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To: Coastal Commission

From: Peter Douglas, Executive Director

Subject: Workload Priorities

INTRODUCTION

At last December's meeting the Commission asked staff to outline how we intend to prioritize work tasks in light of continuing budget and staff cuts. To place this discussion in perspective, it is important to underscore that while California's coastal protection law has not changed, the cumulative impacts of recent and continuing budget cuts make it virtually impossible to carry out all the mandates in the Coastal Act. The Commission routinely hears complaints from members of the public and others with business before the Commission that neither the Commission nor staff are doing what the law requires and that important matters are being delayed at substantial expense to individuals and communities. At almost every meeting, your senior management outlines the important coastal management tasks, issues or requests that we cannot adequately address due to staffing and budget constraints.

While the Commission and staff have implemented austerity measures, further funding constraints have had additional and major adverse impacts on workload. For example, all limited-term staff have been terminated, vacant positions (about 16) remain vacant, staff has been encouraged and is participating in the "voluntary leave without pay program", and a number of positions have been eliminated. Additionally, the two furlough days every month imposed by the Governor represent a 10% reduction in staff work time, further exacerbating our ability to conduct the public's business pursuant to the Coastal Act.

We have little or no discretion over some decisions on workload prioritization due to internal and external forces, such as: court rulings and orders; emergency response to natural disasters; federal grant requirements; state mandated fiscal, personnel, and material management rules and regulations; urgent, unforeseen matters requiring immediate attention; legislative or Congressional directives and

requests; unforeseen personnel departures; and non-discretionary legal mandates that involve penalties or serious consequences for non-compliance (e.g., deficit spending and regulatory or land use plan approvals by operation of law). Where agency decisions and action involve some degree of discretion, the consequences of non-action may lead to far greater costs than what would have been incurred had timely action been taken. Due to circumstances beyond our control, we now find ourselves confronting unprecedented and difficult decisions that will inevitably result in diminution of coastal protection, economic loss to individuals and communities, and erosion of the State-Local partnership created to safeguard California's coast for benefit of current and future generations.

Irrespective of daunting and seemingly intractable challenges, the Commission and its staff have an ethical and legal duty to faithfully carry out the law and public trust given into our care to the best of our ability under the circumstances. It is important to underscore that as we determine how to best use staff resources, many tasks will ultimately be delayed, postponed or no longer carried out. In making decisions about what issues and matters are attended to and when, careful judgments must be made. Every program manager and district director has been making difficult judgments involving prioritizing workload for several years now. Obviously, different people may have subtle or dramatic differences of opinion about what is and what is not important. Accordingly, the Commission, your staff, members of the public, and those seeking Commission action often have conflicting views on what is important and should be assigned higher priority for staff attention.

Decision-making by the Commission and staff is conducted on a case-by-case basis. At the staff level, decisions involving major Coastal Act issues or significant coastal resources are collectively formulated after considerable discussion and review by senior management. Obviously, complicating variables unique to each situation must be taken into account. These include, the precedential import and long-term consequences of the decision, both legal and practical; the historical context of the subject; degree of public interest; ethical, equitable, political and programmatic implications; and how the action taken or not is explained to the public.

This memo attempts to outline, in draft form, continuing major Coastal Act mandates, guiding principles staff uses in making prioritization decisions, major issue areas to be dealt with, and austerity measures already taken and being pursued to best carry out our legal responsibilities under difficult circumstances.

COASTAL ACT MANDATES

While staff and support resources have been drastically cut the law prescribing mandates the Commission must carry out has not changed. Accordingly, decisions about what cannot currently be done must be made in the context of

these continuing legal mandates which then themselves must necessarily be prioritized – something the Commission has been doing for years (e.g., mandated periodic reviews of local coastal programs).

- **Regulation** – The primary mandate under the Coastal Act is to ensure that new coastal development is carried out consistent with land use policies in Chapter 3 and certified LCPs. This is accomplished through coastal development permit review in areas of original jurisdiction, in matters on appeal and through enforcement of previously approved permits and the law where no permits have been obtained. Federal consistency actions pursuant to the federal CZMA and Coastal Act are other vital regulatory functions.

Regulatory authority and responsibilities give the Commission quasi judicial status triggering a host of accompanying legal requirements that demand considerable staff and Commission time and allow less flexibility and discretion than for its other, non-regulatory functions. These include ensuring compliance with a range of legal protections such as due process, evidentiary and procedural rules and regulations, and timely, fair public hearings; comprehensive analytical reports applying the law to facts; providing applicants and members of the public reasonable opportunity to discuss issues with staff; dispute resolution procedures; and appropriate appeal provisions (e.g., judicial review requiring production of a full public record of the proceedings).

- **Planning** – While the Commission’s regulatory responsibilities entail both short- and long-term coastal resource conservation consequences, its planning functions and responsibilities constitute the primary means of ensuring effective, ongoing implementation of Coastal Act protection policies. A key component of this mandate is establishing and sustaining a constructive, collaborative and collegial relationship with the Commission’s local government partners.

