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CALIFORNIA COASTAL COMMISSION

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February 20, 1998

TO: Commissioners and Interested Persons

FROM: Peter Douglas, Executive Director

RE: Proposed legislation regarding periodic reviews of previously certified local coastal programs

**Staff Note:** At its December 1997 meeting, the Commission tentatively endorsed sponsorship of legislation that would amend the Coastal Act to require periodic reviews and updates of previously certified lcps. The proposed legislation would include funding and a mechanism to require modifications to lcps if the Commission deems such revisions to be necessary and appropriate in view of changed circumstances, new information, etc. Recognizing the potential controversy such legislation could cause, the Commission directed staff to prepare a draft of possible legislation and to schedule it for public hearing at a Commission meeting in order to give local government and the public an opportunity to comment. The Commission then will give staff direction on how to proceed.

Staff has discussed this type of legislation with several members of the Legislature and a proposal calling for periodic updates of lcps was included in a package of legislative coastal initiatives announced earlier this year in Sacramento. In staff's discussions with legislators, it was agreed that the Commission should hold its informational hearings on draft legislation before it would be introduced in the Legislature.

**Statement of Problem**

The Coastal Act requires the Commission to periodically, but no less than once every five years, review previously certified local coastal programs (lcps) to evaluate whether they are being effectively implemented and whether they are in need of revision in light of new information, changed circumstances or for other compelling reasons based on application of Coastal Act policies. Over 50 lcps are overdue for review and several are more than ten years old. Only two periodic reviews have been conducted (Trinidad and Sand City).

While the planning landscape to which lcps apply is dynamic and subject to change, lcps are fixed in place unless the local government initiates a review and update. Often, lcp amendments are project driven and do not occur in the context of a more comprehensive lcp evaluation. Consequently, lcps are being incrementally amended without an overview of the cumulative effects of such changes and often without a review of changed circumstances that may warrant additional lcp amendments.

The primary reasons for the failure by the Commission to conduct periodic reviews:

- The Commission lacks the support resources (staff and operations) needed to conduct the reviews.
- There are no meaningful consequences in the Coastal Act for either conducting or not conducting such reviews.
- Even where the Commission completes a review and recommends certain changes to an lcp, there is no mechanism in the Coastal Act to implement those changes if the local government chooses to ignore Commission recommendations. Under the Coastal Act, the Commission is limited to reporting to the legislature after the local government tells the Commission it is not going to implement recommendations for lcp amendment..
- There are no grant funds available to help local government defray the cost of carrying out such reviews. (Note: Even though these reviews are conducted by the Commission, it is essential that the affected local government be fully involved in such review, and doing so entails costs.)

### **Proposed solution**

Amend the Coastal Act to strengthen the requirement for periodic reviews and provide the needed support for such reviews and the mechanisms to accomplish the changes to lcps deemed necessary based on such reviews.

### **Proposed legislation**

**SECTION 1.** Section 30519.5 of the Public Resources Code is repealed.

**SECTION 2.** Section 30519.4 is added to the Public Resources Code to read:

30519.4. a) The Legislature finds and declares that the California coastal zone, while somewhat fixed in geographic area, is a dynamic landscape where population growth, increasing public recreational needs, intensifying competition among coastal resource users, advances in engineering and communications technologies, pressing habitat conservation and restoration needs, expanding technical knowledge about ecosystem and watershed management, marine water pollution, infrastructure capacity, cumulative impacts of development, conservation needs of sensitive habitats and species, evolving doctrines of land-use law, and where principles of contemporary planning and environmental protection, such as environmentally sustainable economic development, interact in a manner that results in constantly changing and incremental pressures for new development that threaten the environmental health and vitality of human and natural coastal community values. The Legislature further finds that while the California Coastal Act of 1976 recognizes the dynamic nature of the coastal zone and established a meaningful partnership between state and local government for the long-term management of coastal resources in furtherance of state coastal conservation and development policies, that Act failed to provide effective ways and means for the timely periodic review of outdated local coastal programs to ensure they are being implemented and updated in a manner that effectively and on a continuing basis carries out the policies of this division and is responsive to contemporary needs, changed circumstances, new information, and current state of knowledge about coastal resources. The Legislature also finds and declares that based on existing law and the need for continuing coastal protection, it is appropriate and necessary and in the public interest to amend this division and enact this act to provide an effective mechanism for the periodic review and updating of previously certified local coastal programs.

(b) At the request of local government or when the Commission deems it appropriate based on compelling changed circumstances or significant new information relating to the implementation of the policies of this division, but no less than once every five years after the effective certification of a local coastal program, the Commission shall, in cooperation and consultation with the affected local government, conduct a review and evaluation of the certified local coastal program. The purpose of the periodic review is to determine whether the local coastal program is being effectively implemented in conformity with the policies of this division or whether changed circumstances or new information exists that warrants revision of the local coastal program to ensure continuing compliance with the policies of this division.

(c) In order to avoid new or unfunded state mandated costs to local government, the Commission shall be responsible for carrying out the periodic review required by this section and may, if funds are made available for this purpose, provide financial assistance to the local government to facilitate participation by the local government in the review process.

