

**KAFKA GOES COASTAL**  
**Amending the Fort Bragg Local Coastal Program**

June 17, 2008

***Summary***

This report describes efforts to review and update the Fort Bragg Local Coastal Program that began in 2003 and remains incomplete at this writing. It documents a pattern of irregular and incomplete communications between the City of Fort Bragg and the California Coastal Commission and addresses some of the costs and unintended consequences of this complex and cumbersome process.

Of particular concern to the Grand Jury is the loss of a low-income housing project due to delays, costly studies and re-design requirements that were imposed on the project based on application of a confusing mix of certified and illegally applied uncertified code.

An extensive investigation led the Grand Jury to the conclusion that neither the City of Fort Bragg nor the California Coastal Commission (CCC) proceeded in a timely and diligent manner to update the City's Local Coastal Program (LCP). In 2003, the Community Development Director submitted an LCP amendment application that lacked numerous key elements, including a legally required City Council Resolution.

A delayed response from the CCC, in January 2004, detailed extensive additional information required for processing of the application. As late as November 2007, the City was still making additions and substantive corrections. In one case, a map incorrectly labeled the sewage treatment plant and seriously underrepresented the size of the Noyo Harbor Park.

During a period of at least two years, staff illegally applied an uncertified LCP to development permit applications. This behavior directly contributed to the loss of 40 units of affordable housing.

***Methods***

The Grand Jury conducted interviews and reviewed numerous documents secured from County Counsel, the CCC, the City of Fort Bragg, the Fort Bragg Advocate News, Development Permit applicants and their advisors.

## ***Background***

**The California Coastal Commission** was established by a voter initiative (Proposition 20) in 1972 and the Legislature's adoption of the California Coastal Act of 1976.<sup>1</sup> The Coastal Act establishes the statutory standards which the Commission and local governments apply to planning and regulatory decisions. The coastal zone, as mapped by the Legislature, ranges from a few hundred feet up to five miles in width and includes a 3-mile band of ocean the length of the California coast. The Coastal Act is primarily implemented through development of local coastal programs that are required to be completed by each of the 15 counties and more than 60 cities located in whole or in part within the coastal zone.

Many coastal counties and cities have divided their local coastal zone jurisdictions into geographic segments, resulting in 126 separate LCPs. As of 2002, about 70% of these LCPs had been certified, many of them in the late 1980s.

The Coastal Act requires that the Coastal Commission review each certified LCP every five years. Although some local governments have updated their LCPs over the years by processing hundreds of LCP amendments through the Commission, with few exceptions, the LCPs are significantly out of date. The CCC, itself, has initiated only six periodic reviews and has only completed two.<sup>2</sup>

County General Plans governed development in coastal areas prior to passage of the Coastal Act. The Coastal Commission has certified four LCPs in Mendocino County including the:

- Point Arena LCP certified on 12/3/81 with a comprehensive update completed in 2007;
- City of Fort Bragg LCP certified on 7/4/83 with subsequent amendments certified in 1985;
- Mendocino County Coast LCP certified on 9/10/92;
- Mendocino Town LCP certified by the CCC in 6/92 and "effectively certified" on 12/9/96.

LCPs are basic planning tools used by local governments to guide development in the coastal zone. They contain ground rules for development and protection of coastal resources. Amendments to an LCP may not legally be applied to

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<sup>1</sup> [www.coastal.ca.gov](http://www.coastal.ca.gov)

<sup>2</sup> The CCC has initiated LCP reviews for Trinidad, Long Beach, Sand City, San Luis Obispo County, Monterey County, and the Marina del Rey LCP segment.

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development permit applications until they have been certified by the Coastal Commission.<sup>3</sup>

**The City of Fort Bragg:** Approximately 30% of the City of Fort Bragg is within the coastal zone. Within this area, development permit applications must be reviewed under an LCP that has been adopted by the City Council and “effectively certified” by the California Coastal Commission. The LCP consists of a Land Use Plan (LUP) and an Implementation Plan (IP) that is also known as a Land Use and Development Code (LUDC).

