

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



W3

ADDENDUM

December 11, 2012

TO: Commissioners and Interested Persons

SUBJECT: Addendum to Item W3 - Additional Local Government and Public Correspondence for LCP Workshop

Additional correspondence received:

- Letter from Francis Drouillard, December 6, 2012
- Letter from Mike Novo, Planning Director, Monterey County, December 6, 2012
- Letter from Susan Jordon, Director, California Coastal Protection Network, December 7, 2012.
- Letter from Brian Crawford, Director, Community Development Agency and Jack Liebster, Planning Manager, Marin County, December 10, 2012.

W3

Public Workshop
Improving the LCP Process
Wednesday December 12, 2012

December 6, 2012

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105

Attn: Elizabeth Fuchs

Dear Commissioners,

I am writing to ask the Commission to revise its inflexible policy of "take avoidance." That policy sometimes results in conditions that defy common sense.

Such an extreme interpretation of LCPs and the Coastal Act may effectively assert and maintain Coastal Commission authority. But many times "take avoidance" does not advance coastal protections or improve beach access.

Please recognize my criticism of the Commission is not an indictment of staff - I appreciate the hard work they do and the forthright manner in which they conduct their business. However, the absolute "take avoidance" policy they must implement all too often impedes the local planning process and fails to respect the social and economic needs of the people of the State of California.

My Anecdotal Experience

A generalization of my own experience with Commission staff may better illustrate the problem. Our vacant property is blessed with numerous coastal resources, some of which are protected under the Coastal Act.

My wife and I applied for a CDP from our local planning agency in May 2010. Our proposed development is consistent with our reasonable financial-backed expectations. It is also the least harmful feasible alternative, and all of its adverse impacts are mitigated to levels that are less than significant.

Not So Fast!

In reply to the referral from my local planning agency, Commission staff provided a thorough discussion of the issues that concerned them most. Although our application is still under review by local officials, staff graciously visited the site. Before leaving they offered advice on changes they felt were necessary to avoid an appeal to the Coastal Commission based on a rigid "take avoidance" policy.

Unfortunately, in our case, the result of implementing such a policy is absurd. Why? Because that inflexible policy requires me to completely avoid California sedge at the expense of removing a small forest of two-dozen Douglas fir and redwood trees.

The take of *Carex* is easily mitigated. Indeed, the number of plants and the size of the plant community are readily expanded. But the take of a small forest cannot be mitigated to a level that is "less than significant." There is something seriously wrong with that result.

What Commissioners Can Do

There are several things Commissioners can do to improve the local planning process. You can achieve that goal and better comply with the Coastal Act in these ways:

- 1) *Consider the social and economic needs of the people*
The Coastal Act requires the Commission to consider the social and economic needs of the people and well as beach access and environmental protections. It is time for the Coastal Commission to place more emphasis on those needs.
- 2) *Stay your hand more frequently*
It isn't necessary for the Commission to appeal all projects that fail to meet their high standards. When beach access or ocean health would not benefit from a de novo review, consider turning down the appeal on that basis.
- 3) *Allow applicants to speak at their Substantial Issue hearing*
This slight policy shift would appease private property rights groups and engender greater public support for the Commission and confidence in their decisions.
- 4) *Consider the adverse effects of the "no-build" alternative*
In some cases the "no-build" alternative has adverse effects on the environment. For example, aggressive invasive species

may threaten rare plant communities without intervention. Those adverse effects should be considered when comparing alternatives.

5) *Respect the knowledge of applicants*

An applicant spends far more time on their property than the consultants they hire or those that review their application for development. Treating them as knowledgeable resources rather than "self-serving" speakers would benefit the public hearing process as well as elevate public support for the Commission and increase confidence in its actions.

As a quasi-judicial agency the Commission is uniquely empowered to implement the slight policy changes needed to improve local coastal planning without changing any laws or ordinances.

One last thought -- please recognize that the Coastal Commission serves everyone in the state, not just beach-goers and environmental activists. You have a duty to provide balanced decisions that consider all of the social and economic needs of all the people.

