

CALIFORNIA COASTAL COMMISSION

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W-26

ADDENDUM

March 11, 2009

TO: Coastal Commissioners and Interested Public

FROM: Peter M. Douglas, Executive Director
 Sarah Christie, Legislative Coordinator

SUBJECT: LEGISLATIVE REPORT FOR March 2009

CONTENTS: This report provides summaries, status and analyses of bills that affect the Coastal Commission and California's Coastal Program as well as bills that staff has identified as coastal-related legislation.

Note: Information contained in this report is accurate as of 03/05/09. Changes in the status of some bills may have occurred between the date this report was prepared and the presentation date.¹ Current status of any bill may be checked by visiting the California Senate Homepage at www.senate.ca.gov. This report can also be accessed through the Commission's World Wide Web Homepage at www.coastal.ca.gov

2009 Legislative Calendar

Jan 5	Legislature reconvenes
Jan 30	Last day to submit bills to Legislative Counsel
Feb 27	Last day for bills to be introduced
April 2	Spring Recess begins
April 13	Legislature reconvenes
May 1	Last day for Policy Committees to hear and report 1 st House fiscal bills to the Floor
May 15	Last day for Policy Committees to hear and report 1 st House nonfiscal bills to the Floor
May 22	Last day for Policy Committees to meet prior to June 8
May 29	Last day for Fiscal Committees to hear and report 1 st House fiscal bills to the Floor
June 1-5	Floor Session only. No committees may meet
June 5	Last day to pass bills from house of origin
June 8	Committee meetings may resume
June 15	Budget must be passed by midnight
July 10	Last day for Policy Committees to hear and report bills to the Floor from the second house
July 17	Summer Recess begins at the end of session if Budget Bill has been enacted
Aug 17	Legislature reconvenes
Aug 28	Last day for Fiscal Committees to meet and report bills to the Floor
Aug 31-Sept 11	Floor session only. No committees may meet
Sept 4	Last day to amend bills on the Floor
Sept 11	Last day for any bill to be passed. Interim Recess begins on adjournment of session
Oct 11	Last day for Governor to sign or veto bills passed by the Legislature before Sept. 11

¹ Terms used in this report relating to bill status. 1) "On Suspense" means bill is held in Appropriations because of potential costs to state agency. Bills usually heard by Appropriations near Fiscal Committee Deadline in June. 2) "Held in committee" means bill was not heard in the policy committee this year. 3) "Failed passage" means a bill was heard by policy committee but failed to get a majority vote. Reconsideration can be granted by the committee.

PRIORITY LEGISLATION

AB 68 (Brownlee) Solid waste: single-use carry out bags

This bill would prohibit stores from providing single-use carryout bags to customers after July 10, 2010, unless the store charges a fee of not less than \$0.25 for the bag. The fees collected would be deposited into the Bag Pollution Fund, which the bill would establish, on a quarterly basis. Funds would be expended, after appropriation by the Legislature, to implement programs that educate consumers and reduce the use of plastic bags, and to reduce and mitigate the effects of plastic bag litter.

Introduced 12/12/08
Status Assembly Natural Resources Committee

AB 87 (Davis) Single use carryout bags: environmental effects

This bill would prohibit stores from providing single-use carryout bags to customers after July 10, 2010, unless the store charges a fee of not less than \$0.25 for the bag. The fees collected would be deposited into the Bag Pollution Fund, which the bill would establish, on a quarterly basis. Funds would be expended, after appropriation by the Legislature, to implement programs that educate consumers and reduce the use of plastic bags, and to reduce and mitigate the effects of plastic bag litter.

Introduced 01/05/09
Status Assembly Natural Resources Committee

AB 226 (Ruskin) Coastal resources: enforcement

This bill would give the Coastal Commission administrative civil liability authority and deposit any resulting revenues into the Coastal Act Services Fund (CASF). This bill would also redirect existing civil penalty revenue from State Coastal Conservancy to the Commission's CASF, subject to appropriation by the Legislature.