The Coastal Commission certified Fort Bragg’s original (1983) LCP with subsequent amendments in 1985. In December 2002 the Fort Bragg City Council adopted a General Plan amendment, including an updated Coastal Element. Between that time and May 2006, Fort Bragg’s Community Development Department illegally applied the amended and uncertified LCP to development permit applications within the coastal zone.

On April 13, 2006, this illegal application of uncertified code was brought to the attention of the City Council during the public comment period. The Council requested a response from staff. On May 22, 2006, the City Manager informed the City Council that only the certified code would be used in the future. She advised Council Members that uncertified code had been applied to 31 permit applications, that none had been denied and that no applicant was harmed as a result of misapplication of the uncertified code.

A Grand Jury review of these applications and relevant documents revealed that at least one application was improperly subjected to conditions of the uncertified LCP. Designed according to the certified code, the project was subjected to numerous demands for further studies and re-design of various elements. Ultimately, the application to construct forty affordable housing units experienced “death by discouragement.” In addition to substantial costs to the applicant, unintended consequences for the City included the loss of construction jobs and tax revenue. Fort Bragg also lost much needed low-income housing that State law requires cities to develop.

**The current update process** began in May 2003 with submission of an incomplete LCP amendment application based on the City’s 2002 General Plan. Eight months later, in January 2004, the CCC acknowledged receipt of the application and provided the City with a detailed list of additional information required for processing. This pattern of irregular and incomplete communications between these two public agencies continued for more than three years.

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<sup>3</sup> California Government Code §30514(a)

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During this period, City Council Minutes reveal repeated assurances by the Community Development Director/City Manager that necessary submissions were being made in a timely manner and that delays were due to a lack of staff attention on the part of the Coastal Commission. In fact, the application remained substantially incomplete and inaccurate. The Grand Jury found no evidence that members of the City Council knew the true status of the application or that, prior to April 2006, they were aware that the uncertified LCP was being applied to development permit applications.

On November 15, 2006 the CCC informed Fort Bragg that its LCP amendment application was complete and could be processed. Processing of the application has moved reasonably expeditiously since that time, under the direction of the new Community Development Director who joined the staff in September 2006.

The CCC certified the amended LCP on January 11, 2008 and authorized the CCC Executive Director to negotiate with the City on 11 outstanding issues. After extensive exchanges and community workshops, Fort Bragg City Council voted unanimously to adopt the Local Coastal Program Land Use Plan (LUP) and to add the Coastal Land Use and Development Code (LUDC) to the Fort Bragg Municipal Code. The City's vote to accept the LCP on May 12, 2008 was one of four final steps toward legal certification. It came five full years after the amendment process was initiated.

The penultimate step in the process, certification by the Coastal Commission, is expected to occur as part of the CCC July 11, 2008 consent calendar. The CCC must file a Notice of Certification with the State Resources Agency to complete "effective certification." Only then may the amended LCP be applied legally to local development permit applications.

## ***Findings***

### ***The California Coastal Commission***

1. LCPs are basic planning tools used by local governments to guide development in the coastal zone. They contain ground rules for development and protection of coastal resources.

***Response: (Mendocino County Board of Supervisors)***

The Board of Supervisors agrees with this finding.

***Response: (Mendocino County Chief Executive Officer)***

The Chief Executive Officer agrees with this finding.

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**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

2. An LCP includes a *land use plan* (LUP), which may be relevant parts of a local general plan (GP) and an *implementation plan* (IP, also known as a Land Use Development Code or LUDC). The IP consists of relevant zoning codes, maps and other legal instruments required to implement the LUP.

**Response: (Mendocino County Board of Supervisors)**

The Board of Supervisors agrees with this finding in general, incorporating the City of Fort Bragg response in specifics.

