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September 8, 2014

TO: Coastal Commission and Interested Persons

FROM: Charles Lester, Executive Director

RE: Setting the Commission's Agenda
Informational Only

I. Introduction

This memo addresses questions raised by the Commission and provides background information for new Commissioners and the public about how the Commission staff identifies and sets the priorities for the Commission's monthly agenda. The Coastal Commission is charged with implementing the California Coastal Act of 1976. The Commission is also part of the federally-certified California Coastal Management Program (CCMP) under the Coastal Zone Management Act (CZMA). Pursuant to the Coastal Act, the Commission is required to meet at least once a month in a public place to conduct its business. The Commission must provide public notices for each monthly meeting, including publishing an agenda that specifies what items will be heard at the meeting. In general, the majority of the items that appear on the Commission's agenda reflect the core program workload priorities that must be addressed by the Commission as a matter of law, including coastal development permit (CDP) applications, appeals of locally-issued CDPs, Local Coastal Program (LCP) matters, Federal Consistency certifications and determinations and other statutory requirements. Other agenda matters are determined case-by-case based on other programmatic priorities, available agency resources, and other considerations.

II. Setting the Commission's Agenda

The Commission's regulations direct that the monthly agenda be set by the Executive Director:

§ 13024. Agenda. (a) *The agenda for regular meetings of the commission shall be set by the executive director at least 10 days prior to the meeting.*

In setting the agenda, staff attempts to plan for manageable meeting days, with the last day generally being a bit shorter to accommodate travel. However, there are many factors that must be carefully considered, balanced, and hopefully anticipated, some of which are completely outside of the control of the staff or the Commission. For example, over the years the Commission has generally needed 3-4 day monthly meetings, though on occasion has needed as many as 5 days and as little as 1 day to conduct its business. The average number of days required is most directly a function of the overall workload of the Commission (often driven itself by the economy and other factors); and the capacity of the staff to process the workload (number of staff). But the length (number of total hours/days) of any particular meeting is also a

function of the number and nature of the items that are placed on the agenda as determined by such factors as:

- Whether an item must be heard as a matter of law (statutory or regulatory deadline).
- The location of the meeting in relation to a matter (staff generally tries to schedule items as close as possible to the site of the project or planning matter to both accommodate the applicant's convenience and maximize public participation).
- Individual scheduling requests of an applicant or local government including requests for postponement.
- Postponements as a matter of right (every CDP applicant is entitled to one).
- The need for a postponement or continuance based on new information.
- An unanticipated need to add an item that must be heard (e.g. an appeal within 49 days – see below).
- Staff capacity to complete the item as planned as may be affected by competing workload (including non-agenda workload such as condition compliance), vacation schedules or necessary leaves, and other factors.
- The amount of public comment on particular items, including pre-hearing and other comments necessitating staff response and/or addendums.
- The relative complexity or controversy related to an item (for example, more complex items typically are accompanied by more comments and presentations, and may require longer staff presentations and response).
- The length of Commission deliberation.
- The length of closed session discussions as driven by new and on-going litigation.
- The coincidence of major items in a single month.

More detail and examples of these factors is discussed below. Overall the vast majority of items on the agenda are matters that must be heard by the Commission pursuant to its statutory responsibilities. Some agenda items, though, are more discretionary and may be scheduled based on a determination that they are a programmatic priority. Many agenda items require little time at the public hearing because they are less complex and without controversy, while others may require significant time due to their complexity, extent of public interest, and length of Commission deliberation. And while there are many common factors and interests that shape the agenda month to month, the process of planning the agenda includes inherent uncertainties that necessarily lead to variability in the overall length of the meeting and the length of specific meeting days in any given month.

