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Date: April 2, 2012

TO: Coastal Commissioners and Interested Public

FROM: Charles Lester, Executive Director
Susan Hansch, Chief Deputy Director
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SUBJECT: **LEGISLATIVE REPORT - ELIMINATION OF LCP MANDATE—TRAILER
BILL LANGUAGE ANALYSIS** (As Drafted February 03, 2012; RN 12 06134 04)

FOR COMMISSION DISCUSSION AND POSSIBLE ACTION, APRIL 11, 2012

SUMMARY AND BACKGROUND

This is a staff recommendation for the Commission to **Oppose** a Department of Finance proposal to eliminate the Coastal Act's LCP program through a budget trailer bill. The proposal would fundamentally change the state's commitment to comprehensive land use planning and resource management in the coastal zone, and appears to result in the transfer of local government coastal development permitting authority back to the Commission, contrary to the Coastal Act's long-standing state-local implementation partnership.

As part of the annual budget process, the Legislature considers numerous "budget trailer bills" that implement the policy and programmatic changes necessary to achieve the budget's goals and targets but which are voted on separately from the budget bill itself. These trailer bills can be drafted and discussed throughout the budget process and amended by the Budget Subcommittees before being formally assigned a bill number later in the process. That is the case with this proposal to eliminate the Local Coastal Program (LCP) mandate in the Coastal Act.

Budget proposals can be modified at several stages in the process. The Department of Finance issues a Spring Finance Letter on April 1 which makes formal changes to the Governor's budget. The "May Revise" also provides an opportunity to modify budget proposals following the Legislative Analyst's revised economic projections. And throughout the process, the Legislature may accept, reject or modify the Administration's proposals through the Budget Subcommittees and ultimately the Joint Budget Conference Committee.

On March 14, Assembly Subcommittee 4 (Local Government) rejected this proposal, and recommended that any changes to the LCP program would be more appropriately discussed by the

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policy committees. The Budget Subcommittees that review and approve the Coastal Commission's budget (Senate Subcommittee 2 and Assembly Subcommittee 3) will be considering this proposal on April 11 and April 25, respectively.

Staff has worked closely with the Department of Finance and the Budget Subcommittees in an effort to highlight the magnitude of these proposed changes. However, the Spring Finance Letter, released April 2, does not retract the proposal. As with other legislation that would adversely impact the Commission's program, it is important that the Commission consider and respond to the proposal prior to the scheduled legislative budget hearings.

The full text of the proposal can be found here:

http://www.dof.ca.gov/budgeting/trailer_bill_language/corrections_and_general_government/documents/%5b301%5d%20Repeal%20Make%20Permissive%20Specified%20Mandates.pdf

Commencing with Section 77 on page 106, through Section 113 on page 145, this draft language would eliminate nearly all Coastal Act references to LCPs and Certified Local Coastal Programs, including their preparation, adoption, certification, amendment and implementation. Under this proposal, LCPs would no longer have any effect for the purposes of the Coastal Act. Chapter 3 would be the standard for all coastal development permits (CDPs), public works plans (PWP), and university long-range development plans (LRDPs). All proposed development in the coastal zone would instead be reviewed by the Commission on a case-by-case basis when CDP applications for individual projects are submitted.

By eliminating the Coastal Act mandate for local governments in the coastal zone to prepare Local Coastal Programs, the state would lose the primary planning mechanism for anticipated future development under the Coastal Act. This proposal would also transfer authority over all coastal development permits previously issued by local governments to the Commission and would require the Commission to intervene in any litigation regarding coastal development permits issued by local governments.

PURPOSE OF THE BILL

No Legislative findings and declarations accompany this draft proposal. However, the stated intent of the entire proposal is to eliminate local mandates which have been suspended for two years or more as a cost-saving measure for the state, and to provide greater flexibility at the local level.

