

CALIFORNIA COASTAL COMMISSION

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Th18a



June 4, 2003

MEMORANDUM

TO: Commissioners and Interested Parties

FROM: Charles Lester, Deputy Director
Liz Fuchs, Project Manager
Steve Monowitz, Coastal Planner

RE: **EVALUATION OF SAN LUIS OBISPO COUNTY'S FIRST YEAR RESPONSE TO THE PERIODIC REVIEW OF THE SAN LUIS OBISPO COUNTY LOCAL COASTAL PROGRAM.** For public hearing and possible Commission action at its meeting of June 12, 2003 to be held at The Queen Mary (1126 Queens Hwy.) in Long Beach.

EXECUTIVE SUMMARY

On March 5, 2003, the Commission evaluated San Luis Obispo County's first year (Phase 1) response to the 2001 Periodic Review of its Local Coastal Program. At that hearing, concern was expressed regarding the limited progress that has been made to date. The purpose of this report is to update the Commission on the steps that the County has taken to address this concern, and to identify options for facilitating a more comprehensive response.

Over the past three months, the County has taken action to advance implementation efforts. On May 20, 2003, the Board of Supervisors approved revised versions of the Phase 1 amendments reviewed by the Commission in March 2003 (Exhibit 2), and a resubmittal of procedural amendments containing changes recommended by the Commission in both the Periodic Review and the previously suggested modifications to the original submittal (Exhibit 3). The revisions made by the Board are attached as Exhibit 1. The Board also authorized its staff to initiate work on a Phase 2 response (Exhibit 4), and to recommence work on the North Coast Area Plan Update (Exhibit 5). County staff also continues to make progress on the draft of the Estero Area Plan Update.

Although these actions illustrate that the County has committed resources to providing a response, it is not clear that the effort is yielding effective results. Rather, recent actions by the Board of Supervisors indicate more fundamental disagreement between the Commission and the County on critical changes required to protect important coastal resources. Specifically, the Board has eliminated key changes from Phase 1 that are needed to protect effectively Environmentally Sensitive Habitat Areas and critical coastal viewsheds. According to County staff, although the Board is generally supportive of the intent to better protect ESHA and scenic

resources, it was unable to approve these changes due to the concern that it would expand the Coastal Commission's appeal jurisdiction.

Many other important recommendations remain either partly addressed, or not addressed at all. According to the Phase 2 work plan, the County intends to respond to an additional 50 recommendations, and continue discussion of unresolved Phase 1 components. This would provide a response to about 117 of the 167, or 70% of the recommendations; approximately 30% of the recommendations adopted by the Commission are not accounted for.

Also of concern is that the recently approved work plan for the North Coast Area Plan Update is limited to the urban areas of Cambria and San Simeon Acres, and, as a result, cannot be expected to address important recommendations regarding the protection of rural areas, such as the North Coast critical viewshed. Overall, the recent actions have not increased the Commission staff's confidence that significant progress is being made in response to the critical coastal resource issues identified by the Periodic Review.

After completing a one-year review, the Coastal Act directs the Commission, where appropriate, to report to the Legislature and recommend legislative action necessary to assure effective implementation of the relevant policy or policies of the Coastal Act. Based on the Commission's experience with the San Luis Obispo County Periodic Review, and in consideration of broader statewide need to complete LCP updates and improve the effectiveness of the Periodic Review process (see Agenda Item Th15), it is the Commission staff's opinion that a report to the legislature is warranted. A draft letter to the legislature from the Commission is attached to this report as Attachment A.

In addition to recommended legislative action, staff will continue to work with the County to achieve a more comprehensive response to the Periodic Review. As detailed in this report, participation in the local review and decision-making process, and use of appeal and LCP amendment modification procedures, provide some opportunity to carry out Periodic Review recommendations. These measures do not, however, provide a reliable means of effective implementation for various reasons. Staffing and budget constraints currently faced by the Commission limit opportunities for early coordination at the local level. Moreover, the Board of Supervisor's rejection of important policy language carefully crafted at the staff level illustrates that increased coordination does not always yield effective results. Implementing Periodic Review recommendations through the use of the appeal process is similarly limited by staffing constraints, the limitation of the Commission's appeal jurisdiction, and the requirement to apply outdated LCP provisions as the standard of permit review. Finally, the Commission cannot rely on its ability to implement recommendations through modifications to future amendment submittals, because the County is under no obligation to accept such changes. Although staff will continue to pursue existing opportunities, the need for legislative action to address these limitations is clear and compelling.

I. Status Update

A. Phase 1 Response

Since March 2003, the County has taken tentative action on a number of LCP amendments that partly respond to approximately one-half of the 165 recommendations adopted by the Commission. This includes tentative approval of a slightly revised version of the Phase 1 amendments analyzed at the March 2003 meeting, as well as procedural changes recommended by the Commission as modifications to a 2001 amendment submittal. Beneficial changes contained in these amendments include updated drainage standards; expanded requirements for biological evaluations and alternative analyses; stronger limits on streambed alterations and uses within ESHA setbacks; better public access requirements; support for California Coastal Trail planning; more stringent standards for shoreline protection; and, improved permit and appeal processing procedures.

