding the appeal area within a local government that fails after appropriate opportunity to effectively respond to Commission recommendations for LCP modifications and by specifying the standard of review on appeal to be the Commission adopted modifications to LCP land and water use policies;
- e. Amend the Act (section 30515 PRC) to add the Commission as an entity entitled to ask a local government to amend its LCP consistent with periodic review recommendations by the Commission and enabling the Commission to effectively amend the LCP if the local government fails to modify its LCP accordingly.
- f. Hold oversight hearings, using the Commission's experience with the San Luis Obispo County periodic review as a focus, to identify deficiencies in and

possible mechanisms to address the need to ensure the timely and effective updating of LCPs through the Periodic Review process.

II. General Plan Provisions:

- a. Amend General Plan law to mandate completion of LCPs for those local governments that do not yet have a fully certified LCP;
- b. Require local governments to periodically (i.e., every ten years) update their LCP elements of the General Plan and provide sanctions for failure to do so.

BE IT FURTHER RESOLVED, that the Commission urges the appropriate policy committees of the Legislature to hold special informational hearings on issues relating to the adverse environmental consequences of the failure in existing law to require effective modifications to LCPs certified more than ten years earlier; and

BE IT FURTHER RESOLVED, that the Commission is prepared to provide technical assistance to the Legislature to inform and achieve the recommendations above.