

**ORCA**  
(Organization of Regional Coastal Activists)  
**TRAINING MANUAL**

- 1- Overview of the Coastal Act  
    Chapters  
    LCPs
- 2- Federal Jurisdiction
- 3- Coastal Commission Structure
- 4- Legal issues
- 5- Appeals
- 6- Monitoring Development
- 7- Working with staff
- 8- Preparing for a Commission hearing

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# Chapter One

## OVERVIEW OF THE COASTAL ACT

### **A. Historical Review**

- California Coastal Conservation Initiative, Proposition 20, was passed by the voters in November 1972.
- California Coastal Act, enacted by the State Legislature in 1976 (California Public Resources Code Section 30000 et seq; California Code of Regulations, Title 14, Section 13000 et. seq.)
- The California Act contains the standards used by the Coastal Commission when reviewing coastal development permit decisions and Local Coastal Plans.
- The Coastal Act is umbrella legislation that is designed to encourage local governments to create local coastal plans to govern decisions that determine the short and long-term conservation and use of coastal resources.
- The Coastal Act addresses development within the Coastal Zone. The Coastal Zone consists of 1,100 miles from Oregon to Mexico including 287 miles of shoreline surrounding nine off-shore islands, encompasses 1.5 million acres of land, and stretches from 3 miles at sea to an inland boundary that varies from several blocks in urban areas to as much as 5 miles in less developed areas.

### **B. FUNCTION OF THE CHAPTERS**

- The Coastal Act is divided into 10 chapters, but the heart of the Coastal Act is found in chapter 3.
- Chapter 3 called ‘Coastal Resources Planning and Management Policies’ (Section 30200 et. seq.) contains seven articles that mandate protection of public beach access, recreational opportunities, marine and land resources, and govern all development:

#### **Article 1: General Introduction**

Defines policies as ‘standards’ for review of coastal development inside the coastal zone and outside the coastal zone where coastal resources may be affected. Article 1 mandates that where Chapter three policies conflict,

they may be resolved in a manner which on balance is most protective of significant coastal resources.

## **Article 2: Public Access**

Mandates that development shall not interfere with the public's right of access to the sea. Mandates developers shall provide new beach access, however recent takings decisions require that there be a nexus between the development and the loss of existing access. Also places priority on lower cost visitor serving facilities.

## **Article 3: Recreation**

Coastal areas suited for coastal recreational activities shall be protected for such uses. Places a priority on coastal dependent recreational or visitor serving uses over residential uses. Upland areas necessary to support coastal recreations uses shall be reserved for such uses and ocean front land suitable for coastal dependent aquaculture and shall be given priority, except over other coastal dependent uses.

## **Article 4: Marine Environment**

Marine resources shall be maintained, enhanced and, where feasible, restored. Uses shall be carried out in a manner to sustain the biological productivity of coastal waters. The biological productivity and quality of coastal waters, streams, wetlands, estuaries and lakes shall be maintained and restored. Sections 30230 and 30231 provide the major link to issues dealing with water quality issues.

This Article also contains major sections dealing with wetlands, (30233) and what is allowed in a wetland, armoring (30235), and stream alterations (30236).

## **Article 5: Land Resources**

Section 30240 and 30233 from Article 4 contain the heart of the Coastal Act as it pertains to the protection of habitat and species. The language protecting habitat is the strongest of any environmental law in the Nation. ESHA under the Coastal Act means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degrade by human activities and development. It states that ESHA's shall be protected and that development adjacent to ESHA shall be sited and designed to prevent impacts on the ESHA and follows that with the limitation that only uses dependent on those resources shall be allowed. Protection of ESHA is different from that provided through the NCCP process and an NCCP or HCP does not trump the Coastal Act.

This article also addresses agricultural land protection (30241-30243) requiring that prime ag land be maintained and protected and archaeological resources (30244), which, unfortunately provides little if any real protection of archaeological resources.

### **Article 6: Development**

Development should be clustered (30250), the scenic and visual qualities of coastal areas should be protected (30251) and the location and amount of new development should maintain and enhance beach access (30232). This article also contains the section (30253) that new development shall not require armoring nor substantially alter natural landforms. It also contains the geologic/hazard policy (30253), states the intent of the Legislature that Highway 1 remain a scenic 2 lane road (30254), requires that there be sufficient infrastructure to accommodate the development (30254) and mandates that coastal dependent development shall have priority over other development (30255).

### **Article 7: Industrial Development:**

The Commission has permitting authority over all offshore oil and gas development on and within the 3 mile jurisdiction and onshore facilities within the coastal zone. This article deals with oil and gas development (30252), tanker facilities (30261), refineries (30263), pipelining of oil (30265), encourages industrial facilities to locate or expand within existing sites but allows accommodation for coastal-dependent facilities (30260) and provides the commission with only limited input into the siting and design of electric generating plants.

## **C. LOCAL COASTAL PLANS & PERIODIC REVIEWS**

### **Local Coastal Programs**

Local Coastal Programs (LCPs) are basic planning tools used by local governments to guide development in the coastal zone, in partnership with the Coastal Commission. LCPs contain the ground rules for future development and protection of coastal resources in the 74 coastal cities and counties. The LCPs specify appropriate location, type and scale of new or changed uses of land and water. Each LCP includes a land use plan and measures to implement the plan (such as zoning ordinances). Prepared by local government, these programs govern decisions that determine the short- and long-term conservation and use of coastal resources. While each LCP reflects unique characteristics of individual local coastal communities, regional and statewide interests and concerns must also be addressed in conformity with **Coastal Act** goals and policies. Following adoption by a city council or county board of supervisors, an LCP is submitted to the Coastal Commission for review for consistency with Coastal Act requirements.

Many of the 74 coastal counties and cities have elected to divide their coastal zone jurisdictions into separate geographic segments, resulting in some 126 separate LCPs. As of 2002, approximately 70 percent of the LCP segments have been certified, representing close to 90 percent of the geographic area of the coastal zone, and local governments are issuing coastal permits in these areas. In some areas, the certified LCP is for only part of the coastal zone. Areas that are not included are said to be "white holes", i.e they have deferred full certification. To determine the status of the LCP in any given geographic area, contact the appropriate **district office** of the Coastal Commission. In some cases, although the majority of the county or city has a certified LCP, areas have been removed and deferred their certification to a later time. These areas of deferred certification are referred to as "white holes"

After an LCP has been finally approved, the Commission's coastal permitting authority over most new development is transferred to the local government, which applies the requirements of the LCP in reviewing proposed new developments. The Commission retains permanent coastal permit jurisdiction over development proposed on tidelands, submerged lands and public trust lands, and the Commission also acts on appeals from certain local government coastal permit decisions (see below). The Commission reviews and approves any amendments to previously certified Local Coastal Programs.

### **LCP Periodic Reviews**

Under the California Coastal Management Program, planning for and regulating development in the coastal zone is shared by the Coastal Commission and local jurisdictions: upon completion of a certified Local Coastal Program (LCP), the local government assumes most permitting and planning responsibilities. The Commission retains some jurisdiction over development in the coastal zone. In addition, Section 30519.5 of the Coastal Act requires that the Commission "review every certified local coastal program to determine whether such program is being effectively implemented in conformity with the policies" of the Coastal Act, and recommend corrective actions,

where necessary. The local government reviews the recommendations and within one year either takes the recommended action or forwards to the commission a report setting forth its reasons for not taking the recommended action. The commission then reviews such report and, where appropriate, reports to the Legislature and recommends legislative action necessary to assure effective implementation of the Coastal Act.