However, as noted above, a critical element of the Phase 1 response that was not endorsed by the County Board of Supervisors is the elimination of the LCP's reliance on outdated maps as a means to delineate environmentally sensitive habitat areas. Ensuring that all areas of ESHA, as opposed to only those that were mapped in 1988, is a key recommendation of the Periodic Review and one of the few higher priority substantive changes included in the Phase 1 amendments developed by County staff. Another disappointing element of the County's recent action is the elimination of a Phase 1 amendment clarifying that Sensitive Resource Areas (SRAs) include critical coastal viewsheds.

The removal of these components significantly diminishes the already low level of response to the Periodic Review achieved to date. As discussed at the Commission meeting of March 5, 2003, few of the Phase 1 responses involve changes to LCP standards; most are voluntary programs, changes in internal policies and procedures, or reliant upon future LCP updates for specific implementation. Coastal resource issues of concern that have not, or only been partly addressed by the Phase 1 response include:

New Development and Public Services

Some progress has been made in addressing short-term development concerns in Cambria. Namely, the Cambria Community Services District has stopped issuing new service commitments, and the Commission and County have agreed on an approach that will allow outstanding commitments to be met in a manner that will not result in increased demands on the area's water supply. However, there has been little accomplished in the way of resolving the fact that the potential buildout of Cambria allowed by the LCP is in far excess of what can be sustained by available public services. The County intends to address this issue, and similar issues being faced in the urban area of Los Osos, as part of the North Coast and Estero Area Plan Updates, described below.

Other important recommendations regarding new development that have not been adequately responded to by the County include the need for new ordinances and policy amendments to:

- avoid the extension of urban services into rural areas;
- reduce development potential on urban edges;
- restrict development of non-conforming lots; and,
- improve the effectiveness of the County's Resource Management System.

Water Quality

Adopting BMPs, especially regarding post-construction runoff was identified as a priority for use of grant funds, and the County has made reasonable progress in this regard. As detailed in the Phase 1 response, the County proposes to incorporate such requirements into LCP ordinances regulating drainage. However, additional work is required to coordinate this change with other pending changes to the same ordinances.

Although the County has proposed to require BMPs for new development, it has not made progress in responding to the broader water quality protection needs identified in the Periodic Review. In particular, the County has yet to respond to recommendations calling for:

- The incorporation of a comprehensive Watershed and Water Quality protection component within the LCP;
- New criteria to address runoff from confined animal facilities;
- New policies and ordinances to better regulate development on steep slopes; and,
- Updated standards to address water quality impacts posed by septic systems.

It should be noted that some of the water quality recommendations specifically apply to the LCP's grading ordinance, an update of which was also considered by the Commission on March 5, 2003. The suggested modifications adopted by the Commission, if accepted by the County, would provide an effective means of implementing many of the Periodic Review water quality recommendations. Before that can occur, County and Commission staff must work together to resolve issues related to the regulation of agricultural grading through the Categorical Exclusion process.

ESHA

As noted above, a major focus of the Periodic Review was to address problems related to the LCP's reliance on outdated maps to delineate ESHA. To ensure that such areas are effectively identified and protected, the Periodic Review recommended changing the LCP's definitions of sensitive resource areas in a manner that eliminates complete reliance on maps. Both the County and the Commission staff identified the implementation of this important change as a grant priority, and the County's Phase 1 included an LCP amendment that, with some minor

adjustments, would effectively revise the definition of ESHA and streams in accordance with this recommendation. However, the County Board of Supervisors has since indicated concern about this change, and has yet to act on this subject.

Additional changes to the LCP (beyond revisions to the definition of ESHA and streams discussed above) are needed to effectively address the mapping problem. For example, the LCP ordinance identifying the types of actions that can be appealed to the Commission also relies on outdated ESHA Maps. In a recent action on the County's proposed amendments to this ordinance, the Commission suggested modifications that would resolve this issue. The modifications, which were coordinated with the County staff, were not, however, accepted by the Board of Supervisors. Resubmittal of the amendment with alternative language to address this issue is awaiting final action by the Board.

Another Periodic Review priority is to improve ESHA protection, among other ways, by updating requirements for biological reports, avoiding development in and adjacent to sensitive habitats, and providing adequate mitigation where impacts cannot be avoided. In response, the County has drafted some minor changes to biological report requirements, and has implemented some internal improvements regarding mitigation monitoring. The County has yet, however, to respond to a number of recommendations calling for LCP changes needed to avoid impacts to ESHA and enhance the long-term protection of such areas. The County's proposed response also falls short of effectively implementing the recommendation to increase setbacks from sensitive riparian habitats.

In reference to increased protections for the sensitive habitat areas of Cambria and Los Osos, the County intends to implement these recommendations through the Estero and North County Area Plan Updates, as described below. Other important ESHA recommendations that have not yet been addressed by the County include the need for:

- New standards requiring new development to permanently protect all portions of a development site that contain ESHA;
- Better coordination with other resource agencies where new development poses impacts to listed species and/or critical habitat;
- Additional standards for wells and stream diversions that can impact riparian and wetland habitats;
- Specific requirements for wetland delineations; and
- Limitations on the use of variances that exempt new development from ESHA protection requirements.