A. Statutory Responsibilities that Shape the Agenda

Most of the agenda is determined by items that must be heard by the Commission as a matter of law. These generally include:

- **Coastal Development Permits.** Pursuant to the Permit Streamlining Act (PSA), the Commission must act on CDPs in its original jurisdiction within 180 days of application filing or 270 days by agreed extension with the applicant.¹ Though it is not always possible, Commission staff tries to schedule CDP hearings in locations close to the

¹ The majority of CDPs are now issued by local governments pursuant to certified LCPs. The Commission retains jurisdiction over development in uncertified areas, below the mean high tide, and on former public trust or tidelands.

proposed development both for convenience to the applicant and to maximize opportunities for public participation. Staff also tries to expedite the processing of CDPs to the maximum extent feasible, but the cumulative workload of the Commission has often resulted in the need to triage permit matters, with staff necessarily prioritizing those that are coming up against the PSA deadlines. CDPs scheduled for hearing may also be postponed once as a matter of right by request of the applicant, which can affect the timing and location of CDP hearings.²

- **Appeals of Local CDPs.** Commission staff monitor locally-pending CDPs in jurisdictions with certified LCPs, and from time to time may recommend that two Commissioners file an appeal of a local CDP to the Commission. Members of the public that have participated in the local CDP review process may also appeal certain CDPs to the Commission.³ Pursuant to the Coastal Act, the Commission must hold a hearing about whether an appeal raises a “substantial issue” within 49 days of the appeal filing unless the Applicant waives this timing requirement. If the Commission finds substantial issue and there is not yet a staff recommendation for the *de novo* CDP review, the Commission continues the appeal hearing to a later date for the *de novo* review. The PSA does not govern the processing of appeals so Commission staff has more flexibility on the scheduling of *de novo* appeal hearings. That said, staff attempts to bring the *de novo* portion of an appeal hearing forward as soon as possible, taking into account other agenda priorities such as CDPs and LCP matters that must adhere to statutory deadlines. However, whether or not an appeal is ready for scheduling is often dependent on information requests that the Commission or staff may have made to the applicant at the substantial issue stage, and the extent to which the applicant or the local government is able to address them.
- **Local Coastal Program (LCP) Matters.** The Coastal Act requires that LCP submittals and amendments be heard within 90 days (Land Use Plan submittals) or 60 days (Implementation Plan submittals) of filing. However, the Commission may extend these deadlines for up to one year. Generally speaking it is even more important to coordinate the scheduling of LCP matters in locations close to the jurisdiction of interest, given the potentially broad community-wide application and public interest in LCP planning issues.
- **Federal Consistency Matters.** Federal regulations require that the Commission hold a hearing on federal consistency matters within 60 (for determinations) or 180 (for certifications) days of receiving complete information for the review, with a possible 15 day extension. Unlike LCP matters, staff cannot recommend an extension of time beyond the 15 days without the applicant's agreement. Staff has less flexibility, therefore, when it comes to scheduling these matters on the agenda.
- **Other Regulatory Matters.** The Coastal Act and the Commission's regulations provide various standards with varying flexibility for scheduling other core program matters,

² The PSA 180 day clock doesn't start until a CDP application is filed, which is a function of whether the applicant has submitted the necessary information determined by staff to be needed for processing; this filing review process also necessarily affects the timing of the scheduling of a CDP matter.

³ For more detail on the Commission's appeals process, see, <http://documents.coastal.ca.gov/reports/2014/6/W6d-6-2014.pdf>.

including, Enforcement Orders, Reconsideration, Revocation, and Dispute Resolution. These standards range from a strict 60 day hearing requirement for disputes about application filing that may be brought to the Commission, to the discretionary ability of the staff to schedule enforcement orders based on the circumstances of the case and workload management factors.

B. Non-Statutory Matters and the Agenda

The Executive Director may also schedule other matters on the agenda that are not required as a matter of law but that do address important programmatic issues or concerns. For example, for many years the Commission's agenda has included such standing items as the Executive Director's Report, Commissioner Reports, Legislative Report, Coastal Conservancy Report, Santa Monica Mountains Conservancy Report, Santa Monica Bay Restoration Report, the Deputy Attorney General's Report, and closed session. The agenda also includes a regular Public Comment period at least once every day of the Commission's monthly meeting, and other necessary organizational matters, such as approval of the minutes, authorization of contracts or election of officers. The nature and extent of these items is determined month-to-month and based on the content of each in any given month.

