

CALIFORNIA COASTAL COMMISSION

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TO: Board of Forestry and Fire Protection
Attention: Edith Hannigan
Land Use Planning Policy Manager
P.O. Box 944246
Sacramento, CA 94244-2460

FROM: California Coastal Commission
Daniel Nathan, Statewide Planning Unit

SUBJECT: Board of Forestry and Fire Protection Proposed Regulations on Subdivision Map Findings, 2019; Safety Element Review, 2019; and Very High Fire Hazard Severity Zone Adoption, 2019

Dear Ms. Hannigan,

Coastal Commission staff supports the Board of Forestry and Fire Protection's (BoF) efforts in preparing revised regulations required by Senate Bill 1260. We have reviewed the proposed regulations on Subdivision Map Findings, 2019; Safety Element Review, 2019; and Very High Fire Hazard Severity Zone Adoption, 2019, and would like to provide comments to the BoF in regards to Coastal Act requirements related to these regulations. The comments below first summarize the Coastal Commission's regulatory responsibility in the coastal zone and the relation between the Coastal Act and local governmental General Plans.

The California Coastal Commission (hereafter, the Commission) plans and regulates the use of land and water in the coastal zone, which generally extends 1000 yards inland from the mean high-tide line and up to 5 miles inland in some rural areas and includes a 3-mile-wide band of ocean (Public Resources Code, § 30103(a)). Under the California Coastal Act (Public Resources, Code § 30000 et seq.), the Commission is charged with upholding core coastal resource protection policies, including minimizing risks from hazards, including wildfire, and protecting water quality and sensitive coastal resources such as rare species and habitats. In partnership with coastal cities and counties, Coastal Act policies are implemented primarily through Local Coastal Programs (LCPs), which include a land use plan and the zoning ordinances, zoning district maps, and other legal instruments necessary to implement the land use plan (Public Resources Code, § 30108.5). Coastal Act policies are the standards by which the Commission evaluates the adequacy of LCPs. Development within the coastal zone may not commence until a Coastal Development Permit (CDP) has been issued by either the Commission or by a local government that has a Commission-certified LCP. The standard of review for new development is the certified LCP and applicable Coastal Act policies.

Development activities in the coastal zone are broadly defined by the Coastal Act to include, in part, the placement or erection of any solid material or structure; the construction, reconstruction, demolition, or alteration of the size of any structure; land divisions and lot line adjustments; activities that change the intensity of use of land, water, or public access to coastal waters; grading, dredging, and the extraction of any materials; and the removal of major vegetation (not including the harvesting of vegetation for agricultural purposes, kelp harvesting, and timber operations in accordance with a timber harvesting plan) (Public Resources Code, § 30106). Therefore, vegetation management and other fire prevention efforts may constitute development requiring a CDP.

RELATION BETWEEN THE COASTAL ACT AND THE GENERAL PLAN

Coastal cities and counties are subject to both statewide planning and zoning laws and the California Coastal Act. The Coastal Act has specific requirements that are sometimes more stringent than the Government Code provisions that the local government may be more familiar with in developing General Plans. Therefore it is important to keep in mind that in the coastal zone, a local government's General Plan may have to be modified if it is to be certified as part of an LCP that must meet Coastal Act requirements. The Coastal Act specifies that coastal Land Use Plan (LUP) provisions be sufficiently detailed to indicate the kind, location, and intensity of land uses (Public Resources Code, § 30108.5). The contents of coastal LUPs generally overlap with some of the required provisions of General Plans but not all are duplicative.

To govern effectively in the coastal zone, a General Plan should be consistent with the local government's Local Coastal Program (LCP), which is the legally-controlling land use planning and regulatory requirement for all development in the coastal zone except as may be specifically exempted. Therefore, when developing or amending a general plan, local governments should coordinate closely with the Commission to assure that general plan provisions intended to apply in the coastal zone are consistent with the governing LCP and California Coastal Act as relevant.