Thanks for hearing me out!

Sincerely,



Francis Drouillard
2021 Shady Lane
Novato, CA 94945
<mailto:fgdrouillard@gmail.com>
(415)989-4551, x213 days

PS - Thank you and staff for all of the fine things you do.

PSS - Thank you for hosting this important workshop.

W3

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY



PLANNING DEPARTMENT, Mike Novo, Director

168 W. ALISAL ST., 2ND FLOOR
SALINAS, CA 93901

(831) 755-5025
FAX (831) 757-9516

December 6, 2012

Elizabeth Fuchs
Charles Lester
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-219

Via email

Subject: Public Workshop: Improving the LCP Planning Process, December 12, 2012, Agenda Item W3

Dear Commissioners:

During 2012, the Planning Directors and Assistant Directors from four central coast counties (Ventura, Monterey, Santa Barbara and San Luis Obispo) have met periodically to discuss issues of mutual interest related to the coastal zone, California Coastal Act (CCA) and the coastal development permit and planning process. The purpose of these meetings was to identify common issues that each agency has faced as local administrators of the CCA and develop a regional strategy for addressing them.

In general, the Counties have identified the following areas of concern:

- Counties have limited resources available to update Local Coastal Plans (LCP) and early input from Coastal Commission staff is imperative to ensure timely completion of LCP amendments, especially when county staff is obligated to provide outreach to our local communities and stakeholders as prerequisite to a local decision. Late hits and scope creep that occur without local public outreach efforts are counter-productive and they can result in substantial or indefinite delays to LCP amendments. The Planning Directors would like to foster a collaborative approach that yields a measured return on local investments into LCP amendments and would like to strive for a new model that, at a minimum, achieves approval of incremental amendments versus the alternative of having no amendment approved.
- By the time a staff report is written or dispute resolution is offered, interpretation of a specific coastal issue or policy is often already entrenched. The Planning Directors would like to explore the opportunity for pre-Dispute Resolution conferences with an empowered Coastal Commission

manager or the Executive Director to present both sides of an unresolved issue, prior to formal Dispute Resolution or a hearing with the Coastal Commission. The Planning Directors would like to pursue a balanced approach to resolving disagreements.

- Appeals can be administratively problematic for counties, especially if the appeal is used as vehicle to set new regulations absent an LCP amendment or used as a precedent for all future actions.
- Each of the counties expressed an interest in proposing a clarified statewide definition for Environmentally Sensitive Habitat Area (ESHA) that is reasonable and can be easily understood by the public and implemented by local jurisdictions.
- The central coast counties are concerned that there is inconsistency in implementation of the CCA and LCPs from District Office to District Office. At the same time, it does not appear that the District Offices are able, without the Executive Director's approval, to negotiate reasonable compromises. The Planning Directors want to build strong relations with the Executive Director and Coastal Commission Staff. We want to help change the culture of the Coastal Commission staff, and work in a more collaborative way together, so we can be as proud of our innovative planning work in the Coastal Zone as we are in our inland areas.

In Monterey County, we have worked hard with your Santa Cruz office staff to have a collaborative approach with quarterly meetings to discuss topics of concern and free and open communication. We constantly share information with your staff, who provide as much information as they can in return. Staffing limitations for the CCC have caused this communication to be more difficult over the past couple years. Adequate funding of the supporting District Offices is critical to ensure continuity, CCC staff input into our daily implementation of the CCA, and good overall communication. We have the following specific comments as it relates to our relationship with the Coastal Commission:

Billboards:

In November 2007, the Board of Supervisors adopted a resolution of intent to adopt LCP amendments to our coastal zone sign regulations. Those amendments were filed as complete at the CCC on June 2, 2008. The original 60-day action deadline was August 1, 2008, but the CCC extended the action deadline for 1 year to August 1, 2009. The CCC took action on the proposed amendments on July 9, 2009 and suggested extensive modifications. Some of the proposed modifications raised legal issues for the County. For example, the CCC modified the code to require that if billboards are relocated, they need to be relocated outside of the coastal zone. This is not feasible since billboards are prohibited in the non-coastal areas of the County. Because it isn't feasible, the County would be forced to pay the owner of the billboard fair market value compensation to eliminate the sign. We are not in position to do that. The County could also be legally vulnerable to First Amendment challenges from some of the suggested changes. County staff and attorneys discussed the modifications with CCC staff and their attorneys in November 2009. No agreement could be reached with staff. Because we were at an impasse, the County of Monterey was forced to start the ordinance process all over again because the modifications expired on January 9, 2010. Thus, the County of Monterey has a sign ordinance for the non-coastal areas of the County that bans new billboards, but a different, outdated ordinance for the coastal areas of the County. The overall goal of banning new billboards was lost over an inability to come to agreement over some of the words.

Short-Term Rentals:

In April 1997, the Board of Supervisors adopted a resolution of intent to adopt an ordinance creating regulations for "Short-Term Rentals". CCC staff submitted a memo in September 1997 asking a number of questions regarding the ordinance to which the County responded. However, in November 1997, CCC staff sent a letter to the Chair of the Board of Supervisors requesting a "reformulation" of the ordinance. They requested that the County come up with a whole new administrative process just for transient rentals instead of utilizing the Coastal Administrative Permit process already in place. We use the Administrative Permit process in the non-coastal area of the County to regulate and control use of short-term rentals. CCC staff wanted a whole new ordinance outside of the purview of the LCP. The request seemed so burdensome that the County dropped the whole idea. Consequently, transient rentals of residential properties (less than 30 days) within the coastal zone remain prohibited. Rather than being regulated and controlled by discretionary permits, we have a huge code enforcement burden, instead.

Staff Coordination:

Despite the examples noted above, we have had some success with some major projects due to proactive and consistent coordination with CCC staff. On the Pebble Beach Concept Plan project and amendments to the Del Monte Forest Land Use Plan, CCC staff in the Santa Cruz office met with us regularly throughout the process. The amendments to the Del Monte Forest Land Use Plan were approved by the County and the CCC swiftly allowing the project that planned for the build out and preservation of Pebble Beach Company property to be approved by the County without any appeals to the CCC. It should be noted that the project attempted approval twice previously without success. The CCC and the PB Company came to a legal agreement as to a project concept that would be acceptable to both sides. The steps taken for the third, and successful, attempt, would be a good model to use for major projects.

Quarterly Meetings:

Monterey County staff and Coastal Commission staff meet quarterly to discuss projects proceeding within the coastal zone and related issues, interpretations to the LCP, and other matters. We alternate meeting sites between your offices and ours and we create an agenda for each meeting. Most of the time issues are resolved. Occasionally we agree to disagree on issues or interpretations, but this seems to be rare. The discussions have helped our staff deal with their applicants and guide them with their projects. Thus, the number of projects that have been appealed by the CCC has been reduced dramatically.

We look forward to having open discussions with the Executive Director, Coastal Commissioners, Coastal Counties Regional Association and staff on ways to improve and modernize the planning and permitting process through positive and collaborative improvement.

Sincerely,



Mike Novo, Planning Director
County of Monterey

cc: Board of Supervisors
File

W3



CALIFORNIA COASTAL PROTECTION NETWORK
2920 Ventura Drive, Santa Barbara, CA 93105 • 805-937-3037
WWW.COASTALADVOCATES.COM

December 7, 2012

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

Re: Support of Commission staff's LCP coordination and improvement efforts

Dear Chairwoman Shallenberger and Commission Members,

On behalf of the California Coastal Protection Network, we would like to commend the Commission for holding a formal public workshop on *"Improving the Local Coastal Planning Process."*

As you know, outdated Local Coastal Plans are one of the most critical issues facing the Commission and its ability to uphold the standards of the Coastal Act. Most of the LCPs that govern the protection of coastal resources were originally certified in the 1980s and do not address significant emerging issues including climate change, sea level rise, marine debris, tsunami run-up and the increasing pressure of development on coastal agriculture. On the process side, the Commission itself has explicitly expressed concern over extensive delays in processing comprehensive LCP amendments and LCP Updates.