Agriculture

The major recommendations related to agriculture were intended to strengthen protection of agricultural lands and minimize conversion of lands and subdivision to other uses by

- modifying the allowable uses in agricultural lands;
- strengthening the requirements for, and use of, agricultural viability reports as a means of assessing the need for supplemental development; and
- adding standards to address lotline adjustments, certificates of compliance, and residential development on agricultural lands.

The County has not responded to any of the agricultural recommendations in its Phase 1 proposed amendments. The Board of Supervisors tentative approval of the Phase 1 amendments does provide, however, an important clarification that partly responds to concerns regarding the adjustment of agricultural parcels by requiring all lot-line adjustments to be evaluated for conformance to the LCP.

Access and Recreation

An important Periodic Review recommendation regarding public access is to incorporate comprehensive access components into each of the LCPs four area plans. Towards this end, Phase 1 incorporates a program into the LCP calling for the County to complete such components as part of future area plan updates. This approach may yield positive results for access improvements in Estero, Cambria, and San Simeon acres, where updates are underway. However, it does not effectively provide for access planning that is needed Countywide. Other access recommendations that have not been effectively responded in Phase 1 include those regarding the acceptance of Offers of Dedication and protecting and maximizing coastal access and recreation opportunities.

Hazards

The County's Phase I response provides a new LCP program to develop the area wide management plans for existing developed areas recommended by the Periodic Review. The response does not address key recommendations to apply a 100-year economic life of a structure to determine setback requirements, and to prohibit the creation of new lots in hazardous areas. Also of concern is that the County has not responded to the recommendation that new bluff-top development be required to record to no future seawall deed restriction.

Scenic and Visual Resources

As reported to the Commission in March 2003, the Phase 1 response partly addressed the Periodic Review recommendations to designate and protect critical viewshed areas by clarifying that important scenic areas could be designated and protected as Sensitive Resource Areas.

However, as previously noted, the Board of Supervisors did not include this provision in the recent approval of Phase 1. Of equal concern is that the only specific visual resource policy improvements currently being pursued by the County are those contained within the Estero Area Plan Update, and within the Cambria and San Simeon Urban Areas as part of the North Coast Area Plan Update. There are other areas of equal or greater scenic importance, such as the rural lands of the County's North Coast, that are not being addressed by current implementation efforts.

Archaeology

The County has not responded to any of the Archaeological Recommendations in its Phase 1 response. Only two of the four recommendations are identified in the Phase 2 scope of work recently adopted by the County.

Energy and Industrial Development

The three recommendations of the Periodic Review regarding energy and industrial development addressed fiber optic cable projects, locating and mitigating new energy facilities, and standards for the clean-up of abandoned energy sites. The Phase 1 response provides improved standards that will help avoid and minimize impacts to coastal resources associated with fiber optic cable projects, but does not specify mitigation standards for unavoidable impacts. The proposed standards for new and abandoned energy facilities lack sufficient specificity and are dependent upon future LCP Updates for implementation.

Commercial Fishing and Recreational Boating

The County has been coordinating the review of a proposed boat launch ramp in Los Osos with the relevant agencies and individuals in accordance with recommendation 11.2, and intends to respond to recommendation 11.1, calling for a public information program regarding the protection of Morro Bay habitats as part of Phase 2. Also as part of Phase 2, the County intends to initiate work on a San Luis Bay Area Plan Update, which will incorporate the Port San Luis Master Plan currently being developed, in response to recommendation 11.3.

Implementation Procedures

The phase 1 response includes a number of internal processing and coordination changes recommended by the Periodic Review. It also contains some improvements to LCP ordinances regarding permit and appeal processing, such as a clarification that lot line adjustments must conform to the LCP. However, a critical ordinance change that has been recently eliminated from the Phase 1 response is one that would clarify that special uses are conditional uses and therefore appealable to the Coastal Commission.

Another important element on the County's response to the procedural recommendations is the imminent resubmittal of a previous set of procedural amendments that includes modifications suggested by the Commission to resolve noticing problems and permit extension processing

procedures. The beneficial changes included in this resubmittal has, however, been significantly reduced by the Board of Supervisor's recent elimination of provisions which would clarify that ESHA's and Sensitive Resource Areas include, *but are not limited to* those that are shown by LCP maps.

B. Phase II Work Plan

The Phase 2 work program recently approved by the County is attached to this report as Exhibit 3. As previously described, Phase 2 includes continued implementation of Phase 1, and a response to an additional 50 recommendations, many of which will be contained in the Area Plan Updates. The program lists general tasks that will be completed as part of the Phase 2 effort, and describes the general categories that the responses will fall into (e.g., types of amendments), but does not provide any details or focus regarding the substance of the Phase 2 effort.

Notably, the listed recommendations to be addressed by Phased 2 work plan notably **do not include** recommendations calling for a comprehensive Watershed and Water Quality Component to be incorporated within the LCP (Recommendation 3.7); improved ESHA protections (e.g., Recommendations 4.8, 4.11, 4.12, 4.13, and 4.32); better controls over the development of non-agricultural uses on agricultural land (e.g., recommendations 5.6 – 5.9); stronger measures to prevent future shoreline armoring (Recommendation 7.7); enhanced watershed protection policies (e.g., Recommendation 8.6); greater protection of archaeological resources (e.g., Recommendation 9.4); and modifications to procedures for the granting of exemptions and variances (Recommendations 12.4 and 12.15).