- Of the 73 cities and counties in coastal California, 65% of local coastal governments now have fully certified Local Coastal Plans covering 90% of the coast.
- When an area has a certified Local Coastal Plan (LCP), the local government has permitting authority over most new development
- All development within an area covered by an LCP shall be consistent with that plan, but appeals are limited.
- If a city or county with a certified LCP approves a project within the appeals zone that is not consistent with the certified LCP or a project anywhere within the coastal zone that is not consistent with the public access policies of Chapter 3 of the Coastal Act, you may appeal that decision to the Coastal Commission. You must file the appeal within 10 days of the local government's final notification to the CCC)
- If an area is not certified (15% of the coast) then the standard of review for all development is the Coastal Act.
- Any proposed changes to a certified LCP must be submitted to the Coastal Commission in the form of an amendment and must be judged consistent with the Coastal Act to be approved.
- While requiring LCPs and updates every 5 years, the Coastal Act does not provide any penalties for failure to do so.
- One of the biggest problems facing the environmental community is that most of the certified LCP's now standing are old, out of date, and have been amended numerous times without a comprehensive review.
- The periodic review process is essential if outdated LCP's are to be updated with new information regarding water quality, habitat, etc.
- To determine if your area has a certified LCP Attachment A includes a map of all certified areas as well as a detailed list of certified LCP's.

## **D. KEY ISSUES FACING THE CALIFORNIA COAST**

- The Key issues facing the California coast are:

- Protection of Environmentally Sensitive Habitat (ESHA) and wetlands
- NCCPs
- DeSalinization Plants
- LNG Facilities
- Water Quality
- Public Access
- Erosion/Armoring of the Coast
- Protection of Agricultural Lands
- Viewshed Protection
- Protection of Native American resources
- Periodic Review and Update of LCPs

## 2. FEDERAL JURISDICTION

In addition to the authority granted to the Commission to regulate development under the Coastal Act, the Commission also has jurisdiction dealing with Federal Permits or Activities. Under the Coastal Zone Management Act (CZMA) the Commission may review Federal Permits or Activities for their compliance with its Coastal Management Program (CCMP), in this case the Coastal Act. It provides the Commission the ability to look at Federal Activities and Permits (such as oil drilling on the Outer Continental Shelf in Federal waters, or development on military bases) to determine if they have an impact on the resources of the Coastal Zone. Most importantly, the permits or activities involved do not have to occur within the boundaries of the Coastal Zone, the test is whether or not they impact the resources OF the Coastal Zone. If the Commission determines that the permit or activity is not consistent with the CCMP then it must specify how the permit or activity may be changed to be found consistent. Also, if the Commission determines the permit or activity is not consistent, that decision may be appealed to the Secretary of Commerce.

There are two types of reviews under the CZMA, Consistency Determination and Consistency Certification

### **Consistency Determination:**

This type of review applies to Federal activities. These activities must be consistent to the "maximum extent possible" with the Coastal Act. This means the activity must be consistent with the Coastal Act unless Federal law prohibits that from happening. If the Commission objects to the activity, it must specify how the Federal agency can make the activity consistent. Federal agencies can proceed if the State objects; however conflicts are encouraged to be resolved through mediation by the Secretary of Commerce. If the parties fail to agree, then litigation is possible

### **Consistency Certification:**

This type of review applies to federally permitted and supported (funded) activities. They must be fully consistent with the Coastal Act. If the Commission objects the decision is appealable to the Secretary of Commerce

<h2 style="margin: 0;">Chapter Two</h2> <h1 style="margin: 0;">COASTAL COMMISSION</h1>
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### A. STRUCTURE BY APPOINTING AUTHORITY

- The Coastal Commission is comprised of 12 voting members and 4 non-voting members.
- There are 3 appointing authorities who are entitled to each appoint 4 Commissioners and 4 alternates. They are the Governor, The Senate President Pro Tem and the Assembly Speaker
- Of the 12 voting members, 6 are drawn from the public and 6 are elected officials. The spots filled by elected officials must be drawn from specific geographic areas for each appointing authority. The Governor: North Coast (Del Norte, Humboldt, Mendocino) and South Central (Ventura, Santa Barbara, San Luis Obispo). The Senate President Pro Tem: North Central (Sonoma, Marin, San Francisco) and South (L.A., Orange County). The Speaker: North Central (Monterey, Santa Cruz, San Mateo) and San Diego
- The terms of Commissioners have just been changed. The Governors appointees are for two years but serve at the pleasure of the Governor and may be changed by him at any time. The Speaker and Senate President Pro Tem's appointees serve for fixed terms. This first term each appointing authority has 2 appointees who will serve for 2 years and 2 who will serve for 4 years. After the first two years all terms will be for four years.
- By law, Commissioners are entitled to select their own alternates, though that rarely occurs
- The four non-voting members are appointed by their respective agencies: Trade and Commerce, Resources, State Lands Commission and Business, Transportation and Housing.

### 12 COASTAL COMMISSIONERS

<b>Governor</b>	<b>Senate</b>	<b>Assembly</b>
1. Meg Caldwell (Chair)	1. Sara Wan (4 year term)	1. Pat Kruer (4 year term)
2. Steve Kram	2. Mary Shallenberger (2 year term)	2. William Burke (4 year term)
3. Bonnie Neely (Humboldt)	3. Mike Reilly, Chair (4 year term) (Sonoma)	3. Dave Potter (2 year term) (Monterey)
4. Dan Secord (Santa Barbara)	4. Toni Isman (2 year term) (2 year term)(Laguana Beach)	4. Scott Peters (2 year term)(San Diego)*
* Shallenberger, Isman, Potter and Peters terms will be up May 2005		

## **B. MONITORING THE COASTAL COMMISSION**

### **A. The CCC Voting Chart and the Sierra Club CoastWatcher**

- Since 1985, the Sierra Club, LCP and NRDC have published an Annual Coastal Commission Conservation Voting Chart that tracks the voting records of each commissioner on key issues
- Despite criticism that the Commission is too 'green', the voting chart reveals that the Commission dropped from a 60% pro-conservation vote in 1999 to 41% in 2001. The Senate appointments have the strongest pro-conservation scores while the Governor's appointments have the weakest.
- Each month, the Sierra Club publishes a monthly CoastWatcher that details the important votes at each Coastal Commission hearing and provides a commentary on the proceedings. The CoastWatcher is available on line. To subscribe to the CoastWatcher, go to <http://lists.sierraclub.org/archives/calif-coastwater.html>

### **B. Other Means of Keeping Track**

- The Coastal Commission also has a web page that contains numerous documents, including a copy of the Coastal Act, that can be downloaded in PDF format. Upcoming agendas are posted so that you can check if your issue is scheduled to be heard at the next meeting. You can log on at: <http://www.coastal.ca.gov>
- Vote the Coast also has information posted on its web site regarding coastal issues. You can go to their site at [www.votethecoast.org](http://www.votethecoast.org).

