

COASTAL COMMISSION INCENTIVIZES LOW-COST LODGING

LOS ANGELES—The Coastal Commission is using AB 2616 to increase access to low-cost lodging along the coast, and Stanley W. Lamport of Cox, Castle & Nicholson gives us the details in this EXCLUSIVE interview.

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LOS ANGELES—The Coastal Commission is using AB 2616 in increase access to low-cost lodging along the coast. The new regulation went into effect at the beginning of this year, and will allow the commission to consider access to affordable lodging when issuing development permits under the “environmental justice” clause of the law. To find out more

about the new law, new requirements, what developers need to know and how this might increase the supply of lower-cost lodging, we sat down with Stanley W. Lamport, a partner at [Cox, Castle & Nicholson](#), for an exclusive interview.

GlobeSt.com: Tell me about AB 2616.

Stanley W. Lamport: AB 2616, which took effect at the beginning of this year, is intended to assure that Coastal Commission decisions are informed by environmental justice principles and issues. AB 2616 allows the commission and local agencies issuing coastal development permits to consider “environmental justice, or the equitable distribution of environmental benefits throughout the state,” which the commission is now applying in considering access to lower-cost lodging along the coast. More specifically, the bill defines “environmental justice” as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” The bill does not amend Chapter 3 of the Coastal Act, which states the policies that govern permit and local coastal program approvals, but it will inform the application of certain policies in the Coastal Act, as we are already beginning to see.

The new law requires one of the governor’s appointments to be someone who resides in, and works directly with, communities in the state that are disproportionately burdened by, and vulnerable to, high levels of pollution and issues of environmental justice, including, but not limited to, communities with diverse racial and ethnic populations and communities with lower-income populations. The governor has two vacancies to fill on the Coastal Commission at the moment (one commissioner has resigned and another will be off the commission after its February meeting). One of those appointments will likely meet the statute’s qualifications; although the new law does not require the governor to appoint a qualifying commissioner until the governor’s fourth appointment after Jan. 1, 2017.

GlobeSt.com: How will the Coastal Commission scrutinize lower-cost lodging?

Lamport: It is not so much a question of scrutinizing lower-cost lodging, as it is finding ways to provide it. The Coastal Act requires the commission to protect, encourage and, where feasible, provide “lower cost visitor and recreational facilities” which includes lodging. However, under the act, the commission cannot fix private overnight room rental rates or set income eligibility standards for overnight room rentals. The commission has been discussing ways to provide lower-cost overnight accommodations in light of the foregoing limitations. The commission is approaching the issue with renewed emphasis due to recent enactment of AB 2616. At a

workshop in November, the commission staff presented a preliminary guidance for providing lower-cost lodging projects in the coastal zone. The commission staff thesis is that (1) there is a shortage of affordable lower-cost lodging and overnight accommodations in the coastal zone and (2) the lack of such lodging and accommodations denies lower-income populations the ability to recreate along the coast in the same way that those who can afford overnight lodging on the coast. That disparity now becomes an environmental justice issue under the Coastal Act.

The commission is now actively developing guidelines to address the issue. The staff's preliminary recommendations include (1) clearly defining what constitutes a lower-cost hotel, (2) prohibiting the loss of existing lower-cost overnight accommodations, or requiring replacement of lost units at a rate of 1:1 or higher, (3) requiring new high- and moderate-priced hotels to provide "an adequate share" of lower- and moderate-cost overnight accommodations, (4) requiring in-lieu fees that are adequate to develop new lower-cost units when those units cannot be provided as part of a new project, (and improving the use of those fees), and (5) support for "appropriately regulated" short-term rentals.

The commission staff has not yet formally established guidelines and is looking for industry input before doing so. But the commission will be acting on permits in the interim using the principles discussed at the workshop. In that regard, we expect that the commission will be scrutinizing lodging proposals in the following ways:

First, renovations of existing lower-cost lodging and projects that remove existing lower-cost lodging are likely to receive much closer scrutiny at the commission, which is now aware of examples of local approvals of renovations of affordable hotel and motel units that resulted in elevated room rates that removed the units from the affordable category, and the fact that there are companies investing in that business model. We anticipate that the commission will maintain that such upgrades require coastal development permits and that those permits will involve conditions to address the anticipated loss of affordability. The commission has a history of denying permits that would allow for the demolition of affordable lodging units, which is likely to be more vigorously applied.

Second, the commission will be looking at the affordability and economics of the marketplace and it is likely to impose measures when there are not enough lower-cost lodging facilities nearby.

GlobeSt.com: What are some of the new requirements that the commission is considering?

Lamport: We expect the commission to consider requiring onsite lower- and moderate-cost accommodations and/or to impose higher in-lieu fees on all classes of lodging projects and appreciably higher in-lieu fees on high-cost lodging projects. The recent workshop pointed out that fees collected in the past fell short of what was necessary to create the affordable units for which the fees were imposed. While the commission cannot regulate room rates, the Coastal Act does not prevent the commission from requiring applicants to provide campsites, R.V. overnight facilities and similar lower-cost classes of accommodations. It is also possible that applicants will face a choice between agreeing to provide cost-restricted units and having to pay the in-lieu fee.

GlobeSt.com: How should owners and developers prepare for AB 2616?

Lamport: Owners and developers need to factor the commission's evolving approach to lower-cost lodging into their planning. It will become much more important for owners and developers to understand and address with the commission the affordability and economics of the marketplace around their projects. The staff's recommendation would relieve an applicant from the requirement to provide lost lodging or pay an in-lieu fee when (1) there are adequate lower cost visitor serving facilities nearby, (2) there is a lack of moderate- and high-cost accommodations nearby, (3) the project would bring in added economic growth to a depressed local economy, and (4) providing lower-cost units would be infeasible. Owners and developers will need to be prepared to address these variables with the commission. They will also need to be ready to discuss the economics of their projects at the commission.

GlobeSt.com: Will this help increase the supply of lower-cost and affordable lodging?

Lamport: The answer will vary by location along California's 1,100-mile coast, but there is concern that the measures the commission has considered publicly will not increase the supply in areas where there is an affordability gap. Land and entitlement costs, among other considerations, make it difficult to achieve an economically feasible affordable lodging project in these markets. The proposals that the commission has been considering publicly add to the cost without increasing the return. The question for the commission is how to make the development of lower-cost lodging an attractive investment in the more challenging markets. One idea, which is the subject of recently introduced legislation, is to open up state lands for new lower-cost lodging. That approach is promising because it has the potential to remove the land cost from the equation. Other approaches that attract investment in lower-cost lodging will need to be developed to close the gap.