Introduced 02/03/09
Status Assembly Natural Resources Committee
Commission Position Recommend Support (analysis attached)

AB 291 (Saldana) Coastal resources: coastal development permits

This bill would prohibit the issuance of a coastal development permit for any property for which a notice of violation has been received, unless the Executive Director of the Commission determines that an application has been filed that fully resolves the violation.

Introduced 02/13/09
Status Assembly Natural Resources Committee
Commission Position Recommend Support (analysis attached)

AB 650 (Hill) Local government: City of Half Moon Bay

This spot bill states that it is the intent of the Legislature to assist the city of Half Moon Bay with respect to the city's settlement agreement in the matter of Yamagiwa v. City of Half Moon Bay (N.D. Cal. 2007). Under the settlement agreement the city waived its right to appeal, and now owes the plaintiff \$18 million in exchange for purchase of the Beachwood property. This is an urgency bill.

Introduced 02/27/09
Status Assembly Desk

AJR 3 (Nava) Offshore oil drilling

This measure would request that Congress reinstate the federal offshore oil and gas leasing moratorium for the 2009 fiscal year and beyond. This measure also would memorialize the Legislature's opposition to the proposed expansion of oil and gas drilling of the Pacific Coast and any federal energy policies and legislation that would weaken California's role in energy siting decisions by those policies.

Introduced 01/23/09
Status Assembly Natural Resources Committee

SB 4 (Oropeza) State beaches and parks: smoking

This bill would prohibit smoking of any tobacco product on a state coastal beach on in any unit of the State Parks system. The bill authorizes the Department of Parks and Recreation, or any other relevant state agency, to develop and post signs to provide notice of the smoking prohibition.

Introduced 12/01/08
Status Senate Natural Resources and Water Committee

SB 21 (Simitian) Fishing gear

This bill would require the Department of Fish and Game to make recommendations to the Fish and Game Commission regarding a sustainable funding source for the recovery of derelict fishing gear and the prevention of the loss of fishing gear. The bill would require any persons and/or vessels who lose fishing gear at sea to report the loss within 48 hours. The bill would require all fishing licenses issued by the Department to include information and telephone numbers related to the new requirement. The bill would also require the Department to establish a data base of all known and reported sites of derelict/lost fishing gear, and to establish performance targets for their removal.

Introduced 12/01/08
Status Senate Natural Resources and Water Committee

SB 42 (Corbett) Coastal resources: seawater intake

This bill would prohibit a state agency from approving any new power plant or industrial facility, including desalination facilities, that utilizes open ocean intake, or any expansion of an existing facility that uses an open ocean intake, for once-through cooling (OTC). It would also require existing facilities with once-through cooling technology to cease operation or switch to an alternative method of cooling by December 31, 2014. The bill would also establish a fee of \$0.000015 per gallon of sea water for facilities that continue to use OTC between January 1, 2011 and December 31, 2014. Fees would be deposited in the Marine Life Restoration Account, which the bill would create, within the Coastal Conservancy's Coastal Trust Fund.

Introduced 01/06/09
Status Senate Energy, Utilities and Commerce, and Natural Resources and Water Committees

SB 262 (Lowenthal) Coastal resources

This bill would repeal the requirement that the Commission must meet monthly. In the event that the Commission were to cancel a monthly meeting, this bill would extend all statutory deadlines to the following month.

Introduced 02/24/09
Status Senate Rules

Commission Position Recommend Support (analysis attached)

SB 650 (Yee) Half Moon Bay

This spot bill states that it is the intent of the Legislature to assist the city of Half Moon Bay with respect to the city's settlement agreement in the matter of Yamagiwa v. City of Half Moon Bay (N.D. Cal. 2007). Under the settlement agreement the city waived its right to appeal, and now owes the plaintiff \$18 million.

Introduced 02/27/09
Status Senate Natural Resources Committee

SB 801 (Walters) Coastal resources: City of Laguna Nigel

This bill states that it is the intent of the Legislature to revise the current coastal zone boundary to terminate at the western developed edge of the city, while continuing to protect parkland, open space and trails. This would remove much of the incorporated area of the city of Laguna Nigel from the coastal zone, including sensitive habitat and undeveloped open space.