## Chapter Four LEGAL ISSUES

### Public Prescriptive Rights

#### What is a Public Prescriptive Right?

- Prescriptive Rights refers to public rights that are acquired over private lands through use along the California coast the general public has historically used numerous coastal areas. Trails to the beach, informal parking areas, beaches and bluff tops have provided recreational opportunity. The public may have the right to use the property by permission of the owner or the public may acquire the right through use of the property without permission.
- Where the public has acquired the right through use, the public has essentially obtained an easement over real property that comes into being without the explicit consent of the owner. In fact, if the owner provides permission, then the public does not gain a prescriptive right or easement. The acquisition of such an easement is referred to as an "implied dedication", the right acquired is also referred to as a "public prescriptive easement". This term recognizes that the use must continue for the length of the "prescriptive period" before a public easement comes into being. In California the prescriptive period is five years.
- Since 1972, a landowner may prevent the creation of prescriptive rights by posting signs containing the language set forth in Civil Code Section 1008 "right to pass by permission, and subject to control of owner: Section 108, Civil Code" and renewing the same if they are removed, at least once a year or by publishing such language in a newspaper.

Another method to prevent creation of public rights that the landowner may use is by recording in the office of the recorder of the county in which the land is situated a notice of consent to public use.

- The loss of historical access and recreational sites funnels a growing population into fewer and fewer areas and can reduce the range of uses as well. Prescriptive trails or sites may provide access to bluff tops, wide sandy beaches, remote coastal areas, rocky fishing sites, scuba entry points, intimate pocket beaches and more, providing for a wide variety of coastal experiences.

#### The Coastal Commission and Prescriptive Rights.

Under the Coastal Act, the Commission is required to maximize public access. On sites with coastal development permit proposals, where investigation shows that public use is substantial enough to create potential prescriptive rights, the Coastal Commission is required to protect those areas of use prior to approving a development project that would interfere with those rights.

If you believe that such rights exist and can provide sufficient evidence to the staff of this on a particular project, you may request that the staff either condition the permit to provide for an easement covering the area involved or an equivalent easement, i.e. it provides similar access to the same area. If the applicant is unwilling to provide equivalent access you may request staff to require a prescriptive rights study of the applicant.

### **Investigating Potential Prescriptive Rights**

- The Commission, in conjunction with the State Attorney General's Office, can investigate areas of potential prescriptive rights. The goal of prescriptive rights investigation is to gather enough information about the subject property to accurately detail the property's history and use status.
- The initiation of a prescriptive rights investigation is not a determination that a prescriptive right exists. The outcome of the investigation will determine whether there is a sound factual basis for making a claim of prescriptive rights
- Only a court of law may make the final determination that a prescriptive right exists.

### **Criteria for Determining Prescriptive Rights to Use a Property**

A prescriptive rights investigation includes documentary searches, on-site inspections and questionnaires and interviews. The most important source of evidence is from persons familiar with the past and current uses of the property. If you believe that these rights exist you should obtain as much information and evidence as possible. Get statements from those who claim to have used the area. Find out when, and under what conditions they used it and keep in mind the following basic criteria that you must establish:

- The land has been used for at least five years as if it were public use
- The use must be substantial rather than minimal and it must be continual, though it need not be continuous
- The use must be by members of the public, not just a few neighbors
- The use must have been without asking or receiving permission from the owner
- The use must have been with the actual or presumed knowledge of the owner
- The use must have been without significant objection or bona fide attempts by the fee owner to prevent or halt such use.

### **The Public's Role in Preserving Prescriptive Rights**

A prescriptive rights investigation includes documentary searches, on-site inspections and questionnaires and Interviews. The most important source of evidence is from persons familiar with the past and current uses of the property. Participating in prescriptive rights investigations will help identify where these rights exist and protect them in perpetuity.

## **Protecting Public Access**

Two cases have particularly affected the way this issue is dealt with. The first was *Nollan v. California Coastal Commission* (1987), which required the establishment of a nexus (connection or correlation) between the impact of a development on public access and a condition, such as an access dedication, to remedy the impact. There must also be a legitimate governmental interest furthered by the condition required.

The second case was *Dolan v. City of Tigard* (1994), which requires the governing entity to establish not only a reasonable relationship between the impact and the required mitigation condition, but also a showing that there is a rough proportionality between the impact and the condition, particularly with respect to how conditions of permit approvals may be required to mitigate the negative impacts of individual developments.

These cases, and other cases, have affected the manner in which both the public access requirements and other provisions of the Coastal Act are implemented.

As a result of these cases it is more difficult to obtain new OTDs for public access, it is not impossible, so long as those seeking to protect the public's rights obtain sufficient evidence that such rights exist on a property and the development would interfere with those rights. In making your presentations at the Commission and to staff, it is important to demonstrate the access impacts of a proposed project.

## **Takings**

Since the late 1980s a series of Supreme Court cases regarding various "takings" issues have influenced how state and local government implement their land use regulatory programs. These cases are based on the Fifth Amendment to the Constitution. The Fifth Amendment states, in part, "nor shall private property be taken for public use without just compensation". If the Commission, or any other regulatory body, makes a decision with regards to land use that could be considered to be taking the property for public use, i.e. by denying that use or by placing conditions on that use so as to effectively deny its use, then it could be considered to be a "taking".

Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. The subject of what government action results in a "taking" was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council*. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of property for public use unless the proposed project would constitute a nuisance under State law. Another factor that should be considered is the extent to which a project denial would interfere

with reasonable investment-backed expectations. The Commission interprets Section 30010, together with the Lucas decision, to mean that if Commission denial of the project would deprive an applicant's property of all reasonable economic use, the Commission may be required to allow some development even where a Coastal Act policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law.

The fear of potential takings lawsuits which could cost a jurisdiction funds has had a chilling affect on both state and local governments' willingness to pursue access-related and other conditions, even in the face of known impacts.

It is important to remember, however, that the takings rulings of the Supreme Court do not require that an applicant be granted whatever they ask. The Supreme Court has said that a governmental agency must grant a property owner the right to get a use that is consistent with a reasonable expectation of financial return on their investment. This means they must usually be allowed some sort of development but it could be very minimal. If there is already development on a property, then there is no basis for a takings if expansion is sought. If the applicant is seeking a subdivision, there is no absolute requirement for a subdivision and this is discretionary and denial does not constitute a takings.

There is also no basis for a takings claim at the planning stage. Therefore, down zoning at the LCP stage **does not constitute a takings**, contrary to what many land use rights advocates would have you believe.

## CHAPTER FIVE APPEALS

- After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of development:
  - 1) Development approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance
  - 2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream or within 300 feet of the top of the seaward face of any coastal bluff.
  - 3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area. (See below for explanation of why this is usually not a basis for appeal)
  - 4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or approved zoning map.
  - 5) Any development which constitutes a major public works project or a major energy facility
- Provided the development is in the appeal jurisdiction of the Commission or meets the conditions above, then it may be appealed. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies of the Coastal Act
- Hearings by the Commission to determine if a project is appealable are called Substantial Issue hearings.
- Section 30625 of the Coastal Act states that the Commission shall hear an appeal of any appealable local government action unless it finds that no substantial issue exists with respect to the grounds on which the appeal has been filed.
- There is no definition of the term "substantial issue".
- The Commission, based on previous decisions and court decisions, has been guided by the following factors:
  - The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act
  - The extent and scope of the development as approved or denied by the local government
  - The significance of the coastal resources affected by the decision
  - The precedential value of the local government's decision for future interpretations of its LCP

- Whether the appeal raises local issues, or those of regional or statewide significance
  
- It is important to understand that most projects are not appealable once an LCP has been certified, even if they impact sensitive habitat or other coastal resources. Developments approved by local governments that are located in a sensitive coastal resource area should be appealable to the Commission. However, when the Coastal Act was passed it had a requirement that the Commission determine what constituted a "sensitive resource" by a date certain (1978). When the Commission failed to make that determination it lost the ability to appeal projects that might impact such resources in areas outside its statutory appeal zone.
  