Response: (Mendocino County Chief Executive Officer)

The Chief Executive Officer agrees with this finding in general, incorporating the City of Fort Bragg response in specifics.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

Finding #2 is only partially correct. The LUP includes policies governing development in the coastal zone that are necessary to implement the Coastal Act and the LUP is typically a part of a city's General Plan. In Fort Bragg, the new LUP is contained within the "Coastal General Plan." The IP provides implementing regulations for the LUP policies, including zoning and subdivision regulations, site development regulations, resource management requirements, etc. In Fort Bragg, the IP is contained within the "Coastal Land Use & Development Code" (Coastal LUDC).

3. Local or County governments cannot legally apply an LCP or amendments to an LCP prior to certification by the CCC.<sup>4</sup> An LCP is not deemed certified until all four of the following steps have been completed:
  - a local or County government has formally adopted the LUP and IP/LUDC;
  - the Coastal Commission has certified the LCP as being in compliance with Coastal Act policies;
  - the local government agency has formally accepted the Commission's approval, along with any suggested modifications adopted by the Commission; and
  - the CCC has filed a Notice of Certification with the State Resources Agency.

**Response: (Mendocino County Board of Supervisors)**

The Board of Supervisors agrees with this finding,

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<sup>4</sup>Public Resources Code §30514 may be accessed at [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)

**Response: (Mendocino County Chief Executive Officer)**

The Chief Executive Officer agrees with this finding.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

4. Most development in the Coastal Zone requires a Coastal Development Permit (CDP).<sup>5</sup> Once an LCP and its IP/LUDC have been effectively certified, authority for issuing Coastal Development Permits is vested in the local agency “...for developments landward of the mean high tide line.”<sup>6</sup>

**Response: (Mendocino County Board of Supervisors)**

The Board of Supervisors agrees with this finding in general, incorporating the City of Fort Bragg response in specifics.

**Response: (Mendocino County Chief Executive Officer)**

The Chief Executive Officer agrees with this finding in general, incorporating the City of Fort Bragg response in specifics.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

Finding #4 is only partially correct. The footnote re: Categorical Exclusion orders inaccurately defines the specified types of development as being "exempt from CCC appeal." In fact, they are exempt from the requirement to obtain a coastal development permit. In addition, the last sentence is only partially correct. Pursuant to Section 30519(b) of the Coastal Act, the Commission retains permit authority (with certain exceptions) after LCP certification over development occurring on tidelands, submerged lands, and public trust lands.

5. Depending on the type and location of a permitted project, it may or may not be subject to appeal to the Coastal Commission. With the exception of major public works and energy projects, denials by local government are not subject to appeal to the Coastal Commission and may only be challenged through the courts.

**Response: (Mendocino County Board of Supervisors)**

The Board of Supervisors agrees with this finding.

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<sup>5</sup> In mapped areas, Categorical Exclusion Orders exempt single-family homes, water wells, septic systems and/or other specified types of development from CCC appeal. Fort Bragg has no mapped Exclusion areas.

<sup>6</sup> Although local agencies may opt to exercise coastal development permit authority, subject to appeal to the CCC following certification of only an LUP, only the City of Los Angeles has exercised this option.

**Response: (Mendocino County Chief Executive Officer)**

The Chief Executive Officer agrees with this finding.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

6. When a locally approved CDP is appealed, the Coastal Commission has 49 days to hold a hearing. At a minimum, it must determine whether or not the local approval raises a substantial issue with respect to consistency with the policies of the certified LCP.

**Response: (Mendocino County Board of Supervisors)**

The Board of Supervisors agrees with this finding.

**Response: (Mendocino County Chief Executive Officer)**

The Chief Executive Officer agrees with this finding.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

7. If no substantial issue is found, the local approval stands; if the Commission determines that there is a substantial issue, there is no limit on how long it can take to hold a full de novo hearing.<sup>7</sup>

**Response: (Mendocino County Board of Supervisors)**

The Board of Supervisors agrees with this finding.

**Response: (Mendocino County Chief Executive Officer)**

The Chief Executive Officer agrees with this finding.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

8. The only recourse in the event of a contested CCC decision is to the courts.

**Response: (Mendocino County Board of Supervisors)**

The Board of Supervisors agrees with this finding.

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<sup>7</sup> In a de novo hearing, prior testimony and the findings of local authorities are not considered. The entire process begins anew.