Introduced 02/27/09
Status Senate Rules

Commission Position Recommend Oppose (analysis attached)

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**BILL ANALYSIS****AB 226 (Ruskin)**

As Introduced, February 23, 2009

SUMMARY

AB 226 would amend PRC Section 30823 and add PRC Section 30821 of the Coastal Act to give the Coastal Commission the discretionary authority to impose administrative civil penalties for Coastal Act violations. The bill would direct that any penalties collected under this new authority, as well as penalties currently imposed by the courts, shall be deposited into the Coastal Act Services Fund.

PURPOSE OF THE BILL

The purpose of the bill is to improve coastal enforcement activities and implement cost-saving efficiencies.

EXISTING LAW

Under PRC Section 30820 of the Coastal Act, a superior court can impose civil penalties of up to \$30,000 on any person or local government who violates the provisions of the Coastal Act, certified Local Coastal Program or a coastal development permit. Additional penalties of not less than \$1,000 per day, but not more than \$15,000 per day, may be imposed for violations that are determined to be intentional and knowing.

Under PRC Section 30822, any funds derived from penalties awarded by a court are deposited into the Coastal Conservancy's Violation Remediation Account and subject to appropriation by the Legislature.

Under PRC Section 30620.1, funds deposited into the Coastal Act Services Fund are subject to appropriation by the Legislature to carry out the provisions of the Coastal Act.

Numerous other state and local agencies currently have the authority to impose administrative civil penalties for violations of applicable code sections, including but not limited to BCDC, State Lands Commission, California Energy Commission, State Department of Health Services, California Air Resources Board, Regional Air Pollution control Districts, Oil Spill Response Administrator, Department of Fish and Game, State Water Resources Control Board, Regional Water Quality Control Boards, and the Integrated Waste Management Board.

PROGRAM BACKGROUND

Currently, the CCC has the ability to issue restoration and cease and desist orders (essentially, to require a violator to stop violating the act and to restore the coast to its former state) after a public hearing, but does not have the ability to impose penalties on violators.

The Commission got its "order" authority in 1980. Prior to 1980, to stop any violations, the Coastal Commission had to sue in state court to get injunctive relief. Although litigation is cumbersome, expensive for all parties and time consuming, this gave the Commission the ability to ask for penalties at the same time that it asked for injunctive relief. Penalties requested through the courts were determined per Section 30820.

Once the Commission obtained order authority, it had more power to stop ongoing violations and to do so more quickly and with expending far fewer state resources than needed for litigation. Order authority has also allowed the Commission to resolve issues amicably through use of consent orders. In a consent order, the

defendant agrees to the order and usually agrees to pay a penalty. The defendant has to voluntarily agree to the penalty, because the Commission has no ability to require that a penalty be paid, but the defendant usually receives the benefit of paying a much smaller penalty than those which could be imposed by a court pursuant to PRC Section 30820 and avoiding the costs and delays associated with litigation. Consent orders are heard by the full Commission in the same “formal” hearing manner as “contested” restoration and cease and desist orders (and therefore receive public review and input), but rarely generate much debate, if any. The irony is that violators who willingly cooperate with the Commission voluntarily agree to pay a penalty, but violators who contest the order are not fined. This creates a perverse incentive for non-cooperation.

Moreover, restoration of critical habitat and coastal resources done by agreement is typically done much faster and more thoroughly than in cases where the Commission is in an adverse position with the violator, such as litigation. Therefore, there are a number of reasons why consent resolutions are preferable both in terms of coastal resources and costs to the state.

However, despite this clear advantage, it is often difficult to create the incentive to settle. Parties who agree to settle pay penalties, and those who do not settle are rarely pursued for penalties because this requires litigation. A completely recalcitrant party may often be in a better position than a settling party, if they refuse to comply and take their chances that the state will not pursue them for penalties. For these parties, by and large, unless they challenge the administrative order in court and the state files a cross complaint for penalties and pursues it vigorously, they escape all penalties under the Coastal Act. This directly undercuts the purpose of penalties under the Coastal Act—to deter violations and put parties who comply with the Coastal Act in a more favorable position than those who violate the Act.