- If the staff recommends Substantial Issue (that is, they recommend that the Commission take the project in on appeal), then the Commission shall find Substantial Issue (SI) unless 3 or more commissioners wish to hear the question of SI. This means that unless 3 Commissioners ask for a hearing, the Commission does not have a hearing on SI.
  
- If the staff recommends no SI (recommends that the Commission not hear the issue on appeal) then there is a hearing on the question of SI
  
- If there is a hearing on SI, either because staff recommends no SIU or the Commission has decided to hear the question, the hearing is very brief, limited to 3 minutes per side. Only those who testified or participated at the local level are eligible to testify at the Substantial Issue hearing
  
- If the Commission finds SI either with or without a hearing then the next step is a *de novo* hearing on the project. That is, the Commission holds a full hearing on the merits of the project *as new*.
  
- The *de novo* hearing may be held immediately after the finding of SI or it may be continued and held at a subsequent hearing
  
- Sometimes appeals are listed on the agenda but are not heard. The Commission must hear an appeal within 45 days after the appeal has been filed. If the staff has not received the record or had sufficient time to analyze the project, there will be no staff report and the Commission will only open the hearing on SI and then continue it to a subsequent meeting.

**What if a project is listed as non-appealable by the local jurisdiction and you believe it should be appealable?**

When a project is approved the local jurisdiction makes a determination if a project may be appealed to the Commission. The local jurisdiction must send the Commission a notice of Final Local Action for all Coastal Development Permits (appealable & non-appealable). In the notice they must indicate whether the project is appealable or not appealable. If it is appealable the notice has to include instruction for filing an appeal.

The Commission monitors these notices but if a citizen believes the local jurisdiction has made a mistake in the notice he/she can call the commission. However, as a precaution, they can file an appeal anyway to preserve the right of appeal. If they believe that the project is appealable and the staff decides it is not, there is no action you can take at the Commission.

## CHAPTER SIX MONITORING DEVELOPMENT

### **MONITORING DEVELOPMENT AT THE LOCAL LEVEL**

It is important to remember that the only one eligible to file an appeal is someone who participated in the process at the local level. This means that you will need to be involved in order to file an appeal, either by having testified at a local hearing or by having submitted comments in writing. That is the function of the development monitors. If you are a development monitor, you will need to review projects that are being heard in your area for compliance with the provisions of the Coastal Act and, if there is a certified LCP, the policies of that LCP.

- Appeals must be filed within 10 working days of the Notice of Final Approval. That means once a decision has been made at the local level you must act quickly.
  
- If a decision is made by the Planning Commission or the Planning Officer you must first appeal it to the City Council or Board of Supervisors, unless there is a fee imposed by the local jurisdiction for filing an appeal. If there is a fee, you may by-pass the City or County appeal process and appeal directly to the Coastal Commission.
  
- During the process at the local level it is important to determine the "appealability" of the project. That is, is it in the appeals area of the Commission, the retained jurisdictional area of the Commission or does it meet one of the other limited criteria for appeal?
  
- Attached is a copy of the Commission's appeal form.
  
- Below is a check list of things to look for when reviewing a project and filing an appeal

## MONITORING CHECK LIST

1. Description of the project \_\_\_\_\_

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2. Is the project in the Coastal Zone\_\_\_\_

3. Is there a certified LCP for the area?\_\_\_\_\_

4. If there is no certified LCP, review the project for conformance with the policies of the Coastal Act. You should use the appeals guide below as the basis for your concerns, but you do not have to relate those concerns back to the LCP, only to the Coastal Act policies.

5. If there is a certified LCP the standard of review is the LCP, regardless of how old the LCP is. First determine if the project is in the appealable, i.e.

a) Is it in the appeals area

b) Does the project raise any of the following issues relative to the LCP

- Public Access
- Habitat/ESHA
- Wetlands
- Water Quality
- Geology
- Armoring of the bluff or beach
- Set-back issues
- Landform Alteration
- Stream-bed alteration
- Public view issues
- Native American Resources
- Development without adequate infrastructure
- Agricultural land conversion
- Zoning, i.e. is it coastal dependent or visitor serving

There are other issues, but these are the main ones to look for. If the project raises concerns about any of these issues the next questions to ask are about the specific facts relating to the project and whether or not the projects complies with the policies of the certified LCP as they relate to the following:

### ACCESS:

- a. Is there currently access across the property to a beach or ocean view site?
- b. Will the project block or in any way prevent or diminish current access?
- c. Will the project provide adequate parking for or interfere in any way with the public's ability to park and use the beach?
- d. Will the project create traffic that will interfere with the public's ability to use the beach?
- e. Does the project block a known public trail to areas other than the beach?

## HABITAT:

- a. Is the area a mapped ESHA?
- b. If the area is a mapped ESHA, is the project within any portion of the ESHA?
- c. Is the project set back a sufficient distance from the ESHA to prevent impacts to the function of the ESHA. Is the buffer area large enough to protect the habitat?
- d. If the area is not a mapped ESHA, should it be?
- e. Are there sensitive species or species that are rare locally that use the property? Does the project site provide important habitat for these species and would the project adversely impact these species? Species do not have to be formally listed to be considered sensitive or of concern under the Coastal Act.
- f. Is the habitat on the property isolated or contiguous with other habitat areas on adjacent properties?
- g. Review the certified LCP to see what ESHA policies apply and if the project is consistent with those ESHA policies.
- h. If it does not appear that there currently is ESHA, did the applicant remove the ESHA? If so, did he do it with or without a permit?
- i. Are there invasive species on the property that should be removed?
- j. Do the conditions of approval prohibit the use of invasive species in planting?
- k. What type of mitigation plan is proposed for the unavoidable impacts? What is the mitigation ration being proposed? Is the project using only local native species from local stock or simply being required to use natives? Are the species being used appropriate for the habitat type?
- l. Remember, you may only appeal a project based on ESHA if the project is in the appeals area, however, if the project is appealable based on other inconsistencies with the LCP or the public access policies of the Coastal Act, then you should include this as a basis for appeal in your filing.

## WETLANDS:

- a. Has the applicant had a wetlands delineation done and if so, which standards were used, State or Federal?
- b. Is the project within 100 feet of the wetland, not necessarily as delineated but as you believe the wetland to be. It is helpful if you have evidence here, such as photos, biologist's statements, etc.
- c. If the project is within 100 feet of the wetland, then there is a basis for appeal.
- d. Again, if you believe the wetland to be larger than what the applicant is claiming and you believe, and have evidence, that the applicant has filed the wetland you should include that in your basis for appeal.
- e. Is there sufficient buffer between the development and the wetland?
- f. If the project will require fill of wetlands or is within the LCP required buffer, does the project meet one of the 8 tests for fill under Section 30233?
- g. If the project meets one of the 8 tests for fill under Section 30233, is it the least environmentally damaging alternative?

