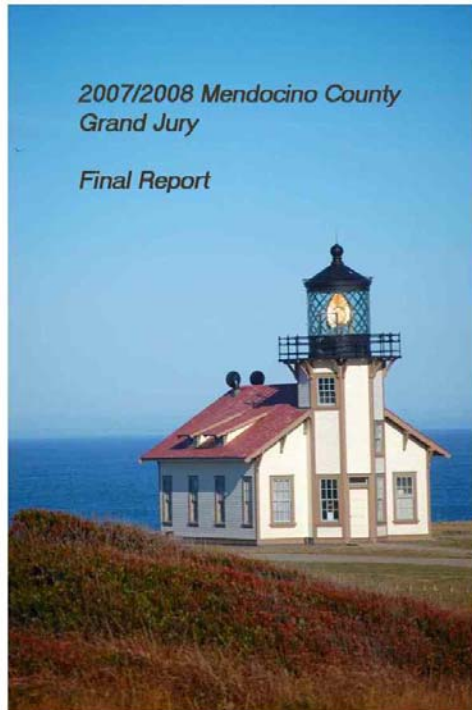


KAFKA GOES COASTAL
Amending the Fort Bragg Local Coastal Program

A report of the
2007/2008 Mendocino County Grand Jury



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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 1976.¹ 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.²

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 development permit applications until they have been certified by the Coastal Commission.³

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

¹ www.coastal.ca.gov

² 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.

³ California Government Code §30514(a)

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.

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.
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.
3. Local or County governments cannot legally apply an LCP or amendments to an LCP prior to certification by the CCC.⁴ 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.

⁴Public Resources Code §30514 may be accessed at www.leginfo.ca.gov/calaw.html

4. Most development in the Coastal Zone requires a Coastal Development Permit (CDP).⁵ 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.”⁶
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.
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.
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.⁷
8. The only recourse in the event of a contested CCC decision is to the courts.

The City of Fort Bragg LCP Amendment Application

9. The original City of Fort Bragg LCP was completed and certified in 1983/85.
10. The Fort Bragg City Council adopted a new General Plan in December 2002, including an updated Coastal Element.
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.⁸
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.
13. On July 30, 2004, the FB City Council adopted the new Land Use and Development Code to implement the 2002 General Plan; sections

⁵ 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.

⁶ 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.

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

⁸ 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.

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.

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.
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.*”
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.
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.”
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.

The Hazelwood Townhouse Project

19. In a letter dated May 5, 2004, the Community Development Director acknowledged the March 25th 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.
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.

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

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.

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.*”

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.

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.

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.

The LCP Saga Continues

27. In September 2006, the current Community Development Director assumed her position and began regular dialogue with the CCC.
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.
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.
30. On January 9, 2008, the City of Fort Bragg presented to the CCC a list of eleven substantive issues that remained unresolved.
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.
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.
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.

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.

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)
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)
 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)

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.

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)

The Grand Jury Report Process

The role of the Mendocino County Civil Grand Jury is to oversee and shed light on local and County government. Jurors conduct oversight inquiries and investigate matters of public interest. Any individual can file a complaint with the Grand Jury using forms available online at www.co.mendocino.ca.us/grandjury.

A Grand Jury inquiry begins when a topic is approved by a minimum of 12 of the 19 seated Jurors. A committee then undertakes extensive research and drafts the report.

Findings are verified against documents and interview notes and are reviewed for accuracy with key individuals in the agency of interest. The draft is then reviewed by an internal Edit committee and must receive approval by the Full Panel. It is then sent to County Counsel and to the Presiding Judge for final review before public release.

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The cover photo for this report was taken at Point Cabrillo Light Station Historic Park by Donald F. Roberts. This report was produced with the generous assistance of Tony and Maureen Eppstein. Information on Point Cabrillo State Historic Park and the Lighthouse Inn is available at www.pointcabrillo.org