

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



MEMORANDUM

November 9, 2007

TO: Coastal Commissioners and Staff

FROM: Hope Schmeltzer, Chief Counsel

RE: **Recent Coastal Act Amendment Prohibiting Gifts Totaling \$10**

The legislature recently enacted amendments to the Coastal Act (attached as Exhibit A) regarding the giving and acceptance of gifts. The amendments take effect on January 1, 2008. This memorandum explains these new provisions.

The new Coastal Act amendments prohibit interested persons from giving, and Commissioners and staff from accepting, gifts aggregating more than \$10 in a calendar month from an interested person. The term "interested person" has the same meaning as in the rules concerning disclosure of ex parte communications. Interested persons include permit applicants, local government officials with LCP submittals pending before the CCC, agents for applicants and local governments, persons participating in CCC proceedings, persons with financial interests in a CCC decision and representatives of organizations who intend to influence a Commission decision. The complete definition of "interested person" is attached as Exhibit B.

A "gift" is anything that confers a personal benefit for which something of equal or greater value is not received. Gifts include free drinks, food, tickets, passes, transportation, lodging and anything else that confers a personal benefit for free.

There are several exceptions to the definition of "gift." The exceptions include evidentiary materials provided to the CCC and staff, field trips that are equally available to all Commissioners and staff, and receptions or other social events that are open to all Commissioners, staff and the public. The complete list of exceptions is in Exhibit A.

The penalties for violating either gift ban in the law include a civil fine of up to \$500 per violation. In addition, the penalties for violations by interested persons include a one-year ban on attempting to influence Commission decisions, and thus interested persons may not have ex parte contacts with Commissioners for one year.

Attachments

Senate Bill No. 884

CHAPTER 663

An act to add Sections 30327.5 and 30327.6 to the Public Resources Code, relating to coastal resources.

[Approved by Governor October 13, 2007. Filed with
Secretary of State October 13, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 884, Lowenthal. California Coastal Commission: gift or gratuity.

The California Coastal Act of 1976 prohibits a commission member or alternate from making, participating in making, or in any other way attempting to use his or her official position to influence a commission decision about which the member or alternate has knowingly had an ex parte communication, and which has not been reported as required by the act.

This bill would prohibit an interested person, as defined, from giving, conveying, or making available gifts, as defined, aggregating more than \$10 in a calendar month to a commissioner or a member of the commission's staff. A commissioner or member of the commission's staff would be prohibited from accepting gifts aggregating more than \$10 in a calendar month from an interested person. A commissioner, member of the commission's staff, or interested person who violates this prohibition, in addition to any other applicable penalty, would be subject to a civil fine, not to exceed \$500 for each violation. A person who for compensation attempts to influence or affect the outcome of a commission decision or action and who violates this prohibition, in addition to any other applicable penalty, may be barred from any activity seeking to influence or affect the outcome of a commission decision or action for up to one year from the date of the finding of the violation.

The people of the State of California do enact as follows:

SECTION 1. Section 30327.5 is added to the Public Resources Code, to read:

30327.5. (a) An interested person shall not give, convey, or make available gifts aggregating more than ten dollars (\$10) in a calendar month to a commissioner or a member of the commission's staff.

(b) A commissioner or member of the commission's staff shall not accept gifts aggregating more than ten dollars (\$10) in a calendar month from an interested person.

(c) For the purposes of this section, “interested person” shall have the same meaning as the term is defined in Section 30323.

(d) For the purposes of this section, “gift” means, except as provided in subdivision (e), any payment, as defined in Section 82044 of the Government Code, that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

(e) For the purposes of this section, “gift” does not include any of the following:

(1) A gift which is not used and which, within 30 days after receipt, is either returned to the donor or delivered to a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code without being claimed as a charitable contribution for tax purposes.

(2) A gift from an individual’s spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person. However, a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered in this paragraph.

(3) A cost associated with the provision of evidentiary material provided to the commission and its staff.

(4) An educational or training activity that has received prior approval from the commission.

(5) A field trip or site inspection that is made available on equal terms and conditions to all commissioners and appropriate staff.

(6) A reception or purely social event that is not offered in connection with or is not intended to influence a decision or action of the commission and that is open to all commissioners, members of the staff, and members of the public and press.

SEC. 2. Section 30327.6 is added to the Public Resources Code, to read:

30327.6. (a) (1) Except as provided in paragraph (2), a person who for compensation attempts to influence or affect the outcome of a commission decision or action and who violates Section 30327.5 may, in addition to any other applicable penalty, be barred from any activity seeking to influence or affect the outcome of a commission decision or action for a period of up to one year from the date of the finding of the violation. Each violation shall be grounds for the person being barred from any activity seeking to influence or affect a commission decision or action for an additional year from the date of conviction.

(2) Nothing in this section shall be construed to prohibit an individual from representing himself or herself in seeking to influence or affect the outcome of a commission decision or action if that individual is acting solely

on his or her own personal behalf and not on the behalf of any other person or entity.

(b) A person who violates Section 30327.5 shall, in addition to any other applicable penalty, be subject to a civil fine not to exceed five hundred dollars (\$500) for each violation.

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Section 30323 Interested persons

For purposes of this article, an "interested person" is any of the following:

(a) Any applicant, an agent or an employee of the applicant, or a person receiving consideration for representing the applicant, or a participant in the proceeding on any matter before the commission.

(b) Any person with a financial interest, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter before the commission, or an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest.

(c) A representative acting on behalf of any civic, environmental, neighborhood, business, labor, trade, or similar organization who intends to influence the decision of a commission member on a matter before the commission.

(Added by Ch. 1114, Stats. 1992.)