PLEASE NOTE: Wetlands may be degraded. Under the Coastal Act, such wetlands still receive the same protections as fully functioning wetlands.

## WATER QUALITY:

- a. Will the project create any run-off and will that run-off be treated or allowed to infiltrate?

- b. Will the project increase the amount of run-off that existed prior to the development.
- c. Will the project the project's run-off cause sedimentation problems in adjacent streams or ocean?
- d. Will the project's run-off cause any erosion on or off the project site?
- e. Will the treatment for the run-off be sufficient to eliminate water quality impacts of the project?

#### GEOLOGY (includes hazards, bluff setbacks, armoring):

##### Hazards:

- a. Will the project create or cause any hazards to the development proposed or to adjacent development?
- b. Has an adequate, up-to-date, geology report been prepared?
- c. Does the project conform to the recommendations of the geologist?

##### Bluff Set-back:

- a. Is the project set back sufficiently far from the edge of a coastal bluff or the water's edge to be able to guarantee that the project will never require protection?
- b. Did the applicant provide an up-to-date report that specifies the erosion rate?
- c. Was that report adequate? Did it contain specific measurements over a sufficient time period?
- d. Does the report account for episodic events, sea level rise, possible changes in the area such as removal of groins and jetties that could impact the sane supply or need for a protective device?

##### Armoring:

- a. Is there existing development on the site and is that development in danger from erosion?
- b. If there is existing development and the applicant wishes to put in a revetment or seawall, is there sufficient proof of danger and is that danger to the main structure or to ancillary structures (pools, patios, etc)? How imminent is that danger?
- c. If the main structure is in danger, can the structure be moved or re-located out of harms way?
- d. If there is no existing development, do the project conditions require that the applicant waive his right to a seawall in the future, given his assertion that the project, if built, will not require one?

#### LANDFORM ALTERATION

- a. Does the project require a significant amount of grading?
- b. Will the project require the fill of all or part of a coastal canyon?
- c. Will the project require retaining walls to support the cuts created for the project? If so, what will their size be?
- d. Is the cut and fill balanced on site or will it require export?
- e. Will the project conform to the natural terrain or will it require significant alteration to create a level pad?
- f. Does the project minimize grading? Are there alternative locations or configurations that would reduce the grading?

#### STREAM-BED ALTERATION

- a. Will the project require that any stream be altered to enable the project to proceed?

- b. Is the project a flood control project or a necessary water supply project, as it's main purpose, not a secondary benefit of the project?
- c. Is the primary function of the project the improvement of fish and wildlife habitat?

#### PUBLIC VIEWS

- a. Will the project adversely impact public views to the beach and ocean or of undeveloped hills and other coastal lands?
- b. Could the project be sited or reduced in size to prevent or minimize view impacts?
- c. Is the size and siting consistent with surrounding development?

#### NATIVE AMERICAN RESOURCES

- a. Is there a likelihood of Native American resources being present on the site?
- b. Has the project been conditioned to require a pre-project survey?
- c. Will that survey be conducted with input from appropriate local Native Americans?
- d. Does the survey consider archeological, paleontological as well as cultural resources?
- e. Will local Native Americans be contacted to determine if there is a sacred site located on the property or within reasonable distance of the property that would be impacted by the development?
- f. If there are resources present, does the project attempt to eliminate impacts to those resources? If the project cannot be sited to avoid impacts, is it sited to minimize the impacts.
- g. If there will be un-avoidable impacts, is there a sufficient mitigation plan?
- h. If resources, archeological, paleontological and/or cultural resources are found after development begins, is there a condition that requires that the project cease until a mitigation plan is developed?
- i. Does the project require that appropriate local Native Americans will be present as monitors during construction and will the Most Likely Descendent be notified?
- j. Will the selection of the archeologist and/or monitors be reviewed by the Native American Heritage Commission?

#### AGRICULTURAL LANDS

- a. Is there agricultural land on the property?
- b. Is that ag land considered to be prime soil?
- c. Is there a working farm or ranch on the land? If not, when was the land farmed or ranched? Could it be farmed or ranched in the future and be financially viable?
- d. Does the development convert prime ag land to non- agricultural use?

#### INFRASTRUCTURE

- a. Is the development being proposed in or in close proximity to existing developed areas able to accommodate it, i.e. are there adequate public services?
- b. Is the development within the urban limit line or outside of it?
- c. Will the development be "leap frog", i.e move out into an un-developed rural area?

- d. Is there sufficient water available for the project? Does the LCP require a will-serve letter from the local water supplier?
- e. Is there sufficient sewage capacity available for the project or will the project require use of on-site treatment?
- f. If on-site sewage treatment, i.e. septic tanks, will there be impacts created?
  - geologic from water into the hill
  - biological, i.e. will the septic be too close to habitat and impact that habitat water quality
- g. What will the traffic impacts of the project be? Are they being adequately mitigated?
- h. Will the project require the expansion of roads to facilitate the development and what will the impact of those roads be on wetlands, ESHA and other resources?
- i. In rural areas, will the project force the widening of Highway One where it is required that Highway One remain two lanes?

## ZONING

### Subdivisions.

- a. Will the subdivision result in new parcels that will make it difficult to comply with provisions of Chapter 3? For example, given the requirement that each parcel must be allowed some development are there two development envelopes that could be found that are outside of ESHA or wetlands and that do not require substantial landform alteration.
- b. If the property is zoned for agriculture, will the subdivision impact the viability of agriculture? Agriculture usually requires sufficient land for the operation to sustain itself. Once the property is subdivided will the smaller parcels still be viable?
- c. If the community involved is one where community character is important and has been an issue, such as Carmel, Davenport, Los Osos, etc. then look to see whether the subdivision will create a density that is in keeping with the current development.
- d. Determine what impacts, if any, the subdivision will have on the urban/rural boundary and the expansion of infrastructure past that boundary.

### Permitted uses:

- a) What will the principle permitted uses be? Will those uses be consistent with good coastal planning and/or consistent with protection of resources? Does it promote land uses that are preferred under the coastal act, i.e. public recreation, visitor serving uses or is it residential?
- b) Will the additional uses allowed under the zoning be protective of resources?

## **LCPs AND LCP AMENDMENT REVIEW**

Probably the most important role that activists can play is in reviewing, commenting on and in general advocating at the LCP or LCP amendment preparation stage. After certification of the LCP it becomes the standard of review for almost all projects in that jurisdiction. Remember, your appeals ability is very limited and is usually based on consistency of a project with the certified LCP.

If a local jurisdiction does not have an LCP and is in the process of preparing one, or if they are in the process of preparing an amendment, it is important that you attend local hearings. Make certain that you carefully review all policies of the LCP as well as all of the ordinances that are intended to carry out these policies for consistency with the Coastal Act. You should be looking at the specific policies to suggest specific changes that will make the LCP consistent with the Coastal Act.

Once the LCP or LCP amendment has been approved by the local jurisdiction, you will need to contact the Commission's staff and let them know your concerns, as early in the process as possible. Again, make specific suggestions for changes, including the actual revised language that you wish.