EXISTING LAW

Under existing law, (Public Resources Code, Section 30500) local governments in the coastal zone must prepare LCPs that implement the statewide coastal protection goals and policies of the Coastal Act at the local level. Once certified by the Coastal Commission and adopted by the local government, these LCPs become the standard for local coastal resource management and development review. Once a local government has adopted a certified LCP, it assumes primary regulatory authority over the issuance of most coastal development projects within its jurisdiction, and issues coastal development permits consistent with the LCP. The Commission also reviews appeals of local decisions for

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consistency with the certified LCP. Until and unless a local government prepares and adopts a certified LCP, the Coastal Commission is the regulatory body charged with issuing coastal development permits consistent with the Chapter 3 policies of the Coastal Act. The Coastal Act deadline by which local governments were supposed to have prepared LCPs was January 1, 1983. However, the statute does not contain any penalty for not preparing an LCP.

In 1979, voters approved Proposition 4, which added Article XIII B to the California Constitution. Section 6 of Article XIII B requires that whenever the Legislature or any state agency mandates a new program or higher level of service on local government, with certain exceptions, the state must provide a subvention of funds to reimburse the associated costs. Article XIII B of the State Constitution also requires the Legislature to either fund or suspend specified mandates in the annual Budget Act. If a specific mandate is temporarily suspended by the Legislature, local agencies are no longer mandated to perform the activity, state reimbursements for those activities are no longer required, and local agencies can no longer submit reimbursement claims. The LCP mandate has been suspended since FY 1992-93.

PROGRAM BACKGROUND

The concept of state reimbursement to local agencies and school districts for state-mandated activities originated with the Property Tax Relief Act of 1972 (SB 90, Stats. 1972, Ch. 1406). The primary purpose of SB 90 was to limit the ability of local agencies and school districts to levy taxes. To offset these limitations, the Legislature declared its intent to reimburse local agencies and school districts for the costs of new programs or increased levels of service mandated by state government. The Legislature authorized the State Board of Control to hear and decide upon claims requesting reimbursement for costs mandated by the state. SB 90 was superseded by the passage of Prop 4 in 1979, which, in addition to requiring reimbursements or suspension of mandates, also created the Commission on State Mandates.

The Commission on State Mandates determines whether local agency claims are entitled to reimbursement. The Commission on State Mandates is a quasi-judicial agency made up of the Director of Finance, the State Controller, the State Treasurer, the Director of the Office of Planning and Research, a public member with experience in public finance, and two additional local elected members. Costs associated with the preparation of LCPs have historically qualified for state reimbursement. Claims for LCP reimbursements are initially submitted to the Executive Director of the Coastal Commission for verification.

Between 1977 and 1991, with the exception of a few years, the average annual cost to the state of the LCP mandate was \$400,000. The last state reimbursement for LCP preparation was made in the amount of \$190,694 in FY 1991-92. Reimbursement claims submitted for LCP work have been suspended by the Legislature since FY 1992-93. (The governor's 1995/96 budget included a \$6,000 reimbursement of an unanticipated carryover balance as a reversion to the General Fund.)

However, many local governments have continued to pursue LCP certification since that time. Local governments that have adopted certified LCPs since the LCP mandate was suspended in 1992/93 include the cities of Carmel, Del Mar, Half Moon Bay, Manhattan Beach, Encinitas, Pacifica, Laguna Beach, and several County segments. More generally, the LCP program continues to be a vital and

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active component of the Coastal Act's mandate to manage coastal resources. Since 1982, the Commission has reviewed and acted on over 1500 LCP amendments, including many comprehensive planning updates that provide improved planning and regulatory guidance for the development community and public.

The Governor's FY 2012-13 Budget proposes to suspend, repeal, or make permissive various mandates except for those related to law enforcement or property taxes. To further the Governor's goal of streamlining government and providing local flexibility, the Budget proposes to repeal dozens of the approximately 50 mandates that have been suspended for the past two years or more. Part of the justification is that many of the activities required by these mandates have become common practice and should not be mandated by the state. The Governor's Budget for the Commission on State Mandates states that the General Fund savings associated with the overall proposal is estimated at \$728.8 million. The budget does not assign a specific score to the elimination of the LCP mandate.