ANALYSIS

Penalties are a critical component of all environmental statutes and are the main means used to persuade would-be violators to comply with the law. The deterrent component of any regulatory scheme is important, and particularly for environmental laws where restoration of violations often is difficult or impossible, and cannot make the resource whole, a credible threat of penalties to prevent violations in the first place can greatly increase the ability of an environmental agency to obtain voluntary compliance, and greatly increase the amount of protection of the environment. This proposal would give the Coastal Commission the ability to impose administrative penalties on people found to be violating the Coastal Act, after a public hearing before the Commission.

At present, the CCC must go to court if it wishes to impose penalties. This is a very slow, expensive and resource-intensive means to impose penalties, and is therefore done infrequently.

Moreover, the CCC cannot represent itself in court; instead, the AG acts on the CCC’s behalf. The AGs have limited resources, and so are unable to bring many cases.

So, for all practical purposes, there is no deterrent to violating the Coastal Act--the Coastal Act violators can easily escape penalties. Potential violators are aware that the CCC needs to go to court to obtain any penalties and can rarely do this; they don’t have to pay any fines for their actions or even compensate the state for the costs of investigating the situation and bringing the matter to a hearing to compel the restoration work.

Moreover, absent the ability to use penalties to deter violations, there is very little disincentive for someone to just violate the Coastal Act and gamble that they will not be caught and even if they are caught, that the CCC will not be able to spend the great resources needed to pursue them for penalties.

This proposal would adopt the administrative penalty provisions contained similar to the McAteer-Petris Act, a similar coastal management law administered by the Bay Conservation and Development Commission. The administrative penalty provisions in that law have been in place and used for a number of years with great success. BCDC reports that these provisions allow them to resolve the vast majority of their cases without resorting to expensive and slow litigation.

This proposal will also give the Commission a means to encourage parties to agree to consent orders for both restoration and penalty resolution, reduce litigation costs generally and result in faster and more protective restoration projects.

Such administrative enforcement authority will allow the state to address more violations more efficiently, reduce litigation costs, and, more importantly, protect the coast and its critical resources by creating a deterrence and discouraging people from violating the Coastal Act. In addition, it will create a modest new revenue source for the Commission's core program work and reduce costs of litigation.

SUPPORT/OPPOSITION (from Author's Office 4/4/09)

Support for AB 226:

Opposition to AB 226:

None on file

RECOMMENDED POSITION

Staff recommends the Commission **Support** AB 226.

BILL NUMBER: AB 226
INTRODUCED

BILL TEXT

INTRODUCED BY Assembly Member Ruskin

FEBRUARY 4, 2009

An act to amend Section 30823 of, and to add Section 30821 to, the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 226, as introduced, Ruskin. Coastal resources: California Coastal Act of 1976: enforcement.

(1) The California Coastal Act of 1976 requires any person undertaking development in the coastal zone to obtain a coastal development permit in accordance with prescribed procedures. Existing law authorizes the superior court to impose civil liability on any person who performs or undertakes development that is in violation of the act or that is inconsistent with any previously issued coastal development permit, and on any person who violates the act in any other manner and authorizes any person to maintain an action for recovery of these civil penalties.

This bill would provide that a person who violates the act is subject to an administrative civil penalty that may be imposed by the California Coastal Commission by a majority vote of the commissioners, upon consideration of various factors, in a public hearing in an amount no less than \$5,000 and no more than \$50,000 for each violation.

This bill would provide that a person shall not be subject to both monetary civil liability imposed by the commission and monetary civil liability imposed by the superior court for the same act or failure to act unless the person fails to pay the administrative penalty or fails to comply with an order issued by the commission in connection with the penalty action or if the person elects to challenge the commission's action in a court of law. This bill would also allow the commission to file a lien on the property of a violator in the amount of the penalty assessed by the commission if the violator fails to pay the fine.