**Response: (Mendocino County Chief Executive Officer)**

The Chief Executive Officer agrees with this finding.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

***The City of Fort Bragg LCP Amendment Application***

9. The original City of Fort Bragg LCP was completed and certified in 1983/85.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

Finding #9 is only partially correct. The City of Fort Bragg's original LCP (LUP and IP) was certified on July 14, 1983. A number of subsequent LCP amendments were certified by the CCC in 1985, 1986, 1988, 1989, 1991, 1992, and 1995.

10. The Fort Bragg City Council adopted a new General Plan in December 2002, including an updated Coastal Element.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

11. In May 2003, the City of Fort Bragg Community Development Director submitted to the Coastal Commission an application for comprehensive amendments to the City's LCP. This submission did not include amendments to the Implementation Plan.<sup>8</sup>

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

Finding #11 is only partially correct. The City submitted an application to the CCC for a comprehensive amendment to its LUP in May 2003. The City was in the process of preparing an amendment to the IP (i.e., the Land Use & Development Code) at that time. At the time the comprehensive amendment to the LUP was submitted to the CCC, the Council and Planning Commission were involved in a lengthy public process for reviewing the proposed Land Use & Development Code. The amended IP was not completed by the City until July 2004.

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<sup>8</sup> During the period covered by this report, Fort Bragg employed three Community Development Directors. The first Community Development Director served as CDD from 1999 through 2005 and became City Manager in January 2006. The second CDD then served until the summer of 2006. The current Director was hired in the fall of 2006.



12. The CCC responded eight months later (1/29/04), acknowledging receipt of LCP amendment application # FTB-MAJ-1-03. The CCC requested extensive revisions in format and content, and additional information, including a required Resolution from the Fort Bragg City Council, a completed matrix showing changes to the original LCP, and corrected maps.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

13. On July 30, 2004, the FB City Council adopted the new Land Use and Development Code to implement the 2002 General Plan; sections applicable in the coastal zone were not sent to the CCC for certification until May 15, 2006, a delay of nearly three years since the May 2003 amendment application was submitted.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

Finding #13 is only partially correct. Characterizing the submittal of the IP amendment to the CCC in May 2006 as a "delay of nearly three years" is inaccurate, since the IP amendments (which were included in the Land Use & Development Code) were not adopted by the Council until July 2004.

14. On April 11, 2005, the FB City Council approved Resolution number 2857-2005, as requested by the CCC in January 2004, to transmit the LCP to the CCC for certification. This resolution states that the LCP amendments take effect "automatically upon Coastal Commission approval." The Grand Jury found no evidence that the Resolution was sent.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

Finding #14 is only partially correct. It does not address the fact that, in November 2004, the Council adopted further amendments to the LUP to ensure consistency between the newly adopted Land Use & Development Code and the December 2004 General Plan. Following this action, Coastal Commission staff suggested that an entirely new LCP amendment submittal should be prepared, hence the adoption of Resolution 2857-2005 in April 2005. The quotation in Finding #14 that the resolution states that the LCP amendments take effect "automatically upon Coastal Commission approval" is misleading as it does not include the remainder of the sentence in the adopted resolution as follows "unless the Commission suggests modifications, in which case, the Council will take action to consider adoption

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of the suggested modifications prior to the Local Coastal Program amendments taking effect."

15. On April 13, 2006, during Public Expression, it was called to the City Council's attention that any amended LCP may not take effect in the City until it has been certified by the CCC and that "...any attempt by the City to impose the new Local Coastal Plan on a project prior to its certification would be contrary to law."

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

16. On May 15, 2006, the City submitted a revised LCP amendment application to CCC including the December 2002 Coastal Element, amendments from November 2004, and the July 2004 LUDC.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

17. On May 22, the City Manager informed the City Council that:

- the City used uncertified code to review applications in the coastal zone;
- in the future, Staff will apply only the certified LCP;
- she had reviewed 31 recent applications and "...did not find any instances where an applicant appears to have been harmed by the advice given."

