

**CALIFORNIA COASTAL COMMISSION**

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# W6b

APRIL 28, 2016

**TO: COMMISSIONERS AND INTERESTED PARTIES**

**FROM: JOHN AINSWORTH, ACTING EXECUTIVE DIRECTOR  
ELIZABETH A. FUCHS, AICP, COASTAL PROGRAM MANAGER**

**SUBJECT: REPORT ON THE LOCAL GOVERNMENT – COASTAL COMMISSION  
WORKSHOP OF NOVEMBER 6, 2015– LCP PLANNING (PART I) AND  
LCPs AND SEA LEVEL RISE PLANNING (PART II)**

Representatives of the League of California Cities (LOCC) Coastal Cities Issue Group and the California State Association of Counties (CSAC) Coastal Counties Caucus and a representative of county Planning Directors participated in a third workshop of Local Officials and Coastal Commissioners held at the Commission meeting on November 6, 2015, in Half Moon Bay, CA.<sup>1</sup> Please see the Attachment A for the list of participants.

This report highlights the main comments and ideas discussed at the workshop. One overarching message from the discussion emerged: Commissioners and local officials agreed that this is a partnership that reflects mutual respect and appreciation of the local and state roles and challenges. The dialogue afforded by these workshops is a positive effort to share ideas and suggestions to continue to strengthen this partnership. In the workshop, Commission staff noted efforts made to date to increase early communication and coordination, and these efforts will continue, as resources allow. Staff will continue to evaluate potential short and longer-term initiatives and the feasibility of their future implementation.

The Commission staff is recommending program actions that give priority to outreach and coordination with local governments that are working on LCP grant funded planning to achieve certification of LCPs and LCP Updates, especially to address sea level rise.

Coordination will include an emphasis on sharing information from these LCP planning efforts. As these grant funded products are completed, and as a new update or significant sea level rise work is certified, examples can be shared to provide assistance and guidance for other local governments. This information sharing can be facilitated through an update of the Resources for

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<sup>1</sup> The agenda is available at: <http://documents.coastal.ca.gov/reports/2015/11/f2-11-2015-a.pdf> and the background staff report at: <http://documents.coastal.ca.gov/reports/2015/11/f2-11-2015.pdf>

Local Government webpage that better reflects the recently redesigned Commission website. This can include information to better communicate the LCP processes and the Commission appeal processes, including substantial issue determination.

Staff will continue with outreach on the adopted sea level rise guidance, and develop additional LCP training materials for local government as well as Commission staff.

Staff will continue to prioritize coordination and communication with the coastal groups and staff of the California State Association of Counties (CSAC) and the League of California Cities (LOC) and the leadership of the Local Government Working Group.

## I. Workshop Discussion – LCP Program (Part 1)

The first part of this third Commission workshop focused on the Local Coastal Planning Process. In addition to the discussion of the Commission and local officials, 9 members of the public commented at the workshop and CCC comment letters from various local government staff were submitted. Background material for the workshop, including correspondence received, may be found on the Commission's website at:

<http://documents.coastal.ca.gov/reports/2015/11/f2-11-2015.pdf>

A recording of the entire workshop is archived at:

[mms://media.cal-span.org/calspan/Video\\_Files/CCC/CCC\\_15-11-06/CCC\\_15-11-06.wmv](mms://media.cal-span.org/calspan/Video_Files/CCC/CCC_15-11-06/CCC_15-11-06.wmv)

Comments embraced a wide variety of observations and ideas and reflected a strong commitment of local governments and the Commission to the policies of certified LCPs and the Coastal Act. The workshop discussion focused on ways to improve its implementation for the benefit of all Californians. Staff has organized a summary of the comments and ideas as follows.

### I. LCP Process

The local government participants and Planning Directors representative presented concerns that focused on managing of state and local perspectives. Once an LCP is certified local governments become the coastal managers and regulators.

The Planning Director presentation and written comments submitted noted the following key requests that were discussed:

**Continue to promote regular communication:** It is important to avoid last minute surprises and to recommend suggested modifications only if needed because this may undercut the extensive local public processes completed at the local level. This is particularly true with LCP Amendments where the local governments have balanced competing interests through the local public process. This is seen as a matter of respecting local outcomes. The recommendations include: continuing early communication, which is especially important for any suggested modifications; to set priorities to provide permanent staffing; and to recognize local planning efforts.

Access to information is also something that can be part of this coordination. This can include access to a digital library of regulatory actions, promotion of statewide practices and interpretations and joint training opportunities.

**Set a high bar for Substantial Issue.** It was requested that there be a high bar for determination of Substantial Issue on appeals of local decisions. More guidance on what constitutes Substantial Issue would be helpful. Managing perspectives also means considering the rights, responsibilities and expectations of private property owners. Unless the process is reasonable, there is likely to be more unpermitted development to resolve.