The Executive Director may also schedule on the agenda less regular matters of programmatic need or interest from time to time such as the recommended approval of LCP or Whale Tail Grants and the Annual Reports of the Public Education Program and the Conservation Open Space Program. Although there may not be a statutory or regulatory deadline involved, some of these matters must be scheduled for Commission action in order to facilitate on-going operations of the agency (e.g. contracts to support the Information Technology of the agency). Other matters, though, are more discretionary, and may be scheduled based on the Executive Director's assessment of the relative importance and need for a Commission hearing on the matter, and on the agency capacity and staff resources available to prepare the matter for the agenda. Other times it is important to convey information, such as the budget reports that staff presents from time to time. In the past year and a half, for example, the Commission's agenda has included numerous briefings and reports by staff and other interested parties, multiple field trips, a major policy workshop, and two public hearings on the Commission's draft Sea Level Rise policy guidance.⁴

C. Identifying, Prioritizing, and Scheduling Discretionary Agenda Items

As noted, the scheduling of discretionary agenda items is based on the Executive Director's assessment of the relative importance and need for a Commission hearing on or discussion of a matter, on the anticipated length of the proposed discretionary item, the agency capacity and staff resources available to prepare the matter for the agenda, and on the length of the mandatory

⁴ See, for example, Sea Level Rise hearings (December, 2013 and January, 2014); Agriculture Workshop, May 2013; fields trip in September, 2013 (Eureka-Arcata 101 corridor), January, 2014 (San Diego I-5 Corridor), and June, 2014 (Newport Banning Ranch); budget updates and reports in December, 2013 and February, April, May, July, and September, 2014; reports on the Commission's Strategic Plan Subcommittee work (November, 2013) and Year 1 of Strategic Plan Implementation (May, 2014); briefings on SLR and Humboldt Bay (September, 2013), Hydraulic Fracturing (February, 2014), the LCP Program (March, 2014 ED Report), Marine Protected Areas (May, 2014), Fukushima Radiation (May, 2014), the Appeals Process (June, 2014) and Ex Parte Communications (August, 2014).

items already on the agenda. For example, in 2013-14 significant public and agency concern arose about hydraulic fracking of oil wells, leading to scheduling two short Commission briefings on the topic. Given the significance of this issue for the protection and management of coastal resources, this agenda matter was made a priority, and staff resources were redirected to address it, however it was done in a way that fit into already tight meeting schedules. Similarly, based on emerging Commission concerns about the appeals process, as well as the importance of this critical regulatory function to the on-going work of the Commission, the Executive Director expedited the preparation and presentation of a briefing on the topic.

The central avenue for the Commission and the public to identify potential workshops or other discretionary agenda items is Coastal Act provision 30326:

Section 30326 Commission workshops; requests

Any person, including a commission member, may request the commission staff to conduct a workshop on any matter before the commission or on any subject that could be useful to the commission. When the executive director determines that a request is appropriate and feasible, a workshop shall be scheduled at an appropriate time and location.

Oftentimes, the identification of the need for a workshop comes about because a topic is raised multiple times in other Commission matters or is anticipated as a future needed discussion, and the Commission, member of the public or staff then proposes that a workshop occur, such as the policy discussion of agriculture that was addressed in a May, 2013 workshop. As anticipated by the Coastal Act, though, the feasibility of planning workshops must be carefully considered in light of the Commission's policy jurisdiction, planned speakers, staff availability for research and presentations, travel budgets and other considerations. Historically the Commission has had to allocate its limited staffing to core, non-discretionary agenda work (e.g. LCP and permit matters) and thus had not been able to staff the regular conduct of workshops and consideration of other policy planning matters. Therefore, already stretched staff resources must be carefully considered, especially relative to other programmatic priorities and workload demands, before a workshop can be scheduled.