When the Coastal Act was passed, it was anticipated that the need to update them would be accomplished every five years via a process called the Periodic Review. But there is no "stick" available to the State to require local governments to be proactive and engage in what can be a lengthy and expensive process for both the local government and the Coastal Commission. As a result, local governments often seek multiple "project-specific" LCP amendments to gain approval for individual projects or plans that may be inconsistent with an underlying LCP and the Coastal Commission staff finds itself locked in a mode of running in place just to keep up with demand.

In terms of the scope of the problem, Dr. Lester indicated at a previous Commission meeting several months ago that there are approximately 141 LCP planning items pending in front of either the Commission or at the local government level. Of those, 70 have been submitted to the Commission and 67 are "major" amendments that propose significant changes to the kind, location, and /or density of uses in the LCP. And, once a submittal has been made, certain legal time constraints are triggered, requiring the Commission to grant multiple extensions.

Commission staff has made an admirable effort to assist local governments with various aspects of their LCPs, but remain seriously hamstrung by a lack of funding for this very time-consuming and detailed work. Since the previous LCP workshop held in 2009, your staff has successfully implemented many of the suggestions discussed and devised a Best Practices Tool to aid LCP planning going forward. And Attachment 1 of the staff report provides specific examples of successful coordination between your staff and local governments. However, despite these best efforts, it will be increasingly difficult to increase efficiency and improve the LCP amendment and update process without a substantial infusion of much needed financial resources and the hiring of additional dedicated planning staff to respond to the numerous LCP items already in review by Commission or pending.

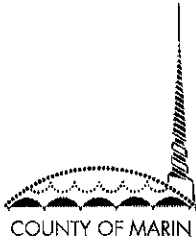
We believe it is time for local government and the Commission to join forces and recognize that both would benefit from additional funding to make desired improvements to the Local Coastal Planning Process a reality. Even with the passage of Prop. 30, it would be ill-advised to rely solely on efforts to increase funding for this work from the General Fund budgeting process where increases in funding are likely to be incremental and difficult to obtain given all the competing funding interests in Sacramento.

If possible, we would suggest that the Commission schedule a LCP Funding Strategy Workshop or initiate an internal working group to explore additional funding streams that could enable the Commission and local governments to improve the LCP planning process and bring LCPs throughout the state into the 21st century by addressing emerging issues that pose the greatest threat to the future protection of coastal resources.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan Jordan", with a long horizontal flourish extending to the right.

Susan Jordan, Director
California Coastal Protection Network



COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

W3

December 10, 2012

California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-219

RE: Workshop on Improving the Local Coastal Planning Process

Honorable Commissioners,

Local Coastal Programs (LCPs) were born through the Coastal Act of 1976 as a partnership between local governments and the Coastal Commission in recognition of the importance of adapting the way Coastal Act policies are carried out to the varying conditions of California's diverse coast. Local governments were given the lead on the LCP process, as explicitly provided in at least two sections of the Act:

Section 30500. Preparation [of LCPs] ...

(c) The precise content of each local coastal program **shall be determined by the local government**, consistent with Section 30501, in full consultation with the commission and with full public participation.

Section 30512.2. Land use plan; criteria for decision to certify or refuse certification...

(a) The commission's review of a land use plan shall be **limited to its administrative determination that the land use plan submitted by the local government does, or does not, conform with the requirements of Chapter 3** (commencing with Section 30200). In making this review, **the commission is not authorized by any provision of this division to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan.**

(b) The commission shall require conformance with the policies and requirements of Chapter 3 (commencing with Section 30200) **only to the extent necessary to achieve the basic state goals** specified in Section 30001.5.

As a follow-up to this Workshop, the Commission should adopt a policy giving operational meaning to these policies for both the staff and the Commission itself.