**LCP Amendment processes.** One suggestion is to support incremental, phased approvals and topical updates. Comprehensive updates are very expensive and time consuming. It is important not to expand the scope of LCP Amendments. Local staff also noted it is essential to try to not expand the scope of LCP Amendments because they reflect an extensive public process that formally engaged a number of views and addressed competing concerns. Local government also noted that local review and action often times includes coordinating and reconciling dozens of different regulatory bodies (e.g. RWQCB, SWRCB, FEMA, EPA, etc.) and their requirements. Each regulatory agency is in its own silo, and their comments often conflict. And local government has to negotiate a maze of constituents.

**Discussion.** Commissioners and Commission staff noted that early Commission input and coordination can raise concerns early in the process such that the issues can be addressed in the local process. This continues to be a goal of early and ongoing coordination. But sometimes all issues are not resolved even when there is early coordination. The final Commission review must reflect the final submittal, which can reflect changes made at the local level. The Commission review must also take into account information presented at the Commission's public hearing.

The discussion also emphasized that staffs should continue to find ways to communicate early across the silos of individual agencies and bridge the entities. Commissioners noted they recognize this frustration and have encouraged Commission senior staff to participate in regular state agency coordination meetings and look for common ground. This is likely to always be an issue, but Commission staff has taken steps to help minimize the differences between multiple agencies and will continue to pursue such coordination.

Discussion also noted the requirements for determining Substantial Issue. While no definition exists in the statute, the staff noted the five criteria that are used in appeal evaluations and included in current staff reports. This is:

*The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question as to conformity with the certified local coastal program" or, if applicable, the public access and public recreation policies of Chapter 3 of the Coastal Act (Cal. Code Regs., tit. 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:*

- 1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;*
- 2. The extent and scope of the development as approved or denied by the local government;*
- 3. The significance of the coastal resources affected by the decision;*
- 4. The precedential value of the local government's decision for future interpretations of its LCP; and*
- 5. Whether the appeal raises only local issues, or those of regional or statewide significance.*

The Commission has encouraged staff to prioritize what is most important but in the end it is a judgement call for the Commission. The Commission noted that the more updated and specific the LCP is the less Substantial Issue determinations will be a problem. Commission staff noted informational material on the appeals process has been developed but could be expanded to include more information on Substantial Issue. The appeal process could benefit from additional guidance on how to determine if a Substantial Issue exists and ways to improve communication with applicants before a project gets too far along. Staff also referred to regulations that address local government's ability to resolve issues before action on an appeal.<sup>2</sup>

The Commission noted some concerns may emanate from the time deadlines for action on appeals. It was suggested that it may be useful to look at ways the time deadlines might be modified in order to allow local governments a chance to react and address concerns in a way that would avoid an appeal. While at the end of the appeal process there may be a better project, the time deadlines are difficult. It would be good to look into how local governments may be able to hold onto projects to avoid an appeal.

The Commission staff noted that regular quarterly coordination with local staffs often currently include major cdps at the local level. Commission staff at times works out issues with the local government and applicant at that time, and the applicant can amend the cdp at the local level without having to withdraw and without an appeal.

Commissioners noted that incremental LCP Amendments for specific topics can raise issues because the LCP is an integrated document and topics can be connected. Many of the existing LCPs are outdated and should be updated and if local government can do an update that is preferable. Also for local governments updating their General Plan it may be more efficient to separate the two.

Commission staff noted how best to streamline LCP Amendments may depend on the locality. The LCP is the controlling regulatory document in the coastal zone for locally issued coastal development permits but the question of whether a comprehensive or incremental update is better may depend on the geography and issues. Early coordination and issue scoping may help define what is the most effective scope for the amendment. Early coordination affords the opportunity to agree on what it is we will be working together on. Commission staff can provide

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<sup>2</sup> See California Code of regulations 13573(b) on exhaustion of local appeals, for example.

early and continuing input but Commission staff recommendations must reflect the final local action.

Discussion included recommendations for greater access to certified LCP language as guidance through access to as certified Digital LCPs and support for more funding to pay for local LCP planning efforts. If tension is inherent in the LCP update process, then the Commission needs to improve its conflicts resolution process and do a better job of articulating statewide interests. While Commissioners who are themselves local officials understand concerns of local government, the issues raised by LCP amendments tend to become more complicated and challenging at the statewide level, especially for some issues related to sea level rise and shoreline erosion. But both Commission and local government officials agreed that continuing to emphasize and work on good communication and relationships as coastal management partners is critical.

Public comments underscored the need for funding for local planning. Commenters also suggested relying more on CEQA documents to determine if there is a significant impact. While acknowledging that the Coastal Act is a different process than CEQA, early coordination and establishing priorities when CEQA documentation is developed is critical. One noted approach that has worked successfully in the past is to separate out General Plan and stand-alone LCP Amendments (Like an Area Plan). It is also important to share examples and models online and use technology to automate information sharing.

## II. Workshop Discussion – Sea Level Rise Guidance (Part 2)

The second part of the workshop focused on the Sea Level Rise Policy Guidance (adopted by the Commission on 8/12/15).