Although the planning component of the Commission’s mandate entails greater flexibility and discretion in terms of allocating staff and support resources, in the long run it is the most effective means of ensuring Coastal Act compliance and implementation. LCPs are not etched in stone and periodically require review and updating as new information and changed circumstances warrant adaptive management. Doing so however, requires local government and Commission staff resources only marginally available at this time. Additionally, many LCP amendments that are brought forward and which must be acted upon by the Commission pursuant to statutory mandate are project-driven and do not offer the more comprehensive topical or geographic coverage warranted by changed circumstances.

- **Public Education and participation** – The Coastal Act contains provisions requiring the Commission to implement a public education program. Fortunately, this has been accomplished primarily through the Whale Tail license plate program that has provided most of the funding support. Other support comes from private sector partnerships. Another Coastal Act requirement is that all planning and regulatory staff share responsibility for assisting members of the public, applicants and other interested parties on how to constructively participate in the Commission's work. This function is obviously constrained by available time, staffing and support resources (e.g., travel funding for site visits, participation in local workshops and meetings).
- **Administration** – The agency cannot function without staff to conduct basic, legally required support operations. These include budgeting, accounting, business services, personnel, office operations, and information technology.
- **Legislative affairs, State and Federal agency coordination** – Both the State Legislature and federal Congress have an ongoing interest in and, from time to time take actions that affect the Commission's program. Budget and policy committee hearings often require a Commission presence. State, federal and local interagency taskforces and working groups on matters of direct jurisdictional concern to the Commission often demand and warrant staff participation. Provisions of the Federal CZMA provide vital ongoing financial support and management authority to California that staff must monitor and often take action to safeguard. Additionally, federal rules require regular reporting and periodic evaluation - all vital to maintaining federal support.

It is important to recognize that California's Coastal Management Program has federal certification that entitles the State to federal funding support and gives it critical regulatory authority over federal activities affecting coastal resources. The certified program includes all the mandated functions summarized above and failure to maintain or implement those responsibilities could result in a loss of federal certification and federal funding that is ever-more critical to the Commission.

GUIDING PRINCIPLES

The following principles provide guidance to agency management in making priority decisions relative to the allocation of staff time. Their application obviously requires good judgment and an adaptive approach to management decisions. Because decisions are necessarily made on a case by case basis, no fixed rules apply and many factors must be taken into consideration.

- **Long-term versus short-term impacts and consequences** – Regulatory and planning matters before the Commission can have both long- and short-term consequences for coastal resources. Taking the long view, is it important that staff resources be allocated to the matter at issue at this time? In 50 years, will it really make a difference?
- **Importance of the coastal resource at risk.**
- **Greater than local significance** – Is the matter at issue of primarily local or neighborhood importance or does it have broader more far-reaching significance? This involves an evaluation of potential cumulative effects as well as precedential implications.
- **Statutory requirements and consequences** – When statutory requirements are involved, what are the consequences of non-compliance? Some are programmatic; others affect individuals (e.g., personal liability for executive staff if the budget is overspent; acceptance of gifts worth over \$10; disclosure of discussions in closed-sessions; violation of ethical or professional standards jeopardizing professional certification or licensing). For example, failure to conduct mandated 5-year periodic reviews subjects the agency to possible litigation (the Commission has been sued once resulting in settlement and agreement to conduct the Marina Del Rey review), but given that there is no Coastal Act requirement that periodic review recommendations be implemented and while vital to any effective coastal management program, conducting these mandated reviews is not a high priority. Similarly, mandated Commission review, comment and recommendations for power plant modernization or expansions reviewed by the Energy Commission are not being conducted due to staff shortages.

Some Commission responsibilities, if not met, could result in new development entitlements or outcomes being approved by operation of law with significant practical, resource-impacting consequences that are clearly inconsistent with Coastal Act policies. Such results must be avoided if at all possible.

- **LCP updates, amendments and completion** – In the absence of an effective periodic review mechanism, the most practical and meaningful way to accomplish comprehensive updates in at least some important land use categories is through locally generated updates and General Plan revisions. Working with local government to identify amendments with relatively higher priority is one way to allocate staff time. Minor or project driven amendments having little coastal resource impacts are clearly of lower priority. Of highest importance are those more general LCP updates initiated by local government that seek to address various significant weaknesses in existing programs such as topical areas dealing with public

access, ESHA, water quality, climate change, agricultural lands protection, view shed protections, and lower cost recreational and visitor-serving opportunities and facilities. Several major updates are moving forward at the local level and it is important for Commission staff to be involved early in the process and to stay involved. For example, Marin, Sonoma and Monterey Counties are all working on major LCP updates.

Several LCPs have not yet been completed and the workload for the Commission in those uncertified areas varies with each local jurisdiction. Although the Commission's workload is high in the uncertified Santa Monica Mountains area of L.A. County, the substantive policy gap between the County and staff (based on Commission action on the Malibu LCP as well as hundreds of cdp decisions) is so large it is unlikely at this time that agreement can be achieved on how to proceed. Accordingly, it makes little sense to expend considerable staff resources on a futile engagement. However, staff resources are being directed to work with the County in updating the Marina Del Rey LCP where we think there is a relatively greater likelihood of success.