When reviewing LCPs and LCP Amendments use the Monitoring check list to make certain that all of the issues you are concerned about have policies that cover the issues, in ways that are consistent with the Coastal Act. **THESE POLICIES SET THE GUIDELINES FOR ALL FUTURE DEVELOPMENT AND APPEALS.**

As an example, LCPs should contain policies that deal with the following issues:

### **Bluff and beach development:**

Bluff top-

- 1-usually either a stringline rule or a minimum setback of say 50 feet- you should look to see what the pattern of development is in the community
- 2-specific geological reports and requirements for setbacks that may be greater than the stringline or minimum setback if needed to avoid geological hazards.
- 3- If the bluff is a coastal bluff it should require that the development not require the use of a protective device (seawall, revetment, etc.) now or in the future

### **Beach development:**

- 1- Requirement that any new development not require the use of a protective device now or in the future
- 2- Studies to determine the extent of possible erosion
- 3- A determination as to the impact on public access due to limiting natural retreat that should include wave uprush, long term erosion rates and sea level rise

### **Wetland and Sensitive Habitats:**

- 1-The filling of wetlands should be prohibited except for the 8 allowed uses in the Coastal Act and the LCP should contain provisions that mirror 30233
- 2- wetlands should be defined according to State standards
- 3- There should be a condition requiring the provision of buffers that provide protection for the wetlands from surrounding development and that provide upland habitat for the

wetland. The minimum usually is 100feet and it should be written as a minimum, not an absolute. Sometimes that minimum can be reduced but the reduction should only be allowed with specific approval of Fish & Game and a determination that the reduction will not impact the functioning of the wetland. However, allowing a reduction is something that you should try to avoid if possible.

4- The definition of ESHA and ESHA protections should mirror that of 30240 in the Coastal Act

5- There should be a site specific requirement for ESHA determination in areas where ESHA might be present

6- If the City has maps that delineate where ESHA is those maps cannot be allowed to be definitive. They should specifically be viewed as "indicating where ESHA may be present" and a policy that states that what is present at the time of development is what determines if ESHA is present

7- For both ESHA and Wetlands, the prior removal of or destruction of ESHA and wetlands that occurred without the benefit of a permit should not be a basis for a determination that no ESHA or wetlands exist, i.e. if they removed it or filled it in without permit then the property should be treated as if the ESHA or wetland still exists.

8- Again, there needs to be a minimum buffer, usually 100 feet, to protect the ESHA from reduction of its function or degradation due to the development but that buffer should be able to be increased if it is determined that is necessary for the functioning of the ESHA or wetland.

9- There should be a policy to prohibit the use of invasive species in all landscaping, unless the area is highly urbanized, i.e. located in a city area. The use of native plants should be encouraged.

### **Water Quality:**

1-There need to be policies dealing with water quality and run-off. How that should be handled

2- Requirement for BMPs and filtration, limit on an increase in run-off due to the development, etc.

### **Public Access:**

1-There need to be policies dealing with the protection of public access

2- No locked gate communities between PCH and the beach

3- A requirement for adequate vertical accessways, say every 1000 feet

4- A requirement for lateral easements if new development will interfere with public access

5- A requirement that signs not be placed that limit public access or have a "chilling effect" on public access, i.e. give the public the impression something is off limits even if it isn't

6- make certain there are policies that adequately protect public parking for beaches

In addition to the above categories there should be policies about streambed alteration (it should not be allowed except for limited circumstances), landform alteration (there must be policies to minimize landform alteration) and visual impacts. You should also look at the zoning issues, do they allow upzoning (increase in density) that places stress on the biological resources and infrastructure or cause water quality impacts. Will it cause traffic problems that will impact public access. Look at the zoning relative to visitor serving uses.

## CHAPTER SEVEN WORKING WITH STAFF

Once a development or an LCP/LCP amendment has been approved at the local level you will need to contact the staff at the appropriate Commission office. You should try to meet with staff as soon as, or shortly after, the item has been submitted to the Commission for review. You will probably get only one or at most two chances to meet with staff. When you meet with them be prepared to explain your issues based strictly on the Coastal Act. Review all of the items listed under Appeals- Monitoring Development and tell the staff where you think the approved development fails to conform to the Coastal Act. Sometimes staff will ask you to wait until after the staff report has been prepared. **THAT IS TOO LATE!** You need to explain to staff that you wish to have input into their recommendation and want a meeting prior to the final staff report.

Please remember that staff is overworked but at the same time you do, as a member of the public, have a right to meet with them prior to the time that they have prepared their staff report. Do not wait until after the staff recommendation has been prepared. That would mean that you would not have any input into what the recommendation will be.

# CHAPTER EIGHT

## PREPARING FOR A COMMISSION HEARING

### **Reading Staff Reports**

A staff report will present a complete description of the project. It will discuss each of the various aspects of the project as it relates to provisions of the Coastal Act. Review the staff report on each issue to see if the staff has analyzed the issue completely. Determine if you agree with the staff, if any issues have been overlooked by the staff or if there are issues that you do not agree with the staff. Reading and analyzing the staff report is essential to any arguments you may wish to make with Commissioners or at a commission hearing. Again, as always, do your analysis based on Coastal Act policies.

### **Reading an Agenda**

**Below are the standard categories of agenda items.**

#### **ADMINISTRATIVE PERMIT APPLICATIONS.**

Report on administrative permits approved by the Executive Director of the Commission. If a member of the public wishes to object to the issuance of an administrative permit or ask the Commission to change the conditions of the permit, that person must ask the Commission to remove the application from the administrative calendar, and schedule it for hearing and voting at a later meeting. A period of three minutes will be allowed for each side to address the Commission. If four or more Commissioners vote to remove an item from this calendar, the Executive Director's approval is revoked, and the application will be scheduled for hearing and voting at a later meeting.

#### **COASTAL PERMIT APPLICATIONS.**

Public hearing on applications for coastal development permits. The Commission may vote on an application at the conclusion of the public hearing, or it may, if additional information is needed, vote at a subsequent meeting. The time limits for this part of the agenda are: 15 minutes combined total time per side for projects recommended for voting at this meeting, and 10 minutes combined total time per side for projects recommended for hearing only. If the project is to be voted on at this meeting, the applicant may reserve some time for rebuttal after the opponents speak.

#### **CONSENT CALENDAR.**

Public hearing and voting on applications scheduled for approval with conditions. At this hearing, a period of three minutes will be allowed for each side to address the Commission on whether or not to remove an application from this calendar. Permits on this calendar will either be approved at this time with the recommended conditions or

removed from the calendar (and scheduled for further hearing & voting at a later meeting) by a vote of three or more Commissioners.

### **FEDERAL CONSISTENCY.**

Public hearing and action on requests for concurrence with Federal Consistency Certifications or Determinations. See time limits under COASTAL PERMIT APPLICATIONS above. In the event the Commission's action differs substantially from the staff recommendation, it may be necessary for the Commission to adopt revised findings on a day following the day on which the public hearing on the matter is scheduled to occur.

### **FINDINGS.**

Public hearing and voting on findings to support previous Commission action. Adoption of these findings will not change the previous action.

### **LOCAL COASTAL PROGRAMS (LCPs).**

LCPs are prepared by local governments in two parts (a land use plan and implementation plan) and will provide the basis for issuing coastal permits after approval by the local government and the Commission. Copies of LCP staff reports are available on request from the Commission office. (Note: Persons wishing to testify on these matters may appear at the hearing or may present their concerns by letter to the Commission on or before the hearing date. Copies of all correspondence will be provided to the Commission. Written comments may be of any length; oral testimony may be limited to 5 minutes or less for each speaker, depending on the number wishing to be heard.)