C. Area Plan Updates

Both the County and the Commission have recognized that existing efforts to update the LCP's Area Plans provide an essential means of implementing the recommended corrective actions. Indeed, approximately one third of the responses contained in the Phase 1 effort rely upon future updates, particularly area plan updates, to achieve the substantive changes in development standards called for by the Periodic Review.

Two Area Plan updates are currently underway (Estero and North Coast), with a third (San Luis Bay) soon to be initiated. The most developed of these is the Estero Update, which is currently in draft form, and will soon be reviewed by the Planning Commission. This is a revised version of a 1999 draft that received extensive comment from Commission staff. Since that time, the County has endeavored to respond to the Coastal Act concerns raised in both staff's previous comments and the Periodic Review. Staff's review of the current draft indicates that significant progress has been made towards addressing important issues such a sensitive habitats and public service limitations in Los Osos. However, a significant amount of work remains in crafting specific development standards that effectively respond to these issues.

The North Coast Area Plan Update is similarly being drafted with previous Commission feedback in mind. A "Project Description" was released in 2000 that describes 6 alternatives update approaches, one of which is a revised version of the 1998 Update as modified by the

Commission. Following the release of the Project Description, the County initiated constraint studies and environmental analyses, which were partly completed before the effort was put on hold, pending the release of the Periodic Review. As previously described, the Update process has been recently reinvigorated by the County, but only partly; rather than updating the entire north coast plan, the County intends to first develop community plans for the urban areas of Cambria and San Simeon Acres.

An update of policies regarding development in Cambria and San Simeon Acres is certainly needed. As pointed out in the periodic review, corrective actions are needed to ensure that LCP implementation will effectively address Coastal Act policies regarding new development, scenic resources, environmentally sensitive habitats, and public services in these urban areas. However, limiting the update to the urban area runs the risk that many critical resource issues facing the North Coast rural area will remain unanswered. Sequencing the update in the proposed manner will also make an assessment of cumulative impacts more difficult.

Notwithstanding these concerns and challenges, there may be a benefit in segmenting the update as proposed. Staging the Update may allow some of the less controversial, but important, changes to proceed through the approval process without getting delayed due to the delay relative to the larger more difficult issues. As noted above, it will be essential for the County to thoroughly consider the cumulative regional impacts of the combined urban and rural development that will be allowed by the proposed update, if such an approach is to effectively address the coastal resource issues identified in the Periodic Review.

The County also favors the phased update approach as a means to avoid any disruption to the negotiations for the purchase of a conservation easement on the Hearst Ranch currently underway. While the Commission staff recognizes the sensitivity of this issue, it is not clear that an update of the plan, as it applies to the rural areas, would necessarily conflict with these negotiations.

Finally, County staff has indicated that an Update of the San Luis Area Plan will be initiated in the near future. An important component of this effort will be the incorporation of the Port San Luis Harbor Master Plan Update (currently being prepared by the Harbor District) into the area plan.

III. Alternative Measures for Improving Implementation

A. Measures that Can Be Implemented Within Existing Program

The state and local partnership established by the Coastal Act calls for the Commission to play an ongoing role in planning for, and regulating, new development in certified coastal jurisdictions. For example, after LCP certification, the Commission monitors local permit activity, retains appellate authority over certain areas and original permit jurisdiction in others, processes LCP amendments, and conducts Periodic Reviews. In addition, other state laws, such as the California Environmental Quality Act (CEQA), provide the Commission with other opportunities to review and comment on proposed development. Existing opportunities for the

Commission to affect the way in which LCPs are being implemented, and to pursue LCP updates, include:

1. Enhance Project Referral And Coordination Process

Early coordination between County and Commission staff on permit applications and LCP amendments provides a valuable opportunity to identify and resolve issues. By identifying and resolving issues early in the process, appeals can be avoided, and LCP amendments can be processed more efficiently. Early coordination also helps avoid mistakes in noticing and processing procedures. The benefits of early consultations are reflected by the many Periodic Review recommendations calling for enhanced coordination.

Often upon receipt of an application for new development, the County forwards a copy of the application to the Commission staff with a request for comments – otherwise known as a “project referral”. Sometimes, project referrals are preceded by an environmental analysis (e.g., negative declaration or EIR) prepared pursuant to CEQA. In other instances, coordination takes place in the form of staff to staff telephone calls, e-mails, and meetings. Similar coordination efforts are typically implemented for LCP amendments and updates. The fairly intensive coordination effort underway regarding the Estero Area Plan is a good example of this.

The initial stages of the Periodic Review effort enhanced such coordination by temporarily increasing the number of Commission staff assigned to San Luis Obispo, and by enabling a review of regional, rather than case-by-case, issues. The Periodic Review allowed the Commission and County staff to meet with greater frequency, and to improve our working relationship. However, after completion of the final San Luis Obispo County Periodic Review report, staff resources were reallocated to the Monterey County Periodic Review currently underway. This has constrained the Commission staff’s ability to provide early feedback to the County.

