

# *Ex Parte* Communications

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CALIFORNIA  
COASTAL  
COMMISSION

# *Ex Parte*

- Latin for “*from (by or for) one party*”
- Legal Meaning = “*brought by one person in the absence of another*”



# Due Process in Administrative Hearings

- *“...due process requires fair adjudicators in courts and administrative tribunals alike.”*
  - Haas v. County of San Bernardino (2002) 27 Cal.4th 1017, 1024.
- *“A fair trial in a fair tribunal is a basic requirement of due process.”*
  - In re Murchison (1955) 349 U.S. 133, 136

# Coastal Act Findings and Declarations

- *“ . . . principles of fundamental fairness and due process of law require that the commission conduct its affairs in an open, objective, and impartial manner . . . ”*
- *“ . . . California's coastal protection program requires public awareness, understanding, support, participation, and confidence in the commission and its practices and procedures.”*

California Public Resources Code (Coastal Act) § 30320  
(emphasis added)



# CA Supreme Court (1950)

- *“Administrative tribunals which are required to make a determination after a hearing cannot act upon their own information, and nothing can be considered as evidence that was not introduced at a hearing.”*
- *“A hearing requires that the party be apprised of the evidence against him so that he may have an opportunity to refute, test, and explain it, and the requirement of a hearing necessarily contemplates a decision in light of the evidence there introduced.”*

English v. City of Long Beach (1950) 35 Cal.2d 155, 158-59 (emphasis added).

# CA Supreme Court (2006)

Case emphasized fairness principles:

*“in adjudicative matters, one adversary should not be permitted to bend the ear of the ultimate decision maker or the decision maker’s advisors in private.”*

- Dep’t of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (2006) 40 Cal.4th 1, 5.

The State APA *“broadly prohibits ex parte contacts between parties . . . and decision makers during administrative adjudicative proceedings.”*

- Id. at 9.



# *Ex Parte Communications*

- *The Coastal Act defines Ex Parte Communications as:*
  - *“any oral or written communication“*
  - *“between a member of the commission and an interested person”*
  - *“about a matter within the commission's jurisdiction”*
  - *“which does not occur in a public hearing, workshop, or other official proceeding, or on the official record of the proceeding on the matter.”*

Cal. Pub. Res. Code (Coastal Act) § 30322(a) (emphasis added)

# Matters within the Commission's Jurisdiction

Defined as:

- “*any permit action, federal consistency review, appeal, local coastal program, port master plan, public works plan, long-range development plan, categorical or other exclusions from coastal development permit requirements, or any other quasi-judicial matter requiring commission action, for which an application has been submitted to the commission.*”

Cal. Pub. Res. Code (Coastal Act) § 30321 (emphasis added)



# Interested Person

*The phrase “interested person” is defined to include:*

- Applicants*
- Other Participants in the proceeding*
- Any person with a financial interest in the matter*
- Any agent or an employee of any of the above, or anyone else receiving consideration for representing them*
- Representatives acting on behalf of a “civic, environmental, neighborhood, business, labor, trade, or similar organization who intends to influence the decision . . .”*

Cal. Pub. Res. Code (Coastal Act) § 30323

# Exclusions

The following communications are excluded from the meaning of ex parte:

- With your staff or your attorney
- About procedural issues
- About matters before another state or local agency on which a Coastal Commissioner also serves, whether:
  - on the record during an official proceeding of such agencies, or
  - between the Coastal Commissioner who serves on the other agency and other officials or employees of that agency
- By nonvoting Commissioners, as follows:
  - with a staff member of any state agency, where both are acting in their official capacities; or
  - regarding a matter pending before the Commission where the nonvoting Commissioner does not communicate with any other Commissioners about the matter (in any way, on or off record)

Cal. Pub. Res. Code (Coastal Act) § 30322(b)



# Disclosure must be “on the Record”

If the communication occurs more than 7 days before the hearing on the matter being addressed, you must disclose:

- in writing,
- on the standard form,
- within 7 days of the communication,
- and submit the form before the Commission meeting begins.

If the communication occurs less than 7 days before the hearing on the matter addressed, you must disclose the communication “on the mic,” at the meeting.

Cal. Pub. Res. Code (Coastal Act) § 30324(a)

# Scope of Disclosure

Disclosure must identify:

- Date, time, and location of the communication
- Identity of persons involved
- A “**complete description of the content of the communication, including the complete text of any written material that was a part of the communication**”

Cal. Pub. Res. Code (Coastal Act) § 30324(b) (emphasis added)



# Recusal Requirement

*Commissioners who have “knowingly had an ex parte communication that has not been reported” may not vote on the matter or “influence a commission decision” in any way.*

Cal. Pub. Res. Code (Coastal Act) § 30327(a)

# Violations - Fines

- *Knowing violations of the disclosure requirements can result in civil fines of up to \$7,500.*
  - Cal. Pub. Res. Code (Coastal Act) § 30824
- *In addition . . . , knowing violations of the recusal requirement can result in civil fines of up to \$7,500.*
  - Id. at § 30327(b)
- *In both cases, “the court may award attorney's fees and costs to the prevailing party.”*
  - Id. at §§ 30824 and 30327(b)



# Revocation of Decision

- *“If a violation of this article occurs and a commission decision may have been affected by the violation, [a court can order] the commission to revoke its action and rehear the matter.”*

Cal. Pub. Res. Code (Coastal Act) § 30328