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

Finding #17 inaccurately synthesizes the City Manager's May 22, 2006 report to the Council. The entire staff report is attached to this response.

18. The Grand Jury reviewed the 31 applications and related documents. Jurors found that at least one applicant was harmed by having a mix of certified and uncertified code applied to his application to develop 40 units of affordable housing in the coastal zone. The numerous demands placed on this application constituted an effective denial of the project.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

Finding #18 is only partially correct. The reference to an "affordable housing project" is not technically accurate as the referenced project did not include any restrictive covenants regarding rental rates or tenant income eligibility.

Based on the project design however, it appears that the project intended to target the lower end of the market rate housing spectrum. The statement that "the numerous demands placed on this application [Hazelwood Townhouse Project] constituted an effective denial of the project" is incorrect. In May 2004, the City sent a letter to the applicant requesting additional information and analysis necessary to complete the Hazelwood Townhouse Project application. That letter did not reference any "uncertified" LCP policies or regulations. The requested information (drainage analysis, traffic analysis, lighting plan, etc.) is standard information necessary to evaluate a project's impacts. Further, on June 19, 2006, the Community Development Committee (CDC) of the City Council met with Mr. Moura, his attorney and his architect to review the Moura Townhome Project application and clarify exactly what information would be necessary to complete the application (see attached CDC minutes). The City Manager, Community Development Director and Director of Public Works participated in that discussion. While the City understands that the information that was required was substantial and may have been interpreted by Mr. Moura to be an "effective denial," that was certainly not the intent of the Councilor staff. Unfortunately, the requested information was not submitted and the application remained "incomplete" until it was deemed to be withdrawn in July 2008.

***The Hazelwood Townhouse Project***

19. In a letter dated May 5, 2004, the Community Development Director acknowledged the March 25<sup>th</sup> receipt of applications for a Use Permit, Coastal Development Permit and Site and Architectural Review to authorize construction of 40 units of affordable housing. The letter also acknowledged receipt of a \$1,500 deposit to the project's development account.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

20. The May 5, 2004 letter informed the applicant that the project plans had been reviewed on April 9, 2004 and additional information was required to complete the application and schedule it for a Planning Commission hearing. This information included:

- a traffic and parking study and a turn-around on Hazelwood Street
- location and size of playgrounds and specifications for play equipment
- a drainage analysis
- an archaeological records search
- refinement of the landscaping plan to ensure security and minimize vandalism

- refinement of lighting plan
- screening of garbage enclosures, fire check valves, PG&E junction boxes, etc.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

21. In a subsequent letter dated November 4, 2004, the Community Development Director invited a status report on the project and advised the applicant that “...the City Council adopted a new set of zoning regulations for Fort Bragg that took effect on July 30, 2004. The newly adopted Land Use and Development Code (LUDC) includes standards that will affect your project plans. Since your application was not complete at the time the new LUDC took effect, it is subject to the new development standards.” Areas specified as potentially requiring re-design included:

- parking and loading
- building frontages, setbacks, “common” and “private” open space
- outdoor lighting
- bicycle and motorcycle parking
- landscaping standards

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

22. At the time of the November letter, the Community Development Director had not yet submitted the July 30, 2004 LUDC to the Coastal Commission for certification. It was not legally applicable to any development permit application in the coastal zone. Nonetheless, a mix of certified and uncertified code was applied to this project and to other applications. This practice continued at least through May of 2006.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

Finding #22 is only partially correct. The statement that the July 30, 2004 LUDC was not legally applicable to any development permit application in the coastal zone is not accurate. The portions of the LUDC that did not amend the City's certified LCP were applicable to development in the coastal zone. A staff report to the City Council dated August 28, 2006 explains the necessity of a "hybrid" approach (see page 2, attached).