In this regard, we are in substantial agreement with the concerns the Counties of Santa Barbara and San Luis Obispo expressed in their letters of November 19, 2012, and hope that the Commission responds to those in the spirit of Sections 30500 and 30512.2.

The Commission should also recognize there are many ways Coastal Act standards can be met. In the context of LCP amendments existing LCP provisions may exceed the requirements of the Coastal Act, or new approaches may offer more relevant, efficient and effective solutions.

In either case, if a local government demonstrates the new policy meets the requirements of the Coastal Act, the Commission should approve the change.

Similarly, what may work in one area may not necessarily be the best solution in another -- one size does not fit all. For example, Marin's coastal agriculture is completely different from that practiced in major production areas like the Central Valley, and in many ways even unlike that in San Luis Obispo, Santa Barbara and Ventura counties: In Marin County, family farmers and ranchers operating at a relatively small scale, and increasingly focusing on organic and sustainable methods, have been stewards of the land for generations, often on land held in the family for more than 150 years. Long before the Coastal Act, they maintained a working landscape that provides outstanding scenic, open vistas and pastoral beauty for the enjoyment of all. Marin County is working with these families and the wider community to carefully tailor strategies for protecting these productive lands and natural resources in perpetuity. A recent CCC staff's position on imposing new requirements for coastal permits for grazing and crop planting is an example of where with a broad brush permit requirement does not reflect Marin's history and institutional support for Agricultural stewardship. In reality, such permits will be counter to supporting Agriculture. Furthermore, the practice of agriculture is by its very nature a continuous and cyclical undertaking, and grazing livestock or planting crops are steps in the on-going process of agriculture, rather than new "developments" in themselves.

This last example is particularly troubling as an example of "regulatory creep" that many coastal planners are concerned with. Some Commission guidance on limitations or realistic implementation requirements for the expansive and all-encompassing definition of "Development" within the context of the Coastal Act would be very useful, especially considering that the definition of development is so broad as to include the "... the placement or erection of any solid material..." (PRC Section 30106).

Finally, while proposed LCP Amendments may be related to one another and to adopted policy, they are not automatically all inter-dependent. Submitting a set of amendments should not necessarily open the entire LCP for Commission review. Such a practice will make local governments reticent to update individual policies out of concern over subjecting a larger portion of their LCP to the substantial undertaking and cost that now characterizes major LCP Amendments. And simply reformatting, renumbering or rearranging existing LCP provisions should never be used as a way of opening up the LCP provisions for review as was done to Santa Barbara and San Luis Obispo Counties.

Thank you for your consideration.

Sincerely,



Brian Crawford
Director
Community Development Agency

Jack Liebster
Planning Manager
Advanced Planning



Los Angeles County
Department of Regional Planning

Planning for the Challenges Ahead



Richard J. Bruckner
Director

December 11, 2012

W3

Mary K. Shallenberger, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dear Ms. Shallenberger:

As you enter into discussions between local governments and The Coastal Commission staff, I am writing to describe my recent experiences with The California Coastal Commission and their staff. The County of Los Angeles, last year worked successfully with The Commission and their staff on amendments to our plans for Marina Del Rey and we are currently working with the Commission staff in the formulation of a Local Coastal Plan for that portion of the Santa Monica Mountains located in unincorporated Los Angeles County.

In both instances we have worked cooperatively with staff on the plans and were pleased that the staff dedicated significant time and resources to our dialogue. Most recently, under the leadership of Dr. Charles Lester, Executive Director of The Coastal Commission, we have experienced actions that confirm his commitment to work cooperatively with local government to find common ground and craft plans that meet the requirements of the Coastal Act and the objectives of City and County officials. We look forward to continuing our relationship and reinforce the spirit of cooperation that we have experienced.

Sincerely,

Richard J. Bruckner
Director

RJB:lg

c: California Coastal Commission (Charles Lester)

EO_121112_L_M_SHALLENBERGER