While there are requirements under the Coastal Act and regulations for the content of LCPs, there is no set format. Some communities have adopted separate coastal elements within their General Plans. Others have incorporated coastal plan policies, plan proposals, and standards directly into the General Plan's land use, open-space, and conservation elements and submitted those General Plan elements as the LCP for certification. A third option is to adopt a specific plan within the coastal zone. Given the diversity of local coastal jurisdictions there is no "one size fits all" approach, but the requirements of the Coastal Act must be met in completing the LCP.

If communities adopt General Plan amendments without updating the LUP, discrepancies may arise between land uses and densities authorized under the General Plan and those authorized in the LUP. If the General Plan and coastal LUP diverge significantly, problems may arise when a project applicant applies for a coastal development permit. Communities may avoid these problems by reviewing all General Plan amendments affecting the coastal zone for consistency with their LUP.

COMMENTS ON PROPOSED REGULATIONS

Any changes that a local coastal government makes to its certified LCP, such as adopting new land use designations (e.g., by designating Very High Fire Hazard Severity Zones in the coastal zone) and related development standards to address the BoF's requirements, must be certified by the Commission. In addition, all development in the coastal zone must be found to be consistent with the LCP and applicable Coastal Act policies and authorized by a CDP before it can commence. The LCP and applicable Coastal Act policies might have standards and provisions related to fire protection and prevention, vegetation treatment, access roads, and other relevant issues.

As such, Commission staff has identified a few areas below that we recommend considering in the BoF's Proposed Regulations:

1. With regard to the proposed regulations on Safety Element Review, we note that LCPs must implement Coastal Act policies related to the protection of life and property against hazards in the coastal zone, including siting and designing new development to minimize risks to life and property if located in areas of high geologic, flood, and fire hazards (see Public Resources Code, § 30253). LCPs must also incorporate Coastal Act policies related to the safe development or transport of oil and hazardous substances (see Public Resources Code, § 30232), as well as the siting and design of refineries or petrochemical facilities to avoid impacts to coastal resources, including avoiding being sited in seismically hazardous areas (see Public Resources Code, § 30263). Further, as part of an LCP update, or amendment, local governments should evaluate and plan for sea level rise and other climate change related impacts, which potentially increase the risk of geologic, flood, and fire hazards, as well as potentially increasing impacts on coastal resources identified throughout the Coastal Act. Accordingly, in the coastal zone, the Coastal Act is the standard of review when the Commission determines whether an LCP hazards or safety component is in compliance with the Coastal Act.
2. With regard to the proposed regulations on designating Very High Fire Hazard Severity Zones by local ordinance and submitting a copy of the ordinance to the BoF, we note that new and amended local ordinances in the coastal zone, must be certified by the Coastal Commission and found to be consistent with the LUP and applicable Coastal Act policies before they become effective. As such, in Section 1280.02(a), the requirement to transmit an ordinance within 30 days of local adoption would result in the BoF reviewing an ordinance which has not yet been certified by the Commission and is not yet effective in the local coastal jurisdiction. We recommend that the proposed regulation Section 1280.02 acknowledge the requirement that in the coastal zone, local ordinances must be certified by the Coastal Commission before they become effective. We are available to discuss this issue further to help determine the most appropriate process for our agencies to review such ordinances.
3. With regard to the proposed regulations on Subdivision Map Findings, including requiring a local government to make the finding that a property to be subdivided will have adequate structural fire protection and suppression services and will be consistent

with regulations adopted by the BoF (pursuant to sections 4290 and 4291 of the Public Resources Code or with local ordinances certified by the BoF), we note that the subdivision of property constitutes a change in the density or intensity of use of land. Such an activity constitutes development under the Coastal Act and would require a CDP from either the local government or the Commission (where there is no certified LCP) and must be found consistent with the certified LCP, or in the case where no certified LCP exists, the Coastal Act. In certain cases, a subdivision could be found to be noncompliant with Coastal Act or LCP policies, notwithstanding compliance with the findings required by the BoF under this proposed regulation.

We appreciate the Board of Forestry and Fire Protection's consideration of our comments.

Thank you,



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