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23. In a letter to the Fort Bragg City Council dated May 22, 2006, the Applicant's Attorney observes: "...*At this point, (my client) has spent more than \$50,000 on reports and consultants, only to have his project effectively denied without a hearing. In my opinion, the Community Development Department should be trying to find ways to recommend approval of (affordable housing) projects such as this, not subject them to a slow 'death by a thousand cuts' until the applicant can no longer afford to build.*"

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

24. Minutes of the June 19, 2006 Community Development Committee reflect a recommendation from the Development Director that because the Hazelwood Townhouse project was subjected to a mix of codes, all or part of the \$1,500 development deposit should be restored to the project account. The committee agreed to refund the full amount to the account.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

25. Minutes of the August 28, 2006 City Council refer to another scheduled meeting with the applicant and state that "...*it is the consensus of the City Council that staff is to continue to use the Certified LCP.*" Nonetheless, several provisions of the uncertified LCP are cited as also being applicable to the project.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

Finding #25 is not entirely correct. The statement that "Nonetheless, several provisions of the uncertified LCP are cited as also being applicable to the project" should read, "Several provisions e4Ae b1Acertifies bCP of the LUDC that are not part of the City's LCP amendment application are cited as also being applicable to the project."

26. From November 2007 through February 2008, the Grand Jury researched the course of the LCP amendment application and that of the failed Hazelwood Townhouse development application. Despite termination of this application, fees collected from the applicant remain in an inactive development account.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

Finding #26 is incorrect. The Hazelwood Townhouse Project application was not a "failed" application, nor was it "terminated." The applicant failed to submit the information required to complete the application. The application status was "incomplete" until July 2008, when the City deemed the application to be "withdrawn." At that time, the City refunded the full balance remaining in the applicant's developer deposit account.

***The LCP Saga Continues***

27. In September 2006, the current Community Development Director assumed her position and began regular dialogue with the CCC.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

28. In a letter dated November 15, 2006, the CCC confirms that the LCP amendment application is complete and can be processed. For the ensuing year, CCC staff and the Community Development Director communicate regularly regarding a multitude of corrections and "friendly amendments" to the application.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

29. Shortly before the December 14, 2007 meeting of the CCC, at which Fort Bragg's LCP Amendment No. FTB-MAJ-1-06 was scheduled for discussion, Fort Bragg received a lengthy CCC staff report in which staff noted that despite considerable improvements to the application, further recommended changes were "numerous." The CCC staff report with addenda totaled approximately 1,000 pages. Some of the changes suggested in the report were "friendly modifications" requested by the City; a majority were proposed by the CCC. The CCC postponed all discussion from its December meeting to January 11, 2008. This was just prior to the January 29, 2008 deadline for the CCC to act on Fort Bragg's application.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

30. On January 9, 2008, the City of Fort Bragg presented to the CCC a list of eleven substantive issues that remained unresolved.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

31. On January 11, 2008, the CCC voted to certify the City of Fort Bragg's LCP Amendment with modifications. The CCC Executive Director was authorized to continue to work with the City to resolve outstanding issues and to modify the LCP without the need for further CCC review so long as the modifications were consistent with the Coastal Act.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

32. As of February 27, 2008, only four issues remained unresolved and the Council gave the Community Development Director authority to negotiate on these four points. Public workshops were then held in March and April.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

33. On May 12, 2008, the Fort Bragg City Council unanimously approved a resolution to adopt the Local Coastal Program Land Use Plan (Coastal General Plan) and the Coastal Land Use and Development Ordinance. Together these documents constitute the Amended Local Coastal Program. The City anticipates that this document will be certified as part of the CCC Consent Calendar on July 11, 2008. Sometime after final certification of the LCP, the City may submit a "clean up" amendment covering issues from the amendment process that were not resolved to the City's satisfaction as well as any issues that may arise as the City implements the newly certified LCP.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

34. After the Coastal Commission has certified the LCP as being in compliance with Coastal Act policies, and before the amended LCP may be applied to review of development permits in the City, the CCC must file a Notice of Certification with the State Resources Agency.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

We agree with this finding.

***Recommendations***

The Grand Jury Recommends that the City of Fort Bragg:

1. pursue certification of the pending amended Local Coastal Program with all due diligence to ensure that it is:
  - certified at the July 11, 2008 CCC meeting, and
  - the CCC files a Notice of Certification with the State Resources Agency.