Commission program priorities and available resources are primary drivers or constraints for determining whether a discretionary matter may be scheduled on the agenda. For example, the Commission has adopted a Strategic Plan that sets out numerous priority goals, objectives, and actions, some of which can be addressed through public Commission hearings. The Strategic Plan establishes the LCP Program as a major priority. Hence, in March of 2014, the Executive Director prepared and presented a briefing on the status of the LCP Program. Similarly, sea level rise policy guidance is a Strategic Plan priority, and thus Commission staff has held two public hearings on proposed guidance in the past 12 months. Still, as noted in the Strategic Plan, it is important to recognize that even the priorities of the Strategic Plan are secondary to the core coastal program, and must be strategically considered, relative to non-discretionary core program agenda requirements and limited staff resources:

The Commission will continue to allocate most of its limited resources to its core statutory work, including reviewing LCPs and amendments, monitoring local coastal program implementation, making determinations on federal consistency matters, and regulating coastal development. Nonetheless, the Commission is committed to focusing on policy priorities as identified in this plan, and on strategically allocating available staff resources and funding to the identified actions to improve the overall functioning of

the organization, which will ultimately benefit the core mission and implementation of all of the policies of the Coastal Act.^[1] [emphasis added]

It is also important to recognize that status reports, briefings, workshops, and other hearings can vary considerably in the amount of time and effort required to complete them. It may be relatively easy to give a short report on the status of a matter if the information is readily known, and with no written materials presented, or it may be very time consuming, such as putting together an expert panel to talk in depth about a policy matter, and preparing background materials for Commission consideration.

Requirement to Publicly Notice Briefings & Workshops

The Bagley-Keene Open Meeting Act and the Coastal Act require that Commission deliberations be conducted in public, pursuant to public notice.⁵ This requirement is a fundamental mechanism whereby the Commission's decisions remain transparent and accountable to the public, particularly given its essential "quasi-judicial" character.⁶ However, sometimes the public or Commissioners raise issues or questions during a hearing on another item or during public comment and those issues are not specifically on the agenda. For example, during public comment or during Commissioner reports a topic may come up and more information will be

^[1] *California Coastal Commission Strategic Plan 2013-2018*, p. 2.

⁵ See Public Resources Code section 11125(b): "the notice of a meeting ...shall include a specific agenda for the meeting, containing a brief description of the items of business to be... discussed..." See also Coastal Act section 30006:

The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.

And, Coastal Act 30320:

*(a) The people of California find and declare that the duties, responsibilities, and quasi-judicial actions of the commission are sensitive and extremely important for the well-being of current and future generations and that the public interest and principles of fundamental fairness and due process of law **require that the commission conduct its affairs in an open, objective, and impartial manner free of undue influence and the abuse of power and authority. It is further found that, to be effective, California's coastal protection program requires public awareness, understanding, support, participation, and confidence in the commission and its practices and procedures.** Accordingly, this article is necessary to preserve the public's welfare and the integrity of, and to maintain the public's trust in, the commission and the implementation of this division.*

*(b) The people of California further find that in a democracy, due process, fairness, and the responsible exercise of authority are all essential elements of good government which **require that the public's business be conducted in public meetings**, with limited exceptions for sensitive personnel matters and litigation, and on the official record. Reasonable restrictions are necessary and proper to prevent future abuses and misuse of governmental power so long as all members of the public are given adequate opportunities to present their views and opinions to the commission through written or oral communications on the official record either before or during the public hearing on any matter before the commission [emphasis added].*

⁶ The Commission's decision process is essentially "judicial" in character inasmuch as the Commission's primary statutory role is to adjudicate (decide) individual LCP and coastal development permit matters on a case-by-case basis. In contrast, the Commission would act in a quasi-legislative mode when considering and adopting regulations.

requested by a Commissioner. Such occurrences raise questions about how staff and the Commission can address the issue without violating the public meeting and noticing requirements of the Bagley-Keene Act and the Coastal Act.