Nevertheless, Commission staff has continued to provide early input to the County to the degree that competing workload demands allow. In some situations, the increased coordination has helped to identify and resolve issues early in the process, and thereby avoid an appeal or a modification to an amendment submittal. Other times, County and Commission staff members have been unable to reach mutually agreeable solutions, or the local decision makers did not accept the solutions developed at the staff level.

As a method to enhance implementation efforts, the Commission could establish increased levels of coordination with County staff as a priority. Given current staffing constraints, and without other funding, such a decision would necessitate a re-direction of staff resources from other priority items. Accordingly, the potential effectiveness of this measure should be carefully considered before additional staff resources are dedicated to this purpose.

2. Appeal Permits That Do Not Effectively Address Relevant LCP Implementation Issues

If new development approved by the County within the Commission's appeal jurisdiction does not effectively address Periodic Review recommendations, the Commission can and does use the appeals process to try and effectuate any necessary changes. This method provides a viable means to implement recommendations regarding interpretations of *existing* LCP policies, but does not provide a means for implementing recommendations calling for new or revised LCP standards. It should be noted that the Commission is currently using its appellate authority on a case-by-case basis, and to the degree that staff resources allow.

3. Prioritize Development of a Categorical Exclusion.

On March 5, 2003, the Commission approved a modified version of San Luis Obispo County's proposed Grading Ordinance Update. The suggested modifications include important changes to the proposed ordinance that implement Periodic Review recommendations regarding the protection of agricultural, biological, visual, aquatic, and archaeological resources. The County and other interested parties have indicated that before they will agree to the suggested changes, the issue of permit exclusions must be resolved. At the March 2003 hearing, the Commission staff agreed to work with the County, through the Categorical Exclusion, process to meet this need. Staff will continue to pursue this as a means for implementing the Periodic Review.

4. Modify LCP Amendment Submittals

To the degree that LCP Amendment submittals include changes to policies and ordinances addressed by the Periodic Review, the Commission may have the opportunity to modify the amendment, where necessary, to better carry out Periodic Review recommendations. The local government is not required, however, to accept these modifications.

Preferably, the Commission staff would inform the County of the recommended changes during the local review period, in order to provide the County with the opportunity to incorporate the change into the submittal. However, as described above, this type of staff coordination is not always successful, in part due to insufficient staff resources to provide timely and thorough feedback. In such cases, the use of suggested modifications can provide an appropriate means of implementing Periodic Review recommendations. Like the measures above, the Commission is currently employing this method.

5. Expand/Revise Grants Program

Implementation of the Periodic review recommendations requires a significant dedication of staff resources, both at the state and local level. Current staffing and budgeting shortfalls therefore present a serious problem. Grant funds provide the primary means for overcoming this obstacle.

The Commission provided more than \$220,000 in grant funds to San Luis Obispo County between 1999 and 2001. The County has used approximately \$117,000 of these funds to date.

A more detailed evaluation of these grants, and the degree to which these grants have facilitated Periodic Review implementation, could help the Commission determine whether this is an effective use of state funds, and how future grants could be better conditioned to achieve their intended objectives.

6. Establish Timelines And Performance Standards

Another measure that can be implemented by the Commission to encourage a more complete response is to establish specific timeframes and standards that will be used to measure the adequacy of the County's efforts. For example, the Commission could consider establishing January 1, 2004 as time by which the County must take final action to implement **all** of the recommendations, or provide a response setting forth its reasons for not taking the recommended actions. The County, in fact, has yet to provide the Commission with a response setting forth its reasons for not taking some of the recommended actions of the Periodic Review, as required by statute. Alternatively, the Commission could establish different deadlines for different recommendations. Or, the Commission could recommend a date by which the County to submit its own timeline for the review and comment of the Commission (e.g., by August 1, 2003). Failure to meet the established timeline(s) could be used as a trigger for the Commission to initiate a more intensive pursuit of the legislative actions identified in the following section of this report.

B. Measures that Require Action by the Legislature

1. Prohibit LCP Amendments other than those that Implement the Periodic Review

Currently, coastal jurisdictions are limited to submitting a maximum of three LCP amendment packages per year (Coastal Act Section 30514). To create greater incentive for local governments to respond to Periodic Review recommendations, additional limitations could be established for jurisdictions where the Commission has completed a Periodic Review. For example, the policy could be revised to limit or prohibit the submittal of LCP amendments that do not serve to implement the recommendations contained in the Periodic Review.

2. Expand CCC Appeal Jurisdiction

As established by Coastal Act Section 30603, only certain types and locations of development approved in certified jurisdictions can be appealed to the Coastal Commission. The Commission's ability to use the appeals process to address coastal resource issues identified by Periodic Reviews (see Section II.A.2 of this report) would be enhanced by amending this section to allow for the appeal of any development approved by a local government that has failed to effectively implement the recommendations of a Periodic Review.

3. Establish the Periodic Review as a Standard of Review for Permits and/or Appeals

The standard of review for development in certified jurisdictions is currently consistency with the certified LCP, as well as consistency with Coastal Act access and recreation policies for development between the first public road and the sea (Coastal Act Section 30604). Revising this standard, and the standard of review for appeals established in section 30603, to include the recommendations of a Periodic Review would provide an efficient way for both local governments and the Commission to implement recommended LCP changes.