(Findings 3-4, 15, 31, 33-34)

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

Recommendation #1 has been implemented. The City has diligently pursued certification of its LCP amendment. While it was not certified at the July 11, 2008 CCC meeting due to Coastal Commission staff's inability to complete their necessary review, it was placed on the Coastal Commission's August 8, 2008 agenda for final certification. The City will confirm that the required Notice of Certification is filed with the Secretary of Resources.

2. publicly apologize to and refund all fees collected from any and all applicants who were affected by having a mix of certified and uncertified code applied to their projects. (Findings 15, 17-18, 20-26)

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

Recommendation #2 has been implemented. The City apologized to the applicant for the Hazelwood Townhouse Project for confusion resulting from the references to uncertified IP requirements in the November 2004 letter on numerous occasions, including at the May 22, 2006 City Council meeting and the June 19, 2006 Community Development Committee meeting. The City refunded the applicant's initial \$1,500 deposit after the June 19, 2006 Community Development Committee meeting. In addition, the City refunded the balance in the applicant's developer deposit account in July 2008.



3. join with the County of Mendocino and with the consortium of coastal cities to demand that the California Coastal Commission:
- establish clear guidelines and streamline the process for review and amendment of LCPs
  - provide timelines that specify required CCC response times both for the LCP amendment process and for applicants whose projects are subjected to the CCC appeals process.

(Findings 3-8, 12-13, 28-29, 33-34)

**Response: (Mendocino County Board of Supervisors)**

This recommendation has been and continues to be implemented by the Board of Supervisors in that the County actively participates in the Coastal Counties group, which works with coastal cities, and supports the two requests listed in the recommendation.

**Response: (Mendocino County Chief Executive Officer)**

This recommendation has been and continues to be implemented by the Chief Executive Officer in that he has attended and participated in meetings of the the Coastal Counties group, which works with coastal cities, and supports the two requests listed in the recommendation.

**Response: (Fort Bragg City Manager, Fort Bragg City Council, Fort Bragg Community Development Director)**

Recommendation #3 has been and continues to be implemented. The City is an active participant in the League of California Cities "Coastal Cities issues group" which is coordinating closely with the California State Association of Counties (CSAC) on issues relating to the Coastal Commission.

***Comments***

The City of Fort Bragg was not well served by Coastal Commission staff. Prevailing CCC regulations and processes are complex and poorly articulated. This, however, does not excuse the deliberate and persistent application of the uncertified LCP to local development permit applications by the Community Development Department. Jurors found substantial evidence that the Community Development Director failed to keep the City Council accurately informed about the status of the LCP amendment application and that most, if not all, Council Members were unaware that the uncertified LCP was being applied until this was brought to their attention by members of the public in April 2006.

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After a long and onerous process, the amended LCP now appears to be on its way to effective certification in July 2008, five years after the initial application was submitted. Even now, at least one substantive issue remains unresolved that will require further amendment. The loss of the Hazelwood Townhouses appears irrevocable.

The Coastal Commission was established ostensibly to protect the coastal environment, not to preclude human habitation and necessary development. Although periodic review of Local Coastal Programs is required by law, it is effectively precluded by Byzantine rules and a process of implementation that is nothing short of Kafkaesque. Addressing malfunctioning State government entities is beyond the purview of County Grand Juries. We cede this task to our elected officials and to county and local governing bodies throughout the State.

***Required Responses***

Fort Bragg City Council (All Findings; All Recommendations)

Fort Bragg City Manager (All Findings; All Recommendations)

Fort Bragg Community Development Director (Findings 9-32;  
Recommendations 1 and 2)

Mendocino County Board of Supervisors (Findings 1-8; Recommendation 3)

Mendocino County CEO (Findings 1-8; Recommendation 3)

***Requested Responses***

California Coastal Commission Executive Director (Findings 1-18, 27-34;  
Recommendation 3)

California Coastal Commission District Manager (Findings 1-18, 27-34;  
Recommendation 3)