- **Partnership building** – California's Coastal Management Program is predicated on a partnership between the State and local government. On the whole, this partnership approach has been relatively successful. Local government share with the Commission the frontline defense of California's coast and it is clearly in the best interest of the public and coastal resources that there is a strong, sustained partnership in pursuit of the common mission. There are a number of steps staff can take to promote this partnership as well as improve efficiencies.

Based on recent initiatives by coastal cities and counties, as well as the Commission's own evaluation of the status of the partnership, it is clear that more effort should be expended in building, improving and sustaining that partnership. Doing what is appropriate and essential toward this end will require considerable resources. It is not yet clear how specifically this effort will materialize in the near future, but steps have been, are being and will continue to be taken toward this goal of achieving a more effective working partnership with local government.

ISSUES

In setting priorities for allocation of staff time, the issues raised, as well as a number and significance of relevant variables must be considered. For example, is the issue given high priority treatment in the Coastal Act and is it of significant importance to the public? Is it minor or major? Are impacts permanent or temporary? Are cumulative effects a concern? What are the precedential implications?

- **Public access and recreation** – Public access to and along the coast, as well as recreational opportunities are among the highest Coastal Act priorities. Any planning or regulatory matter raising access or recreation issues must be given priority.
- **ESHA and other important natural habitat** – Important and in some cases wholly unique habitat resources and wildlife species are being lost at an alarming rate around the planet, including in California. Since passage of the Coastal Initiative in 1972, the rate of loss of important, rare coastal habitat has been slowed significantly and in some cases even reversed (e.g., wetlands that have been restored). Nonetheless, population growth combined with development pressure and the collateral damage from new development (e.g., expanding the development footprint to provide fire clearance in rural areas) are resulting in significant incremental loss of unique coastal habitat. Accordingly and because the Coastal Act contains strong protective policies, habitat and species conservation will continue to be program priorities. Judgments about how much staff time, if any, should be devoted to addressing habitat and species impacts, and which habitats and species warrant the focus of staff resources in any particular case are challenging. Such difficult decisions are now being made regularly and will continue to necessarily be more difficult, discriminating and selective in the future.
- **Urban-rural boundaries** – One of the most important Coastal Act achievements is the establishment of rural-urban boundaries. Preserving such land use demarcations is vital to the conservation and promotion of many significant coastal resources and values (e.g., protection of agriculture, habitat, scenic resources, open space, concentration of development).
- **Energy** – The coast continues to be a focus for new, expanded or modernized energy facilities. Renewable energy projects are important and coastal sites are being identified. Due to the multiplicity of impacts and their importance, dealing with them is a priority.
- **Agriculture** – As population increases, public understanding and interest in the importance of safe and healthy, locally produced foods means agricultural lands – including in coastal areas - will play an increasingly important role in the nutritional future of society. Creative ways to sustain locally based agriculture as a viable economic enterprise are being identified and promoted. Protection of agricultural lands, especially prime soils, will continue to be a priority.
- **Mariculture** – Ocean farming of food will become an increasingly important source of protein for human consumption. New proposals must be carefully planned, developed and carried out due to the potential for

significant adverse, unintended consequences. While not many proposals are pending, more can be anticipated and a thorough review of these proposals will be a priority.

- **Infrastructure** – While most infrastructure projects are not coastal, many are pending and require attention. Creative ways to deal with them are being pursued (e.g., CalTrans funding for additional staffing and support). Care must be taken to avoid or minimize adverse effects on coastal resources, including avoidance of growth inducing consequences.
- **Climate change** – As manifestations of climate change are become increasingly severe, concentrated efforts are being made at all levels of government to reduce human caused green house gas emissions. As part of developing permit and LCP recommendations for Commission consideration, and pursuant to applicable Coastal Act policies, staff has long considered sea level rise and erosion rates and other effects of climate change in its analysis. Since 2006, the Commission and staff have placed more focused attention on the broad issues of climate change and global warming and how to implement Coastal Act policies by working with other agencies, working groups and task forces to develop approaches to reduce, mitigate, and adapt to climate change effects on coastal resources. The Commission is actively participating with other departments in the California Natural Resources Agency in developing climate change adaptation strategies for coastal California. Work on climate change issues, especially as a part of the Commission’s core regulatory and planning work is an ongoing priority. Commission staff will continue to seek additional funding for climate change work.

CONCLUSION

In summary, when faced with decisions affecting allocation of staff time, primary factors taken into account include: the importance of the coastal resource at stake; the context (both place-based and topical) of the activity at issue; the partnership element (e.g., is it important to and high on the agenda of local government); taking the long view and looking back will it really matter; likelihood of successful implementation; other public agency expertise; complexity of technical issues; cost in terms of time and support resources required; and other factors unique to the case.