4. Enable CCC to Independently Update LCPs

Coastal Act Section 30515 enables individuals authorized to undertake public works or energy projects to request amendment to a certified LCP where necessary to accommodate a public need of any area greater than that included within the LCP. In the event that the local government does not amend its LCP in order to accommodate the need, this section enables the Commission to independently certify the amendment if specific findings can be made. Expanding this section to entitle the Commission to ask local government to amend its LCP consistent with Periodic Review recommendations, and to enable the Commission to certify such amendments in the event that local government fails to do so, would greatly increase the Commission's ability to enforce such recommendations.

5. Use Permit Fees as Grants to Local Governments for Periodic Review Implementation Revise

As previously noted, funding and staffing constraints, both at the state and local level, represent a significant obstacle to effective implementation of Periodic Reviews. One method of responding to this problem would be for the legislature to use coastal development permit fees as grants to local governments for implementing the LCP modifications identified by Periodic Reviews.

6. General Plan Law to require LCP Updates

Another legislative action that would both enhance the Commission's ability to implement Periodic Reviews, and address the need for updates to outdated LCPs, would be to amend General Plan law. A requirement for local governments to periodically (i.e., every ten years) update their LCPs could specifically require that LCP Updates respond to the implementation issues identified by Periodic Reviews.

7. Establish Development Moratoriums

A significant concern regarding the Commission's currently limited authority to implement Periodic Reviews is that during the period in which implementation is being pursued, development continues to proceed within the context of outdated LCPs that do not sufficiently protect coastal resources and public access. It may therefore be warranted for the legislature to consider adding a provision to the Coastal Act that would place a moratorium on development in areas where local governments fail, after appropriate opportunity, to effectively respond to Commission recommendations for LCP modifications.

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June xx, 2003

Senator John Burton
President Pro Tem
California Senate
State Capitol Room 205
Sacramento, CA 95814

Attachment A

DRAFT

Speaker Herb J. Wesson, Jr.
California Assembly
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0047

Dear Senator Burton and Speaker Wesson:

Pursuant to section 30519.5 PRC, I write on behalf of the California Coastal Commission with suggestions for how the Legislature should address the fact that the County of San Luis Obispo has failed to adopt important recommendations by the Commission for revisions to the County's local coastal program (LCP), deemed necessary for the effective implementation of Coastal Act resource protection policies. The Commission's recommendations resulted from its mandated review of how the County's LCP is being carried out. (See enclosed staff report to the Commission dated July 12, 2001.) This request coincides with and is complementary to what the Commission heard from members of the public over the course of more than a year of public hearings focusing on the problem of how to make current outdated LCPs. The Commission also believes legislative action is necessary and appropriate to address the related problem of the failure by some coastal local governments to complete their own LCPs.

The California Coastal Act establishes shared responsibility for protecting the state's coastal resources with local governments, through the adoption and implementation of Local Coastal Programs. LCPs include land use policies and ordinances that identify appropriate types, locations, and intensities of new development in the coastal zone, as well as resource protection standards, such as the exclusion of development from environmentally sensitive habitats. Once an LCP is certified by the Commission as being consistent with and adequate to carry out Coastal Act resource protection policies, local governments assume coastal development permitting authority and thus the primary responsibility for such things as the protection of sensitive wetlands and water quality, maintaining scenic landscapes and natural shorelines, and maximizing public access to and along the coast in their jurisdictions.¹ As of June 2003, approximately 85% of the coastal zone is being managed directly by local governments through

¹ The Commission retains permitting jurisdiction in certain areas, including tidelands, submerged lands, and on public trust lands.

their LCPs.² In 2002, local governments issued approximately 75% of the coastal permits statewide. This illustrates the central importance of LCPs to the protection of California's coast.

Unfortunately, the Coastal Act is deficient in that it does not contain an effective mechanism to ensure that local governments regularly update their LCPs to address emerging resource issues, new scientific knowledge or policy insights, and other changed circumstances that may impact coastal resources. Local governments sometimes do propose LCP amendments to address new resource management questions – for example, updated ordinances to address cellular telephone tower facilities. More often, however, LCP amendments are project-driven, focused on specific properties or localized planning problems, and fail to address the broader statewide interest in and need for comprehensive and integrated planning updates that respond to current resource management needs and other changed circumstances. Significantly, there is no legal requirement that LCPs be comprehensively updated or otherwise amended at all after certification. To the extent that the Commission does have resources to address LCP planning issues, the Coastal Act requires their allocation to the LCP amendments that local governments choose to submit to the Commission. This means that from a statewide perspective, scarce Commission planning support resources are necessarily spent on coastal resource protection issues of lower priority.