(2) The act also requires that all funds derived from the payment of a penalty are to be deposited into the Violation Remediation Account of the Coastal Conservancy Fund, until appropriated by the Legislature, for purposes of carrying out the act.

This bill would instead require that all penalties derived from the payment of a penalty be deposited into the Coastal Act Services Fund, until appropriated by the Legislature, for the purposes of carrying out the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 30821 is added to the Public Resources Code, to read:

30821. (a) In addition to any other penalties imposed pursuant to this division, a person, including a landowner, who is in violation of a provision of this division is subject to an administrative civil penalty that may be imposed by the commission in an amount not less than five thousand dollars (\$5,000) and not to exceed fifty thousand dollars (\$50,000) for each violation.

(b) All penalties imposed pursuant to this subdivision shall be imposed by majority vote of the commissioners present in a duly noticed public hearing.

(c) In determining the amount of civil liability, the commission shall take into account the factors set forth in subdivision (c) of Section 30820.

(d) A person shall not be subject to both monetary civil liability imposed under this section and monetary civil liability imposed by the superior court for the same act or failure to act, unless the person fails to pay the administrative penalty or fails to comply with an order issued by the commission in connection with the penalty action, or if the person elects to challenge the commission's action in a court of law.

(e) Failure to pay the fine imposed by the commission shall allow the commission to file a lien on the property in the amount of the penalty assessed by the commission.

SEC. 2. Section 30823 of the Public Resources Code is amended to read:

30823. ~~Any funds derived under this article shall be expended for carrying out the provisions of this division, when appropriated by the Legislature. Funds so derived shall be deposited in the Violation Remediation Account of the Coastal Conservancy Fund until appropriated.~~ *All funds derived under this article shall be deposited in the Coastal Act Services Fund, established pursuant to subdivision (a) of Section 30620.1, until appropriated by the Legislature, for the purpose of carrying out this division.*

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**BILL ANALYSIS**
AB 291 (Saldana)

As Introduced, February 13, 2009

SUMMARY

AB 291 would add PRC Section 30825 to the Coastal Act, prohibiting the Coastal Commission from accepting an application for a coastal development permit (CDP) for processing if the property is subject to an unresolved violation of the Coastal Act, unless the Executive Director determines that the application fully resolves the violation.

PURPOSE OF THE BILL

The purpose of the bill is to improve the Commission's ability to resolve Coastal Act violations, and to streamline the coordination between permitting and enforcement.

EXISTING LAW

Under existing law, the Commission has no authority to require applicants to resolve outstanding violations before applying for additional development on the same property. Although the Commission frequently encourages such an approach, there is no statutory provision that obligates applicants to comply.

PROGRAM BACKGROUND

The CCC got its "order" authority in 1980. Prior to 1980, to stop any violations, the Coastal Commission had to sue in state court to get injunctive relief. Penalties requested through the courts are determined per statute (Resources Code Section 30820).

Once the CCC obtained order authority, it had more power to stop ongoing violations and to do so more quickly and with expending far fewer state resources than needed for litigation. Order authority has also allowed the CCC to resolve issues amicably through use of consent orders. Experience has shown that restoration of critical habitat and coastal resources done by agreement (through consent orders) is done much faster and more thoroughly than through restoration orders or litigation. However, the Coastal Act provides no specific authority to require the resolution of an existing violation as a condition of new development.

Currently, under the Coastal Act, parties can apply for coastal development permits ("CDP"s) for new development at sites with current Coastal Act violations, including both violations of prior permits and violations involving wholly unpermitted development on the site. In acting on the applications for a CDP, the Commission is obligated to consider applications without regard to any outstanding violations, even if they are directly relevant to the proposed development. Therefore, the Commission is obligated to have a hearing on the application and then separately bring an enforcement action to address the violation, rather than having the two issues addressed together. This is more expensive for all parties, and can delay resolution of even violations with serious and ongoing effects on coastal resources for years, or indefinitely given the shortage of Commission staff. In contrast, many local governments have the authority to require that an applicant resolve outstanding issues at the same time as an application, in order to save resources and create an incentive to voluntarily resolve outstanding violations.