ANALYSIS

This bill would amend Public Resources Code Sections 30108.4, 30600, 30600.7, 30601, 30605, 30607.2, 30610.1, 30610.9, 30603, 30620, 30624, 30711, 30801, 30802, 30806, 30809, 30810, 30811, 30820, 30821.6 to eliminate all references to Local Coastal Programs and many references to local governments. It would completely repeal Article 4 of Chapter 4; Article 1 of Chapter 6, commencing with Public Resources Code Section 30350; Article 2 of Chapter 6, commencing with Public Resources Code Section 30510; as well as Public Resources Code Sections 30108.6, 30340.5, 30340.6, 30600.5, Public Resources Code Section 30600.6; 30601.3; 30602, 30603, 30603.1, 30604, 30620.5, 30624.9, 30625. It would add new Public Resources Code Section 30813.

The Coastal Act requirement for local governments to prepare and implement LCPs is fundamental to the overall administration and effectiveness of the state coastal program. It is one of the core principles around which the entire program revolves. The state/local partnership embodied in LCPs is a demonstrably successful model implementing the statewide coastal resource protection policies of the Coastal Act. To date, 80% of the 76 coastal jurisdictions have LCP segments certified for all or portions of their coastal zone. LCP planning is on-going in many of the remaining areas, including the cities of Seaside, Goleta, Seal Beach, Newport Beach and Solana Beach. Many others are actively pursuing updates and amendments to address changing land use needs and environmental concerns.

Because local government actions and Local Coastal Programs are so fundamental to the process and procedures of planning, resource protection and permitting in the coastal zone, attempting to eliminate all references, cross-references and definitions pertaining to LCPs and local government actions creates numerous, substantial changes to California's coastal management program. The draft language has numerous internal inconsistencies that would create uncertainty and litigation, but the primary effect of the bill would be to eliminate the current, direct role of local governments in implementing the Coastal Act.

Through the elimination of LCPs, local governments would lose the ability to tailor Coastal Act requirements to local circumstances and to plan for future development consistent with Coastal Act requirements. Although the bill includes contradictory language regarding what, if any, permitting authority local governments would retain under the Coastal Act, the main thrust of the bill is to

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terminate local involvement in CDP review. These changes are fundamentally incompatible with the original purpose of the Coastal Act, which provides local governments with a substantial say in how the Coastal Act should be implemented. These changes are also incompatible with California's longstanding tradition of allowing significant local control over land use matters.

Obviously, this proposal would be devastatingly disruptive to the Coastal Commission, the public, and every local government with a certified LCP, or those in the process of LCP preparation and submittal. Under this proposal even if a local government sought to voluntarily prepare an LCP without seeking reimbursement, they would have no basis in law to do so -- no standards, procedures or process by which to draft such a plan, nor any procedures, process or timeline for submittal to the Commission. There would be no mechanism by which the Commission could certify an LCP, and if it could, none of the current statutory responsibilities or obligations would flow to the local government. In short, all the incentives, standards, and procedures for LCP preparation and implementation would be eliminated by this proposal. All other public planning processes undertaken by public agencies would also be directly affected, as all of those governing procedures reference the process for preparing and amending LCPs.