Although the Coastal Act lacks a requirement that LCPs be updated, it does require periodic review (at least once every 5 years) by the Commission of previously certified LCPs and their implementation. Based on these reviews, the Commission must transmit to the local government its recommendations for revisions to its LCP that the Commission deems necessary to assure continued protection of coastal resources consistent with Coastal Act policies and contemporary circumstances. Unfortunately, this provision includes no incentives or requirements that local governments actually follow the Commission's recommendations. As elaborated below, the absence of meaningful mechanisms to ensure effective implementation of Periodic Review recommendations seriously undermines the state's ability to keep LCPs current and thus to ensure ongoing effective protection of California's coastal resources. Periodic Reviews have also been difficult for the Commission to undertake primarily because of a significant lack of support resources to conduct this type of planning work. Meaningful Periodic Reviews require considerable staff time, coordination with local governments, and public outreach. To date the Commission has only been able to complete three periodic reviews, although work on a fourth, for Monterey County, is nearing completion. The general failure of 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.

Clearly, the State has learned a great deal about how to effectively manage coastal resources for the benefit of current and future generations in the thirty-one years since Californians approved Proposition 20. But as with other societal and environmental dynamics, needs and circumstances change, and the state has seen the emergence of many new, unanticipated issues and challenges relative to coastal stewardship that need immediate attention. The California coastal zone is a remarkably dynamic, diverse, and complex environment. With regularity new lessons are learned about the workings of coastal ecosystems and their interaction with human activities. Examples include, loss of habitat resulting in the listing of new species as threatened or

² Although the Coastal Act originally set a deadline to complete LCPs by January 1, 1984, 38 of 128 LCP segments are yet to be fully certified (see attached summary).

endangered and therefore requiring higher levels of protection, and the emergence of new environmentally sensitive habitat areas. A major area of new scientific and management insights relates to the problem of nonpoint sources of pollution. Changes in the distribution of wealth, technological advances and shifting legal doctrine involving private and public rights affecting land use have given rise to unforeseen development patterns and trends, as well as new industries and activities with unanticipated adverse effects on public interests and values relating to coastal resource protection. These changes come at a time of continuing population growth. Nearly 85% of California's 36 million citizens live within an hour's drive of the coast.

The problem is obvious because many of the LCPs that constitute the frontline of coastal stewardship in California were completed more than twenty years ago. Without substantial, comprehensive revisions and updates, these dated LCPs are becoming increasingly obsolete and ineffective. In short, there is a compelling and currently unmet need to enact legislation that will ensure timely and comprehensive updates of LCPs if coastal management in California is to remain meaningful and effective.

The San Luis Obispo County Experience

The problem of outdated LCPs, and the need for legislative action, is well illustrated by the Commission's recent experience with San Luis Obispo County. The LCP for SLO County was developed in the late 1970s and early 1980s, and the Commission certified the Land Use Plan portion in 1984. The implementation plan portion of the LCP was certified in 1988, and the County began issuing coastal development permits that year. Through 2002, the County has processed more than 3,200 coastal development permits.

The County has also amended its LCP numerous times, although most of these amendments have not been comprehensive updates. In certain cases where updates have been conducted, such as for the North Coast Area of the County, the Commission and the County have not been able to reach agreement on a comprehensive set of changes necessary to address changed circumstances, new knowledge, and the like in a manner fully consistent with Coastal Act policies. The number of appeals of locally approved coastal development permits in SLO County, both by the public and the Commission itself, has risen dramatically over the years. Although there are many strong policies and sound programs in the County's LCP, continuing disagreements between the County and the Commission reflected in the rising number of appeals indicates that the County's implementation of its LCP, as well as parts of the LCP itself, are in need of revision if the policies of the Coastal Act are to be fully achieved along the coast of San Luis Obispo County.

In recognition of this need to update and reform the County's LCP and some implementation practices, and in recognition of the unique importance of the wide array of coastal resources in San Luis Obispo County, the Commission identified the County as a priority for a Periodic Review under Coastal Act Section 30519.5. This section states:

(a) The commission shall, from time to time, but at least once every five years after certification, review every certified local coastal program to determine whether such program is being effectively implemented in conformity with the policies of this division. If the commission determines that a certified local coastal program is not being carried out in conformity with any policy of this

division it shall submit to the affected local government recommendations of corrective actions that should be taken. Such recommendations may include recommended amendments to the affected local government's local coastal program.

(b) Recommendations submitted pursuant to this section shall be reviewed by the affected local government and, if the recommended action is not taken, the local government shall, within one year of such submission, forward to the commission a report setting forth its reasons for not taking the recommended action. The commission shall review such report and, where appropriate, report to the Legislature and recommend legislative action necessary to assure effective implementation of the relevant policy or policies of this division.

The Commission conducted a Periodic Review of the County's LCP and its implementation in 2000/2001. Using federal Coastal Zone Management Act grant funds, the Commission was able to allocate significant staff resources to the evaluation of locally-issued coastal development permits, identification of new resource information and changed circumstances relating to San Luis Obispo's coastal resources. The Commission conducted numerous public outreach and staff-to-staff meetings, and held two well-attended public hearings on the implementation of the County's LCP. In 2001, the Commission adopted and formally transmitted 165 recommendations to the County that identified a wide variety of LCP revisions, in both practice and policies, that the Commission deemed necessary and appropriate in order to ensure that the LCP and its implementation is fully consistent with Coastal Act policies in light of changed circumstances. Recommendations ranged from changes in administrative procedure at the staff level, to specific LCP amendments to revise existing policies and ordinances.