ANALYSIS

The Commission currently has a backlog of over 1,300 open enforcement cases statewide. At the current rate of processing, it would take more than 100 years to resolve these cases, provided no new cases were opened. Budget cuts have reduced the number of enforcement staff assigned to statewide casework, making local resolution significantly more critical. Clearly, the Commission needs additional tools to resolve Coastal Act violations in the most efficient, cost-effective manner possible. Applicants are well aware of the Commission's staffing limitations, and far too many conclude that it is more cost-effective to ignore unresolved violations, on the assumption that the Commission will be unable to summon the resources to pursue enforcement on the vast majority of open cases.

This measure would provide a strong incentive for property owners to resolve outstanding violations in advance of a new CDP application, because they would be ineligible for any additional development until such time as the violation has been demonstrably cured. Alternatively, this measure would give the Commission the ability to resolve outstanding violations as part of a CDP application, something that can only be accomplished voluntarily under existing law.

If enacted, this process will facilitate resolution of violations without litigation or Cease and Desist orders. This saves time and money for both the Commission and the applicant. As an additional benefit to applicants, violations can be resolved in this manner without being subject to penalties. It is far better to attempt to resolve these issues and avoid the expensive, adversarial process.

SUPPORT/OPPOSITION (from Author's Office 4/4/07)

Support for AB 291:

Opposition to AB 291:

None on file

RECOMMENDED POSITION

Staff recommends the Commission **Support** AB 291.

BILL NUMBER: AB 291
INTRODUCED

BILL TEXT

INTRODUCED BY Assembly Member Saldana

FEBRUARY 13, 2009

An act to add Section 30825 to the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 291, as introduced, Saldana. Coastal resources: coastal development permits: penalties.

The California Coastal Act of 1976 requires any person undertaking development in the coastal zone to obtain a coastal development permit issued by the California Coastal Commission in accordance with prescribed procedures. The act authorizes civil liability to be imposed on any person who performs or undertakes development that is in violation of the act or that is inconsistent with any previously issued coastal development permit, subject to specified maximum and minimum amounts, varying according to whether the violation is intentional and knowing.

The bill would require that if a person applying for a coastal development permit has a record of unresolved violations of the act, that person would be ineligible to submit an application for a permit until the violations have been resolved. The bill would also provide that this requirement would not apply if the executive director of the commission determines that the application includes a provision that would fully resolve the violation consistent with the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 30825 is added to the Public Resources Code, to read:

30825. (a) A person who has been issued a notice of intent, cease and desist order, restoration order, or a notice of violation pursuant to Section 30809, 30810, 30811, or 30812, in addition to any other penalties, shall be ineligible to submit an application for a coastal development permit until the violation has been resolved.

(b) Subdivision (a) does not apply if the executive director determines that the application includes a provision that would fully resolve the violation consistent with this division.

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BILL ANALYSIS
SB 262 (Lowenthal)
As Introduced, February 24, 2009

SUMMARY

SB 262 would amend Section 30315 of the Coastal Act to remove the requirement for the Coastal Commission to meet at least monthly. Instead the Commission would be required to meet "regularly." The bill would also add Section 30315.2 to the Coastal Act, extending any applicable statutory deadlines to the following meeting, notwithstanding any other provision of law.

PURPOSE OF THE BILL

The purpose of the bill is to give the Commission the flexibility to legally cancel a meeting, should that be necessary for fiscal reasons, without losing jurisdiction over pending items.

EXISTING LAW

Under Section 30315 of the Coastal Act, the Commission is required to meet at least once a month at a location convenient to the public. The Coastal Act and other statutes contain deadlines for the Commission to take action on items such as Substantial Issue determinations, LCP amendments and coastal development permits. Failure to meet these deadlines may result in approval by operation of law.