Due to the magnitude of the proposal, staff has not yet fully and exhaustively analyzed all of its components and potential impacts. But some of the more problematic changes are itemized below:

- Requirement for local governments to prepare LCPs eliminated (Repealing Article 1 of Chapter 6).
- Procedures for Preparation, Approval and Certification of LCPs eliminated (Repealing Article 2 of Chapter 6).
- Local governments lose authority to issue coastal development permits. (Repealing Sections 30519, 30600(b)-(d), 30600.5, 30604 (b)).
- All references to delegating permitting authority to local governments following LCP certification is eliminated. This creates a substantial question regarding the permitting authority of certified jurisdictions. (Repealing Section 30600.5, 30620.5). Authority to issue coastal development permits going forward, therefore, would most likely lie exclusively with the Commission. However, other references to "local permits" remain in the Act. (e.g. Section 30601).
- If local governments retain any permitting authority, the Commission will no longer have appeal jurisdiction over local actions, whether the jurisdiction is certified or uncertified. All procedures for hearing appeals of local actions, including finding of Substantial Issue, are repealed. (Repealing Sections 30600.5 (d), 30602, 30603 and 30625). However, not all references to appeals are eliminated (see e.g., sections 30621, 30622, and 30623).
- If local governments retain any permitting authority, local governments with certified LCPs no longer required to notify Commission of local actions via the filing of a Notice of Final Action (Repealing Section 30603(d))

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- If local governments retain any permitting authority, a finding that new development between the first public road and the sea is in conformity with the public access policies of Chapter 3 is no longer required for approval. (Repealing Section 30604 (c)).
- All coastal development permits issued by a local government prior to the date of enactment of this section shall be deemed permits issued by the Commission. The Commission compelled to intervene in any pending judicial review of a coastal development permit issued prior to enactment of this section. (Added Section 30813).
- Ports no longer required to prepare Port Master Plans (PMP). (Amended Section 30711).
- Public Works Plans and LRDPs can no longer be submitted utilizing the procedures specified for LCPs. PWP and LRDPs in areas with certified LCPs no longer have to be found in conformity with certified LCP. Consultation with local governments no longer required. Amendments to PWP and LRDPs no longer carried out under procedures for amending LCPs. (Amended Section 30605).
- Eliminates existing prohibition on denial of a coastal development permit based on the project's impact on resources outside the coastal zone. (Repealing Section 30604 (d)).
- Requirement for the Commission to designate sensitive coastal resource areas eliminated. (Repeal of Section 30502).
- Commission no longer authorized to encourage housing opportunities for persons of low or moderate income, or protect existing affordable housing in the coastal zone. (Repealing Section 30604 (f)).
- Commission will no longer be able to issue a "consolidated permit" at the request of an applicant and a local jurisdiction with a certified LCP. (Repealing Section 30601.3). This was a streamlining measure passed in 2003 with the support of local governments.
- Commission will no longer have the ability to make coastal zone boundary adjustments at the request of local governments to avoid properties being bisected by that boundary.
- Local governments with certified LCPs can no longer expedite permitting for temporary motion picture or television production by requesting that the Commission assume permitting responsibility. (Amended Section 30610.9).
- Statutory definition of, and related procedures for, "minor development" is eliminated. (Repealing Section 30624.9).
- Department on Justice (DOJ) no longer required to provide legal assistance upon the request of a local government for actions enforcing or implementing its LCP. (Amended Section 30806 (b)).

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- Commission no longer able to respond to local governments requesting help enforcing LCP policies, nor can the Commission act independently to issue Cease and Desist orders to enforce policies of a certified LCP. (Amended Section 30809).
- Courts may no longer issue civil liabilities to any party found guilty of violating a permit issued by a local government implementing a certified LCP. Nor may a party who knowingly and intentionally performs unpermitted development in violation of a permit issued by a local government pursuant to a certified LCP be found civilly liable. (Amended Section 30820).
- Courts may no longer impose civil penalties to persons violating the terms of a restoration order issued by a local government. (Amended Section 30821.6).

While inconsistencies in the language create substantial uncertainty, the overall effect of these changes would be to eliminate or substantially change local governments' authority over CDPs. All previously issued local CDPs would be "deemed" to be permits issued by the Commission, and all provisions of the Coastal Act that pertain to delegation of permitting authority to local governments (e.g., sections 30519, 30600(b)-(d), 30600.5), would be repealed, while some scattered references that assume local permitting authority would remain (e.g., sections 30601, 30621, 30623). If local governments that currently have permitting authority retain any of that authority, Chapter 3 will be the standard of review for local CDP applications, but their actions would not be appealable to the Commission. The most important provisions regarding permit appeals (including sections 30602, 30603, 30604, and 30625) would be repealed.

