

A new report recommends strategies to improve the transparency and fairness of the California Coastal Commission's processes and procedures.

The California Coastal Commission is a state agency whose mission is to preserve and manage the state's coast. Its decisions regarding planning and development implement core state policies and determine individual legal rights. Both the perception and the reality of a fair, just, and accessible process is crucial to maintaining public confidence in the Commission's decision-making.

In February 2016, the Coastal Commission dismissed its Executive Director following several years of increasing tension at the Commission's meetings between pro-development interests and environmentalists. A number of issues served as focal points for the tension: the fairness and independence of the Commission's staff; complete and timely access to information upon which the Commission was making its decisions; and, in complex and controversial matters, adequate time to evaluate and respond to information in the record.

Taken together, these issues involved public participants' concerns about transparency and fairness in the Commission's process. The breadth and intensity of these concerns indicated that an evaluation of the Commission's decision-making process, essentially unchanged since its inception, was needed. To address these concerns, I collaborated with stakeholders across the state, including Emmett Institute faculty, to identify ways to help make the Commission's public decision-making process more transparent and fair. The results of this research are contained in a new report, *The California Coastal Commission:*

Increasing Transparency, Accountability, and Opportunities for Effective Public Participation, published by UCLA School of Law as part of the Pritzker Environmental Law and Policy Brief series.

The brief includes analysis of the processes and procedures that the Commission uses in making certain types of important decisions, called "quasi-judicial decisions". The Commission makes these types of decisions often, for example, in reviewing coastal development permit applications, certifying local coastal programs, and reviewing the activities of the federal government to assess whether those activities are consistent with California law.

The brief first examines the manner in which the Commission gathers, analyzes, retains and distributes, or otherwise makes available the information it collects to inform its quasi-judicial decisions. It then looks at issues of access to decision-makers and at the conduct of hearings themselves. Based on this review, the brief identifies opportunities and recommends strategies to improve the Commission's processes and procedures.

These recommendations, which can be advanced by the Commission on its own initiative and pursuant to its existing authority, include:

- Improving access to information in the record by expediting full implementation of the Commission's system for electronic filing and record-keeping, with the goal that all documents placed in the administrative record are immediately electronically available to all participants, interested parties, and the public;
- Ensuring timely, complete, and comprehensive disclosure of ex parte communications conducted by Commissioners, with written records of these communications submitted electronically as part of the electronic records system, made public immediately, and incorporated as part of the administrative record;
- Closing the record for written submissions and ex parte communications sufficiently in advance of the hearing to allow all participants the opportunity to understand, evaluate, and respond to all record evidence at the hearing;
- Obtaining complete information from the applicant during the filing review process to better manage the time constraints of the Permit Streamlining Act;
- Continuing to develop and implement the Commission's current process of prioritizing permit matters and streamlining those that do not present difficulty, while developing separate formal procedures and informal practices

for staged, multi-part hearings for complex and controversial matters; and
- Managing the hearing process with reasonable flexibility to ensure that all participants are able to present their perspectives effectively, so that the Commission is able to understand fully all points of view.

Finally, the Commission should consider whether and how to change its processes with full reflection upon environmental justice concerns and the particular problems of communities impacted by these issues, taking into account the policies enacted by the Legislature and the commitments the Commission itself has undertaken as part of its recently adopted Environmental Justice policy.

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