### **NEW APPEALS.**

Unless a majority of the Commissioners present find "no substantial issue" is raised by an appeal, there will be a "de novo" hearing, on the original project, under the same rules as for COASTAL PERMIT APPLICATIONS above.

### **SUBSTANTIAL ISSUE.**

On the recommendation of staff or 3 members of the Commission, a public hearing will be held to determine whether the decision being appealed raises any substantial coastal issues. The time limits for this public hearing are: 3 minutes combined total per side to address the question of substantial issue.

### **PERMIT AMENDMENTS or EXTENSIONS.**

Public hearing and voting on requests to amend or extend permits previously issued by the Commission.

## **RECONSIDERATIONS.**

Public hearing and voting to reconsider previous actions. Only applicants can request reconsideration.

## **VOTING on APPLICATIONS.**

Continued public hearing on applications for coastal development permits. The time limits for this part of the agenda are: 5 minutes combined total time per side, and the applicant may reserve some time for rebuttal after others have spoken.

## **REVOCATIONS**

You may seek revocation of a permit if you believe that the Applicant knowingly gave false or misleading information that might have caused the Commission to change its decision had it known the facts. This standard is very difficult to meet and the Commission rarely will revoke a permit. The burden of proof is on those seeking revocation. Remember this is not a chance to get a second bite at the apple. You must PROVE your contentions.

**PLEASE NOTE:** The Agenda is organized by geographical region. The hearings on the above categories will be held for each area of the coast based on the location of the project.

## **CONTACT WITH INDIVIDUAL COMMISSIONERS EX-PARTE COMMUNICATIONS**

As of January 1, 1993, significant new ex- parte requirements affecting communications with Commissioners went into effect. (Public Resources Code, sections 30319-30324.) These stringent new provisions of law may have serious consequences. **Anyone** wishing to communicate with a Commissioner about any matter pending before the Commission should read and abide by the guidelines below. The following guidance covers **most** of the new requirements.

**No** written materials should be sent to Coastal Commissioners **unless** the Commission staff receives copies of all of the same materials at the same time.

**All** materials transmitted to Commissioners should clearly indicate (e.g., on the cover page or envelope) that they have also been forwarded to the staff. Materials that do not show that copies have been provided to staff might not be accepted, opened or read by Commissioners. In these cases, **no** ex- parte communication has occurred.

- Ex-parte communication is not prohibited by law. Please remember, that if you follow the above rules, ex-parte communications are not prohibited. Under the ex-parte rules, each commissioner must disclose any ex-parte conversations he or she has with an applicant or a member of the public.
- While most commissioners will be willing to talk with you or meet with you, some will not. You will need to honor their decision in this regard. If you do attempt to contact a commissioner, remember that they are busy and may not have to talk with you, although most will.
- Some commissioners file detailed written ex-parte documents that closely describe what was discussed during the meeting, while others provide only the name(s) of the person(s) they met with and a brief description of what was discussed.
- Ex-parte files are public information and can sometimes provide useful information.
- Some persons who regularly lobby the Commission are also registered lobbyists in California and are required to file quarterly reports regarding projects and expenses with the FPPC. However, lobbying at the Commission does not require registration as a lobbyist and therefore the reports DO NOT reflect any activity at the Commission.
- If you contact a commissioner by sending them material you **MUST** also send a copy of that same material to the CCC staff **AT THE SAME TIME**. Clearly mark

your materials as having been submitted to staff or a commissioner may disregard them.

- Conversations with Commissioners are NOT prohibited. If you plan on speaking with a commissioner by phone you may simply call them. If you plan on meeting with a Commissioner, either at their office or at a Commission meeting, be certain to call to set up an appointment well in advance of the hearing. While the actual meeting is best after the staff report has come out, do not wait until then to make your appointment. Commissioners have very busy schedules and their calendars may be full if you wait until the last minute.

It is important that you try to talk with or meet with Commissioners, so ask if they would be willing to do so. If you wish to meet with a Commissioner or Commissioners, you should make your appointment with them well in advance of the meeting, although the actual meeting should be set for no sooner than 10 days prior to the hearing to insure that the staff report is available. You will need to know the staff recommendation in order to be able to discuss it with the Commissioner(s). Remember that Commissioners are very busy so if you don't set up the meeting early enough they may not have time. You may meet with them at their offices or frequently meetings are arranged for breakfast and/or lunch during the week of Commission hearings.

When you meet with or talk to Commissioner(s) remember to discuss your concerns about the project in terms of the Coastal Act. You will need to understand the project and all of the issues, including what the proponents are saying. You will need to let the Commissioner(s) know if you agree with the staff and if so, why and if not, you will need to explain why. Do not take anything for granted. Be specific and complete. This will be your real opportunity to get your issues heard. Remember you will probably have only 2 minutes to talk at the hearing.

## Meeting Rules and Procedures

**SPEAKER SIGN-UP & TIME LIMITS.** If you wish to speak on an item, please fill out a "Request to Speak" form and give it to a staff person before the public hearing. The forms are available near the door to the meeting room. Time limits are indicated on the speaker sign-up forms, and later in this summary, and in case of questions or disputes, the Chairman will determine the time limits for each speaker at the beginning of the public hearing. Speakers on non-permit items may be limited to five minutes or less depending on the number wishing to be heard. Time limits for permit items are **combined total time** for all speakers in favor of or in opposition to the project. Written comments may be of any length; you are encouraged to submit detailed information in writing to staff for distribution to Commissioners. Please provide twenty copies if possible.

**SUGGESTIONS FOR SUBMISSION OF WRITTEN MATERIALS.** It is requested that written materials be submitted to Commission staff no later than three working days before the hearing. In the upper right hand corner of the first page of your submittal please identify the agenda item number, your name and your position in favor or opposition to the project. Please attempt to summarize your position in no more than two or three pages. You may attach as many exhibits as you feel are necessary.

**Please Note:** You may submit material to the Commission on the day of the hearing, however, doing so is usually not very productive since Commissioners will not have time to read it prior to the hearing.

**If you are able to get your materials prepared and submitted to the staff prior to the hearing, we suggest that in addition you send, if necessary by express mail, your written comments to each commissioner at their listed address.** Make certain that the material will arrive no later than Monday of the hearing week if it is a 3 day meeting or the previous Friday if it is a 4 or 5 day meeting. If you are unable to do this, get your written materials to the Commissioners at their hotel rooms the evening prior to the hearing.

**VISUAL MATERIALS.** Using visual materials at a hearing is very effective and can help your presentation. A power point presentation helps to get your points across and keep your presentation moving and within required time allocations. A slide projector & carousel will be available, and Commission staff can assist you in its use. All materials exhibited to the Commission during the hearing (slides, maps, etc) are part of the public record and must be kept by the Commission for 60 days after final Commission action on the matter. Your materials will be returned upon written request.

**LOCATION of MEETINGS.** Another reason to organize your thoughts and submit them in writing is that the location of the meeting may not be nearby. The Commission is a statewide agency, which meets once a month in different locations in Northern, Central, and Southern California. The hearing on a coastal permit or other item may take place in a different area than the proposed project, due to legal deadlines for Commission action.

**NO FAXs** will be accepted at the meeting site by the Commission. You may be able to make prior arrangements with staff or a Commissioner to send a fax, but you will be responsible for paying the hotel or meeting site for its receipt. You may send faxes to individual Commissioners but again, you will need to be careful not to run up charges to the commissioners for your faxes.