This proposal also repeals various provisions unrelated to LCPs. For example, by repealing section 30604(d), the language would remove a limitation on the Commission's authority to review development outside the coastal zone and would arguably overturn the California Supreme Court decision that interpreted that provision (*Sierra Club v. CCC (Catellus)*). It would also repeal provisions that exempt certain emergency actions from CDP requirements (section 30600(e)), provisions that restrict the authority of the Commission to deny development on the basis of possible future public acquisition of the site (section 30604(e)), and protections for affordable housing (section 30604(f)-(g)). Repeal of Section 30502 would eliminate the designation of sensitive coastal resource areas.

The bill would also impose significant new workload requirements on the Coastal Commission and the Attorney General. The Commission would probably be responsible for all new coastal development permit applications within the entire coastal zone and would assume responsibility for enforcement and defense of all coastal development permits previously issued by local governments. The Coastal Commission would be required to intervene in all currently pending litigation that relates to locally approved CDPs. Under current law, the Attorney General is required to represent the Coastal Commission in litigation. If plaintiffs prevail in that litigation, the Commission would potentially be liable for any damages awarded and the plaintiffs' attorney fees and court costs. The Coastal Commission does not have the staff resources to accommodate this level of workload increase.

Eliminating the LCP mandate and shifting most or all authority from local governments to the Commission would signal that the state is backing away from its carefully considered State-local planning partnership. This would be in direct contradiction of the Coastal Act's legislative findings

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and declarations. It would undermine the substantial investment that local governments, the Commission and the public have made in preparing, implementing and updating certified LCPs. More fundamental, it would eliminate the significant resource protection embodied in these LCPs that has and continues to be key success of California's coastal management program, including the provision of public access and recreation, protection of sensitive wetlands, riparian and habitat areas, maintaining urban-rural boundaries and protecting scenic rural agricultural lands, and providing for coastal-dependent and related development. Looking to the future, LCPs will be central to California's success in addressing climate change and adaptation through land use planning, particularly addressing coastal hazards and public access and recreational impacts associated with global sea level rise. The State's 2009 Adaptation Strategy calls for the update of all LCPs to address climate change.

Because LCPs are a core component of the Coastal Act, legislation terminating the LCP program would also need to be submitted to NOAA for approval as a major amendment to California's Coastal Management Program under the federal Coastal Zone Management Act (CZMA). If NOAA does not approve the change, California could lose federal grant funding and potentially lose its authority to review federal permits and activities, including offshore oil production. Given the serious nature of the change, the risk that NOAA would reject the amendment is high.

In addition, repealing the LCP mandate is fundamentally at odds with the goals of realignment generally, as it will result in substantial increased costs to the State and decreased local responsibility. These costs include but are not limited to substantially increased planning and permitting costs as the Commission takes over numerous responsibilities from local governments, substantial litigation costs as multiple areas of settled law would now be up for re-interpretation, loss of federal CZMA grant funding, and loss of enforcement penalty revenue.

Rather than permanently eliminate the mandate, the State should continue to embrace the balance and effectiveness of the program alignment inherent in the Coastal Act's State-local partnership, and commit funding to support LCP certification and amendment, particularly updating LCPs to address current and emerging issues, such as sea level rise.

RECOMMENDED POSITION

Lack of funding for LCP implementation does not mean the mandate is flawed or unnecessary -- LCPs are critical state management tools for achieving statewide and local interests in coastal resource protection and facilitating environmentally-sustainable development, including effective local adaptation to climate change and extreme events.

Staff recommends the Commission **Oppose** this proposal and support annual Legislative review of the mandate suspension as required by law.

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