

As Rick Frank [insightfully discussed](#) earlier this week, the [California Coastal Commission](#) has [fired its former executive director](#), Charles Lester. Readers interested in more background information and analysis should read Rick's post, as well as the [excellent reporting by Tony Barboza and others from the LA Times](#). (And anyone who wants to hear about it can also listen to [this archived podcast](#) from earlier this week, in which I discussed it on KPCC-FM.) I won't rehash the details here, but wanted to post some reflective thoughts about the Commission's decision and how the commissioners' handling of the situation – and particularly their unwillingness to speak specifically and directly about their concerns about Dr. Lester at the public hearing during which he was fired – has eroded public trust in the Commission.

The Commission is subject to the state's [Bagley-Keene Open Meetings Act](#), which requires most discussion by a majority of commissioners about any matter in front of the Commission to be conducted in open, noticed public meetings. There is a personnel exception to the open-meetings requirement, which requires confidential, closed-session discussion of most personnel actions among commission members. (The commissioners have also been criticized for deliberating and deciding behind closed doors. I don't see anything wrong with that in itself. Personnel decisions are difficult and awkward, and the commissioners are legally entitled to confidentiality in the deliberations and at the time of the vote itself. Under the Bagley-Keene Act, the commissioners were entitled to deliberate and make decisions in closed session.)

At the same time, the Act gave Dr. Lester the right to request a public hearing for open discussion on his employment status prior to any final action. As has been [reported](#), the Commission received over 20,000 comments prior to the public meeting, and about 200 people spoke at the meeting – all but one in favor of retaining Dr. Lester. The editorial boards of all major newspapers in the state agreed. But the commissioners were unwilling to discuss, in the open meeting, any specific issues relating to Dr. Lester's work or their decision to fire him. This failure is very troubling. Various commissioners complained that they were [unable to discuss the specific issues involved, and even characterized themselves as under a "gag order,"](#) because although Dr. Lester elected this issue to be discussed in open session, he did not waive the confidentiality of his personnel records.

But the story that Dr. Lester put the commissioners in a bind by demanding the public hearing but refusing to authorize release of the confidential documents is untrue, and the commissioners know it. Commission chief counsel Chris Pederson [circulated a memo last week](#) that described the legal issues relating to public disclosure and confidentiality in yesterday's hearing. Pederson correctly differentiated between confidential information, including performance evaluations and other items in Dr. Lester's personnel file as well as

the closed-session deliberations, and public information that is not confidential. He stated:

The Commission may deliberate and vote in public session regarding whether or not to dismiss him. As part of those public deliberations, Commissioners may discuss points raised during the public hearing, other matters of public record, their own current thoughts regarding the executive director and management of the agency, and any other issues that they think are relevant, aside from the executive director's past performance evaluations.

As I understand it, the commissioners who voted to fire Dr. Lester provided only the barest summary of their concerns about him, after hearing over 7 hours of testimony in support of him. To be sure, the commissioners certainly had the legal right to not discuss their reasons publicly. But the commissioners have to own their decision rather than hiding behind a false story that they were hamstrung. It's beyond implausible to me that the firing was entirely for reasons that were confidential – that is, based entirely on information available only in personnel records and Commission deliberations in closed session. No commissioner has said that. And the few concerns that surfaced at and prior to the meeting involved vague assertions – but importantly, assertions based on facts and opinions that had to arise outside confidential contexts- that Dr. Lester had not communicated effectively with the commission, denied them access to information, slanted the information or analysis in staff reports, or failed to promote staff diversity. The confidentiality of personnel files makes sense, and if there were evidence of serious employee misconduct, for example, we would expect the Commission to handle its work discreetly. But it seems pretty clear that there is no such evidence based on the general statements the Commissioners have made publicly.

In light of all that, the commissioners had a responsibility to voice their concerns. Not a legal responsibility, but a responsibility nonetheless. Observers almost universally have seen their failure to do so as an insult to the staff, members of the public, and legislators who questioned the decision, as well as a grave abdication of their duty to sustain the public's trust in the Commission's integrity. I just can't see why the commissioners would not have expressed more specifically their reasons, or provided concrete examples of situations in which Dr. Lester disappointed them. They could have explained in detail the situations that frustrated them. And they could have provided specific information to support their views. For example, they could have provided statistics or particular examples where the pace of approval or disapproval of applications was unsatisfactory. Or they could have provided examples of situations in which they believe that his actions or inactions led to bad decisions or inadequate processes (for example, if they did not get answers to

specific questions they had that might have had that would have facilitated decisionmaking). Or they could have provided comparative statistics on diversity. While I didn't attend the meeting and I listened to only part of it, my impression based on the reporting is that no commissioner did so. It's no surprise, in light of that, that public frustration with the Commission's decision is still escalating. I agree with former Commission General Counsel Ralph Faust, who told the commissioners they should deliberate in public, and "whatever [the decision] is, own it and defend it."

Their failure erodes confidence in the Commission, since people understandably will assume the worst if they can't understand there to be legitimate motives. Commissioner Mark Vargas (a friend of mine, with whom I haven't discussed this), among the commissioners who voted to fire Dr. Lester, attacked the environmental community for spinning the action as pro-development, saying "this is like trying to convince people that the fluoride in their water was not a communist plot." I have no reason to doubt his sincerity and integrity, but that comment is ridiculous. The Commission has done nothing at all to even try to disprove the plausible theory that pro-development pressure motivated the Commission's action. The commissioners simply did not explain persuasively any alternative motive for the Commission's action, so we all are left with only the explanations available to us from the public record. Even putting the Commission's action in the best light, it just doesn't make sense given their public explanation, as the [Sacramento Bee noted in an editorial](#):

The few specifics that surfaced were penny-ante: They felt Lester and his staff didn't brief them in enough detail on proposed projects. They felt sandbagged on the budget. Hardly firing offenses, and hardly the complaints about the staff's attitude and the lack of a national search when Lester was hired that several commissioners had shared in private.