Pursuant to section 30519.5 PRC, the next step in the Periodic Review process after transmittal of the Commission's recommendations was for the County to review those recommendations, and either take action to implement them or explain to the Commission why no action is being taken. Unfortunately, the County's response to the Commission's recommendations has been disappointing and falls far short of the action needed to ensure effective coastal resource protection consistent with the Coastal Act. While Commission and county planning staff continue to work to achieve LCP implementation changes and amendments to address the Periodic Review, including a comprehensive update of the Estero Area Plan of the LCP, the Board of Supervisors has yet to effectively respond to many of the most important Commission recommendations. Among these are LCP revisions to address protection of environmentally sensitive habitat areas, rural scenic landscapes, and important viable agricultural lands.

The Board of Supervisors recently adopted a set of "Phase 1" responses, some of which are LCP amendments to be submitted to the Commission. For the most part, however, these changes address only the more programmatically uncontroversial and less significant recommendations. The Board has also directed its staff to prepare a "Phase 2" response that may address many important additional recommendations, but other important recommendations still are not addressed. Moreover, it is unclear at this time when and if these changes may be adopted and submitted to the Commission as LCP amendments. In many cases, the substance of the County's response is inadequate to meet the intent of the Commission's Periodic Review

recommendations. Other than an early action to essentially table most of the more substantive recommendations, presumably because of fundamental policy differences, the County's reasons for not responding to the Commission's recommendations are not clear. In summary, the Commission's periodic review, completed nearly two years ago, has not resulted in significant progress toward the needed updating of the County's LCP.

The Commission recognizes that comprehensive LCP updates require significant financial and technical support resources at both the local and state level. Additionally, the Commission recognizes County efforts to update its LCP in the North Coast and Estero Planning Areas, as well as the mostly successful effort a few years ago to update the Avila Beach Specific Plan. The Commission is hopeful that at least in the case of the Estero Area Plan agreement will soon be reached on significant, substantive revisions to the LCP. To assist the County in its planning effort to update the LCP, the Commission awarded the County over \$200,000 in local assistance grants, including funding for the comprehensive update of the North Coast Area Plan. Notwithstanding these planning grants, progress in updating the County's LCP has been limited.

The Commission will continue to work in a collaborative manner with the County to implement Periodic Review recommendations. In the absence of legislative changes, the Commission's options are limited and include: withholding future grant funds until the Commission has the assurance that meaningful progress toward implementation of Periodic Review recommendations will be made; discouraging by all possible means LCP amendments that do not further implementation of Periodic Review recommendations; and expanding the use of permit appeals in cases where local action is inconsistent with the LCP in light of changed circumstances identified in the Periodic Review.

Recommended Legislative Action

The San Luis Obispo County Periodic Review has exposed some of the inherent weaknesses in the Commission's statutory authority to ensure that LCPs remain current and meaningful. In addition, at the request of members of the public and several environmental organizations, the Commission recently held a series of hearings throughout the state on the status of LCPs and Periodic Reviews. Staff status reports and public testimony highlighted the fact many LCPs are substantially outdated and have not been reviewed or revised since certification. The Commission was also reminded that some jurisdictions have yet to complete an LCP. The public hearings 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 relating to threats to coastal resources.

In addition to the Commission's own experience, considerable attention has been focused on this problem in Sacramento. In response to requests for the information from the Joint Legislative Budget Committee, Commission staff outlined a work program and strategy for eliminating the backlog of periodic reviews. The Legislative Analyst's Office also called for strong, new incentives to ensure that local governments incorporate Coastal Commission Periodic Review recommendations as amendments to LCPs and recommended statutory reform. In 2001, Assembly member Hannah-Beth Jackson introduced AB 640, which proposed a series of Coastal Act amendments to address deficiencies in the existing periodic review process set forth in the Act.

In addition to adequate funding for LCP updates and the conduct of periodic reviews, the California Coastal Commission respectfully requests that the Legislature consider enacting legislation and taking actions that include 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 Periodic Review 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 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.

III. San Luis Obispo County Specific Legislative Changes:

- a. Mandate that San Luis Obispo County adopt the recommendations of the Commission's Periodic Review, including specific LCP amendments where identified. Consider imposition of a coastal development permit moratorium in the event that the recommendations are not adopted by a date certain.

- b. Authorize the Commission to decline review of any LCP amendments that do not effectively respond to recommendations of the Periodic Review. Alternatively, specify that two of the currently allowed three LCP amendments per year must address Periodic Review recommendations.
- c. Consider financial disincentives and incentives to encourage adoption of the Periodic Review recommendations by the County.

Clearly these recommendations are not exhaustive of possible ways to address the problem of outdated LCPs and the need for comprehensive revisions and updates. The Commission is prepared to provide any technical assistance it can, within obvious support resource constraints, that the Legislature feels will help inform and support the review process to achieve any of the recommendations made here.

In conclusion, the Coastal Commission continues to be committed to effective coastal stewardship in California. Toward that end, we respectfully urge that the legislature take appropriate action to address current deficiencies in the Coastal Act and that effectively ensures that LCPs are current and adequate to address contemporary needs taking into account new information and changed circumstances. Thank you for your consideration of this important matter. If we can be of any assistance or respond to any questions, please let me know.

Sincerely,

Mike Reilly, Chairman
California Coastal Commission