The Commission and staff does have some discretion to address issues in real time without running afoul of the Bagley-Keene Act or the Coastal Act, however it is important that the Commission not engage in signification deliberation or decision-making unless the topic has been formally noticed on the agenda. For example, if a Commissioner wants to know the status of a matter raised in public comment, the staff can provide short direct responses limited to factual descriptions and general identification of issues or policy. Similarly, the Commission can raise questions to staff in the context of matters addressed in the Executive Director or Deputy Director Reports. However, because new topics raised in these circumstances were not specifically noticed and the public would not have the opportunity to know these issues were being raised nor to comment on them, extended substantive discussions should be avoided until such time as a noticed item can be set on the agenda.

D. A Note on Agenda Streamlining

The Commission's agenda includes different calendar types that provide opportunities for streamlining the decision process. For example, in addition to the regular CDP calendar that includes items that receive a full public hearing, the Commission may also process CDP applications on the consent or administrative permit calendars, or as reported minor items such as permit waivers or immaterial permit amendments. The Commission also often moves many items originally calendared as regular CDPs to the consent calendar on the day of the hearing.

Staff tries to streamline the Commission's business to the maximum extent as appropriate and consistent with the Coastal Act requirement to maximize public participation in the decision process. Many items are processed on the consent calendar when the staff and applicant are in agreement on the recommended conditions. Generally speaking staff does not calendar CDP matters as a consent item, or recommend moving them to consent, if there is any public opposition or interest in speaking to the item or if staff determines that the matter itself raises an important issue for the Commission to hear in more detail through a staff presentation. The Commission itself, of course, can always pull items off the consent calendar, or decline to move them there from the regular calendar, as well.

The use of other minor agenda item processing options is governed by the Coastal Act and the Commission's regulations. For example, the Executive Director can process development applications by waiving permit requirements where it is determined that "it involves no potential for any adverse effect, either individually or cumulatively, on coastal resources and that it will be consistent with the policies of Chapter 3."⁷ Similarly, the Executive Director may issue administrative permits, for certain types of developments, subject to reporting to the Commission, pursuant to Coastal Act 30620 and implementing regulations. The Executive Director may also process and report to the Commission applications and LCP matters as immaterial CDP amendments and extensions, emergency permits, and minor or de minimis LCP amendments. Other than emergency permits, immaterial CDP amendments to which no member of the public has objected, and exemption determinations (no permit required), all minor items

⁷ Coastal Act 30624.7 and 14 CCR §§ 13238-13238.2.

must be reported to the Commission, and are subject to re-scheduling if the Commission so directs, before becoming effective.

In terms of agenda priorities, Commission staff uses the triage process not only to process matters in the order received and to meet required deadlines, but also to identify and streamline processing sooner where appropriate and feasible. Thus, where an item may qualify for a permit waiver or other minor-item processing option, staff will try to process that item as soon as possible all things being equal.

III. Conclusion

The Commission's agenda is mostly a product of scheduled matters that must be heard as a matter of law. Commission staff seeks to streamline such matters to the maximum extent feasible to provide for efficient application processing, consistent with the law and the requirement for public participation. The Executive Director also schedules many different types of discretionary agenda matters based on the on-going needs of the program and the resources available to do so, including staff capacity, time available, and the importance of the matter relative to other competing workload demands. Senior staff meet regularly together and with their teams to consider pending workload and priorities, and all of the factors that must be considered in formulating the agenda month-to-month. The staff welcomes Commission and public input on the factors that should be considered in setting the agenda. In addition, the Commission and the public can raise potential future agenda items through public comment or other portions of the Commission's agenda, though Commission discussion of such items must wait until a future publicly-noticed opportunity for such discussion is provided. Staff has recently added a new agenda item entitled "Future Agenda Items" that will enable specific identification of potential future agenda items by the Commission and the public.