**CAMPAIGN CONTRIBUTIONS.** Government Code Section 84308 requires Commissioners to disqualify themselves from voting on any matter if they have received a campaign contribution of more than \$340 from an interested party. If you intend to speak on any hearing

item, please indicate on your speaker slip and/or in your testimony, if you have made campaign contributions of more than \$340 to any Commissioner within the last year, and if so, to which Commissioners you contributed.

**GIFTS:** Spending more than a total of \$340 on gifts for a Commissioner within the last year also requires that Commissioner to disqualify themselves. A gift is anything of value, including meals, drinks, travel, etc.

**PUBLIC STATEMENTS ABOUT ITEMS NOT ON THIS AGENDA.** Before the lunch recess each day there will be time for public statements about the work of the Commission other than items that are pending before the Commission. Persons wishing to speak during this period should be sure to fill out a sign-up slip, and should limit the length of the presentation to 3 minutes or less. If this public comment period is inconvenient, you may submit written comments to the Commission office, and copies will be distributed to all Commissioners.

**WHEN WILL MY AGENDA ITEM BE HEARD?** Unfortunately, no one can predict how quickly the Commission will complete agenda items or how many will be postponed to a later date. The Commission begins each session at the time listed on the Meeting Notice and considers each item in order, except in extraordinary circumstances. The Commission may consider an item even though the interested persons are not present.

**WAIVERS OF PERMIT & EMERGENCY PERMITS.** The District Directors of the Commission's various offices will announce the Executive Director's decisions to waive coastal permit requirements and issuance of emergency permits during the "Deputy Director's Report" item at the beginning of each section of the agenda.

**PUBLIC & ADMINISTRATIVE RECORDS.** Many public records on agenda items will be available for inspection at the meeting, and are available at all other times in the Commission office. Please call the Commission's office to make an appointment to see any file you are interested in. If you need a verbatim transcript of these proceedings, there will be a court reporter present at the hearing. If you decide to challenge a final decision of the Commission in Court, please request preparation of an administrative record by letter to the Administrative Records Section at the Commission office in San Francisco, and indicate in your letter a description on the agenda item and the date(s) of Commission action. Such a record will include a transcript of the proceedings at the hearing.

**CLOSED SESSION.** At any time during the meeting the Commission may meet to consider possible and pending litigation in a session closed to the public pursuant to attorney-client privilege and statutory exemption to the Open Meeting Act (Government Code Section 11126e).

**ACCESS TO HEARINGS.** The hearings are wheelchair accessible. If accommodation for other disabilities is required, please call (415) 904-5200.

**MORE INFORMATION.** For more information contact one of the following staff members:

(Del Norte, Humboldt, Mendocino) **Bob Merrill (707) 445-7833,**  
(Sonoma, Marin, San Francisco & San Mateo Counties) **Chris Kern (415)  
904-5260,**  
(Santa Cruz, Monterey & San Luis Obispo Counties) **Diane Landry  
(831) 427-4863,**  
(Santa Barbara & Ventura Counties, Malibu & Santa Monica Mountains)  
**Gary Timm (805) 585-1800,**

(Los Angeles & Orange Counties) **Teresa Henry (562) 590-5071**,  
(San Diego County) **Sherilyn Sarb (619) 767-2370**,  
(Energy, Ocean Resources & Water Quality) **Jaime C. Kooser (415) 904-5240**,  
(Statewide) **Chris Goehler (415) 904-5200**.

A Telecommunication Device for the Deaf (TDD) is available at (415) 904-5200.

The Coastal Commission Is not yet equipped to receive comments on any official business by electronic mail. Any information relating to official business should be sent to the appropriate Commission office using U.S. Mail or courier service.

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## **TIME LIMITS for Permit Items**

The combined time per side for testimony on any items is shown below. You may need to coordinate your statement with other speakers to stay within the time limits. All statements should be brief, non-repetitive, and related to coastal issues. Written comments of any length may be submitted to staff.

3 minutes	Administrative & Consent items
15 minutes	"Public Hearing and Voting"
5 minutes	Continued Hearing and Voting
10 minutes	Public Hearings
3 minutes	Substantial Issue Determination

All others -- determined by the chair, approximately 5 minutes per side.

## **Public Hearing Procedures for Regular Permit And Local Coastal Program Matters**

- If you wish to speak on a matter, fill out a color-coded speaker's slip depending on: 1) whether you support or oppose the project proposed by a permit applicant or; 2) whether you support or oppose the staff recommendation on an LCP or LCP amendment or; 3) whether you are neutral. Applicants must also fill out a speaker slip.
- The order of the hearing will be: staff presentation, applicant, supporters, opponents, and neutral parties.
- Speaker slips must be given to staff prior to the start of testimony by opponents. Additional speaker slips will not be accepted after that time.
- There may only be two organized presentations for each matter - one in favor organized by the applicant or other proponents, the other opposed. Generally, time allowed for organized presentations is a maximum of 15 minutes per side. However, the precise time for organized presentations will be determined by the Chair on a case-by-case basis. If there is more than 1 organized presentation, it is up to the organized groups to confer and divide the time between them.
- Individual speakers will be given 2 minutes each.

- Individuals who wish to speak may donate their time to another speaker up to a maximum of 6 speakers (12 minutes). However, you must indicate your request to donate time on your speaker slip and you must be in the hearing room at the time of the presentation. Speaker slips must be submitted together and must indicate to whom you are donating your time.

**Suggestion:** Where the item you are speaking on is a major one and you anticipate that the applicant will take a full 15 minutes or more for their presentation, after which there will be members of the general public speaking on behalf of the applicant, each allowed 2 minutes to speak, it is suggested that you get together with whatever other organizations are planning on attending and develop a prepared presentation. Speak with the Chair prior to the meeting and ask that those presenting a prepared presentation be given the same amount of time that the applicants will be given. Additional members of the public who will not be speaking as part of your prepared presentation can expect to be given 2 minutes each to speak. Member of the public, on either side, who are not part of the applicant's presentation or the prepared presentation, may also combine their speaker slips to get additional time but those donating their time must be present in the hearing room. Since the meeting procedures and times are at the discretion of the Chair it is important to speak with the Chair prior to the hearing, regarding these matters.

## **YOUR PRESENTATION AT THE COMMISSION HEARING**

Whether you have 15 minutes or 2 minutes to speak you will need to make your presentation as effective as possible. This means:

- Select the most important points and concentrate on these. If you include too many issues you will not be effective. Do not try to say everything, only the most important points. Commissioners have probably been sitting and hearing testimony for hours and you will lose them if you are not concise and to the point.
- Do not ramble on and give too much information. Your important points will get lost.
- Stick only to issues that are relevant to the Coastal Act. Do not include neighborhood issues that are not covered under Coastal Act policies
- Do not attack anyone personally, your personal feelings about others are not pertinent to the issues
- If you can support the staff recommendation say so and then say why.

- If you have differences with the staff, concentrate on those differences and specify why but do not forget to specify which areas you are in agreement with staff and why.
- Listen to the applicant's testimony and respond to those issues you think are most important to respond to. You will not have any rebuttal time.
- If you have a number of different speakers, make certain that you each cover different aspects of the issues. Do not repeat yourselves.
- **AGAIN- BREVITY IS THE KEY TO SUCCESS!**