(d) If, after public hearing, the Commission determines that the local coastal program is not being effectively implemented in conformity with the policies of this division or if changed circumstances or new information warrants the revision of the local coastal program to ensure conformity with the policies of this division, the Commission shall identify and recommend to the local government appropriate remedial action, including but not limited to amendments to the land use plan portion and/or the implementation portion of the local coastal program and, if appropriate, modification of the manner in which the local coastal program is being carried out that may not require amendment of the local coastal program.

(e) If the Commission, pursuant to subdivision (d), determines that remedial action is needed, it shall promptly transmit to the affected local government a summary of amendments to the local coastal program and, if appropriate, recommended changes in the way the local coastal program is being implemented to remedy the identified deficiency. Within 60 days of the Commission's transmittal of the recommended remedial action, the local government shall inform the Commission whether it will take the identified remedial action or if it proposes alternative action to remedy the identified deficiency. The Commission may, if the affected local government requests the Commission to do so within the 60 day period specified in this subdivision, prepare the proposed local coastal program amendment or proposed change in the implementation program on behalf of the local government for adoption by the local government. If the Commission elects to prepare the proposed remedial action on behalf of the local government pursuant to this subdivision, it shall do so within 180 days of the date it determines to prepare the remedial action.

(f) If the local government fails to adopt amendments to its local coastal program or revisions to the manner in which it is carrying out the program within 240 days of the transmittal by the Commission, as required by subdivision (e), of the recommended remedial action or within 180 days of receipt by the local government of the proposed remedial action prepared by the Commission at the request of the local government pursuant to subdivision (e), the Commission may, after public hearing, prepare and adopt the proposed remedial action on behalf of the affected local government. The Commission shall provide the affected local government the opportunity to review and comment on the proposed remedial action before it is formally heard and acted upon by the Commission and shall, within 30 days of adoption by the Commission, forward a copy of the adopted remedial action to the local government.

(g) With respect to remedial action involving amendment to the land use plan portion of the local coastal program, if the local government does not adopt for effective implementation the amendments prepared and adopted by the Commission pursuant to subdivision (f) within 90 days of their receipt by the local government, the Commission may, after public hearing, adopt the amendments to the land use plan for inclusion in the local coastal program and the amendments shall thereafter, notwithstanding any other provision of law to the contrary and on an effective date

specified by the Commission, become an enforceable part of the certified local coastal program and shall be implemented and have the same legal force and effect as if the amendments had been adopted by the local government.

(h) With respect to remedial action involving amendments to the implementation portion of the local coastal program, if the local government does not adopt the recommended revisions to the implementation program prepared and adopted by the Commission pursuant to subdivision (f) within 90 days of their receipt by the local government, the Commission may, after public hearing, adopt the amendments to the implementation portion of the local coastal program for inclusion in that program and the amendments shall thereafter, notwithstanding any other provision of law to the contrary and on an effective date specified by the Commission, become an enforceable part of the certified local coastal program and shall be implemented and have the same legal force and effect as if the amendments had been adopted by the local government.

(i) With respect to remedial action involving modifications to the manner in which the local coastal program is being implemented that do not require amendments to the certified local coastal program, the local government shall implement the modifications specified pursuant to subdivision (f) within 90 days of their receipt by the local government. The local government shall promptly notify the Commission that the remedial action is being implemented and how it is being implemented.

(j) Failure to comply with the provisions of this subdivision shall constitute a violation of this division, provided however, that subdivisions (g), (h) and (i) shall not apply to any remedial action the implementation of which would necessitate the expenditure of funds by the local government for capital improvements or new personnel if the expenditures would not have been incurred by the local government in the absence of taking the remedial action and where special funding to defray the costs of implementing the remedial action has not been made available to the local government.

(k) Where the Commission identifies specific remedial actions to be taken by the affected local government pursuant to the provisions of this subdivision, the local government may, with the Commission's approval, address the identified program deficiencies in alternative ways to those specified by the Commission.

(l) The Commission may for good cause extend any time limit specified in this subdivision for a period of time not to exceed one year for each limit specified and for a cumulative total period not to exceed two years for all time limits applicable to the specific periodic review in which the remedial actions are identified.

(m) The Commission shall, after public hearing, and within six months after the effective date of this subdivision, adopt guidelines which may be modified from time to time, as deemed appropriate by the Commission, for the implementation of the provisions of this subdivision. The Commission may, at its discretion and in addition to the guidelines required by this subdivision, adopt regulations for the implementation to this subdivision. The guidelines adopted pursuant to this section are for guidance only and are not enforceable as regulations and for this reason and notwithstanding any other provision of law to the contrary shall be exempt from review by the Office of Administrative Law.

**SECTION 2.** The amount of \$\_\_\_\_\_ from the \_\_\_\_\_ Fund are hereby appropriated to the Coastal Commission for grants to local governments to defray costs for the conduct of periodic reviews of local coastal programs as required pursuant to section 30519.4 of the PRC.

**SECTION 3.** The amount of \$\_\_\_\_\_ from the \_\_\_\_\_ Fund are hereby appropriated to the Coastal Commission for \_\_\_\_\_ PY on a permanent basis and for support costs to carry out the periodic reviews of local coastal programs pursuant to section 30519.4 of the PRC.