To be sure, the environmental community has caricatured the firing of Dr. Lester by asserting that it was entirely motivated by a good vs. evil battle between development interests and coastal advocates. Dr. Lester himself, in [comments after the hearing](#), has said that he thinks it's more nuanced than that, even as he (and I) believe that staff is trying its hardest to enforce the Coastal Act against a political backdrop in which commissioners are influenced by developers. I don't doubt that the commissioners were annoyed with Dr. Lester and the staff for framing their staff recommendations in ways that supported the staff's own independent analysis, and for working in a way that limited the commissioners' ability to assert their own preferences effectively. And there's nothing wrong with the staff doing that, even if Dr. Lester's interactions with the commissioners may have left them

wanting. Staff's job - as the experts paid to do the hard work of the agency - is to do their jobs, remain independent, and call the issues as they see them, even as the commissioners' jobs are more overtly political. That leads to inevitable tension, demonstrated by unsuccessful efforts to oust former executive director Peter Douglas twenty years ago. And while the commissioners may understandably be annoyed by that if the staff analysis is at odds with commissioners' preferences or views, it's it is extraordinarily arrogant and foolish for the commissioners to believe that staff's primary duty is to the commissioners and not to the public. And that belief is evident here.

I have grave concerns about the agency right now. The overwhelming support of the staff for Dr. Lester (including high-level staff including the Chief Deputy Director, several Deputy Directors, Enforcement Chief, and Legislative Coordinator all of whom signed the [staff letter in support of Dr. Lester](#)), coupled with the public support for his retention (including so many newspaper editorial writers) and the split Commission vote, mean that it may be very difficult for the Commission to hire someone effective to take his place. The lack of clarity about the reasons for the dismissal magnifies this challenge. And the Commission's work will be under intense scrutiny now, with some very significant and controversial regulatory actions in front of it and an environmental advocacy community that has been galvanized. The Commission [may even have set itself up for legislative changes that will limit the influence of lobbyists](#), as state legislators have reacted with dismay to Dr. Lester's firing and have blamed the influence of developers for this action by the Commission. (Assembly Speaker Toni Atkins, who appointed several Commission members, [tweeted a remarkable apology](#): "Let me apologize to the public. I truly thought my appointees would be better stewards of the coast.")

The situation is particularly odd in an agency that is structurally built to withstand political vagaries. Executive agencies are vulnerable to chronic failure because they are bureaucratic, and to politics because their executives are completely beholden to the governor. Most boards and commissions are vulnerable in similar ways for similar reasons- but one step removed because the executives serve the boards, which are beholden to the governor. The CCC is unique in its structure, in that the commissioners are appointed in equal numbers by the Governor, the Assembly leader, and the Senate rules committee. This structure distributes the power to appoint commissioners and allows the power to largely reside with the whole group of 12 voting commissioners. There's no reason that structure ought to make the executive director more vulnerable to politics; on the contrary, it should be the opposite. I guess it would (and has) tended to result in more independent executive directors, which might annoy particular commissioners or frustrate whoever influences them, and here it apparently added up to an implacable majority.

On a more personal note, I have worked a little bit with Charles Lester and have a lot of respect for him. He is extraordinarily knowledgeable and committed to the protection of the coast. He was on staff at the Commission long before he became the director, and knows its work thoroughly. The Commission's work at the staff level has been high in quality, and the Commission has been moving forward successfully with critical initiatives, such as its new and cutting-edge [sea-level rise policy guidance](#). I have been working on a sea-level rise research project that will provide policy tools to local governments to manage coastal change, and Commission staff has been very engaged and helpful to our work. I was privileged to spend some time at the Commission staff retreat this past November, presenting some of this work-in-progress on sea-level rise planning, and the staff's morale and energy were clearly high (confirmed by the recent mass show of staff support for Dr. Lester from the highest to lowest levels). The Commission staff is talented, innovative, and committed to the Commission's charge to implement and enforce the Coastal Act.

I hope the Commission can recover from this. The Bee pointed out the terrible situation the Commission is in now, in [its scathing editorial](#) this week:

Whoever they bring in [as the new Executive Director] had better not have even a whiff of pro-development hackery or undue sympathy for beachfront homeowners. The person also had better know the [Coastal Act](#) inside and out, since that law is actually the real bulwark against those who would hog and sully the state's coastline.

And the commissioners who instigated this uproar must go. Lester may not have been the employee of the month, and his staff may have needed an attitude adjustment. But it's one thing for an appointee to clash with an agency's staffers, and something else entirely to mismanage a personnel matter to the point that it disrupts the people's business.

The Senate and Assembly appointees can't be replaced until their terms end. But the commission chairman terms out this year and [Gov. Jerry Brown's four appointees](#) serve at the governor's pleasure. If those who pushed hardest for Lester to go really were doing Brown's wet work - [as was implied by his silence](#) - fine. Their work is done now. If not, even more reason to clean the slate on all sides and move on.

Chief Deputy Director Susan Hansch and Senior Deputy Director Jack Ainsworth, by all

accounts very capable leaders, will be leading the agency until a new director is selected. Perhaps ironically, Hansch and Ainsworth were among the signers of the staff letter urging the Commission to retain Dr. Lester.

Whatever is to come, this chapter in the Coastal Commission's history will be remembered decades from now. The commissioners must have known that before the hearing, especially given the public attention and outcry. I wonder if the commissioners who voted to fire Dr. Lester thought about their legacy before they cast their votes. It's pretty hard for me to envision any scenario in which they will be seen as heroes by our future residents and leaders.