### **Coordination**

The local government presentations noted that adapting to sea level rise will require involving all partners including state and federal agencies, perhaps in a multi-agency regional approach as well as steady funding. Comments noted that it may be more effective to address on a regional scale rather than LCP by LCP and a mechanism to accomplish this is needed. Comments of local participants encouraged flexibility in moving forward because of the differences in local conditions. But commonalities should be identified. It may be useful to consider devoting resources for collaboration among several grantees and finding ways for communities with common interests to learn from each other. Coordination will also be needed to resolve potential conflicts with FEMA requirements.

### **Project Review**

The comments noted the significant issues in addressing sea level rise in project by project review rather than a long term approach. Comments noted the need to look at what will work long term rather than in individual projects. Comments also underscored the need for resources at the local level to do this work.

Comments and discussion addressed issues related to what constitutes existing development, new development, redevelopment and cumulative repair and maintenance. These have implications, especially in existing neighborhoods or where existing armoring may exist. Densely developed urban areas need a different approach than less developed areas. Local governments have limitations on land use controls and funding to be able to implement broad adaptation through LCP land use and zoning.

Comments also identified some specific issues that are raised by the guidance such as the need for a clear understanding of what is feasible as well as practicable, how to educate property owners that they will have to accept more risk, how to address harbors and marinas where long term leases exist, and should infrastructure projects be given priority and a sense of urgency. Suggestions were made to pursue pilot projects, but those pilots would need legal and regulatory relief to test approaches.

### **Other Impacts**

Comments also noted that we need to address other impacts from sea level rise to habitat and wetland resources as past mitigation may be impacted. This may raise big issues but also big opportunities to include restoration as adaptation.

Among the public commenters concerns included requesting that public harbor districts, ports and small craft harbors be eligible for future grant funding, that such facilities not be required to provide mitigation and to consider that life of structure is an issue when permitting ports and harbor facilities, such as breakwaters. Possible future funding sources were identified through the Greenhouse Gas Reductions Funds.

### **Discussion**

Commissioner discussion noted that if existing armoring cannot be factored in when siting new development, there may be more litigation, which may affect how adaptation reflects existing neighborhoods. There may be areas that should never have been developed, and we should not try to keep them going, but we will possibly need legislation and good legal outcomes to do that. Adaptation for public infrastructure requires a long lead time, and we need to develop new mechanisms to address it.

Discussion noted that each community will have a unique situation, so very early engagement with Commission staff is important. Addressing impacts at the community level through LCPs is important. Commission discussion noted that the Commission has been implementing buffers to accommodate sea level rise and is continuing to learn important lessons from past projects on the shoreline. It will be important to work with the State Lands Commission to address the Mean High Tide Line as it moves and the effect on public trust lands. Salt water intrusion and risk to groundwater supplies is also an important issue to address.

## **II. Next Steps**

Staff will carry out the following actions:

- Allocate priority to working with those local governments completing LCP/SLR planning grants.
- Continue local outreach and education efforts on the adopted Sea Level Rise Guidance.
- Share examples of certified grant work products, especially related to sea level rise, as technical assistance for local governments, including through revised and updated Resources for Local Government webpage.
- Develop additional training and information sharing to include the LCP processes and the Commission appeal processes, including substantial issue determination.
- Continue regular coordination meetings with local government planning staff on upcoming LCP amendments, potential appeals of CDPs, enforcement issues and other matters.
- Continue coordination and communication with the coastal groups and staff of the California State Association of Counties (CSAC) and the League of California Cities (LOC) and the leadership of the Local Government Working Group.

### III. Attachment A: Participants

#### County Representatives

Kathy Long, Supervisor, Ventura County, [CSAC Coastal Counties Co-Chair]

Virginia Bass, Supervisor, Humboldt County [CSAC Coastal Counties Co-Chair]

Zach Friend, Supervisor, Santa Cruz County

Bruce Gibson, Supervisor, San Luis Obispo County

#### City Representatives

Mark Wheatley, Council Member, Arcata

Lindy Peters, Vice Mayor, Fort Bragg

Shelly Higginbotham, Mayor, Pismo Beach

Jamie Irons, Mayor, Morro Bay

John Sibert, Mayor, Malibu

Edward Spriggs, Council Member, Imperial Beach

#### Planning Directors Representative

Kathy Previsich, Planning Director, Santa Cruz County

#### Coastal Commissioners Present

Commissioner Kinsey, Chair

Commissioner Bochco, Vice-Chair

Commissioner Cox

Commissioner Groom

Commissioner Luevano

Commissioner McClure

Commissioner Schmidt

Report on the Local Government – Coastal Commission Workshop of November 6, 2015

Commissioner Schallenberger  
Commissioner Turnbull-Sanders  
Commissioner Uranga  
Commissioner Vargas

Public Speakers:

Steve Monowitz, San Mateo County  
Lia Renee  
Robin Rudisill  
Dan Stegink  
Jim Haassener, CMANC  
Amanda Winchell, Surfrider Foundation  
Becky Smyth, NOAA  
Amanda Winchell, Surfrider Foundation  
Jeff Rabin