PROGRAM BACKGROUND

The Coastal Act requirement for the Commission to meet at least once a month at locations convenient to the public is grounded in the overarching policy goal of maximizing public participation and efficient processing of permits, appeals, Local Coastal Programs and enforcement matters. In the more than three decades since the passage of the Coastal Act, the Commission has never missed a meeting.

In recent years, substantial cuts to the Commission's budget have prompted discussions about the necessity of occasionally canceling a meeting to avoid deficit spending. However, the Coastal Act makes no provision for such an action. In addition, cancellation of a meeting could potentially cause the Commission to miss statutory deadlines for action, raising the possibility of LCP amendments or coastal development permits being approved by operation of law, or local government decisions becoming final because of the Commission's failure to find substantial issue within the 49-day limit.

ANALYSIS

Coastal Commission meetings are a significant cost to the Commission. Hotel rooms, airfare, web streaming, per diem and staff travel costs can add up to \$10,000 or more per meeting. The Commission has taken several steps to reduce meeting costs in recent years. The Commission no longer pays for meeting rooms, as we now conduct the hearings in public chambers. The Commission has eliminated all but essential staff travel authorizations, and Commissioners themselves have made an effort to carpool and/or take public transportation whenever feasible. However, ongoing cuts and increasing costs continue to reduce the Commission's operating budget to unsustainable levels. Although the option to cancel a meeting for cost-saving reasons would not be undertaken lightly, it is in the Commission's best interests, from a fiscal perspective, to have the option. The proposed legislation would give the

Commission additional flexibility to determine whether or not cancellation of a meeting is warranted, while preserving the Commission's authority over pending applications that might otherwise expire.

SUPPORT/OPPOSITION (from Author's Office 3/2/09)

Support for SB 262:

None on file

Opposition to SB 262:

None on file

RECOMMENDED POSITION

Staff recommends the Commission **Support** SB 262.

BILL NUMBER: SB 262
INTRODUCED
BILL TEXT

INTRODUCED BY Senator Lowenthal
FEBRUARY 24, 2009

An act to amend Section 30315 of, and to add Section 30315.2 to, the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 262, as introduced, Lowenthal. Coastal resources: California Coastal Commission: meeting.

Existing law requires the California Coastal Commission to meet at least once a month at a place convenient to the public.

This bill would, instead, require the commission to meet regularly. The bill would provide that a deadline for a commission hearing or action established pursuant to the California Coastal Act of 1976, the California Environmental Quality Act, or the Permit Streamlining Act is extended until the adjournment of the next regularly scheduled commission meeting after the deadline.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 30315 of the Public Resources Code is amended to read:

30315. (a) The commission shall meet ~~at least once a month~~ *regularly* at a place convenient to the public. All meetings of the commission shall be open to the public.

~~—A~~(b) A majority of the total appointed membership of the commission shall constitute a quorum.

~~—Any~~ An action taken by the commission under this division requires a majority vote of the members present at the meeting of the commission, with a quorum being present, unless otherwise specifically provided for in this division.

SEC. 2. Section 30315.2 is added to the Public Resources Code, to read:

30315.2. Notwithstanding any other provisions of law, a deadline for a commission hearing or action established pursuant to this division, the California Environmental Quality Act (Division 13 (commencing with Section 21000)), or the Permit Streamlining Act (Article 5 (commencing with Section 65950) of Chapter 4.5 of Division 1 of Title 7 of the Government Code), is hereby extended until the adjournment of the next regularly scheduled commission meeting after the deadline. This section does not apply to actions that the executive director may take without the approval or concurrence of the commission.

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BILL ANALYSIS
SB 801 (Walters)
As Introduced, February 27, 2009

SUMMARY

SB 801 is a spot bill stating that it is the intent of the Legislature to revise the coastal zone boundary to terminate at the western, developed edge of the City of Laguna Niguel.

PURPOSE OF THE BILL

The purpose of the bill is to remove significant undeveloped portions of the City of Laguna Niguel from the coastal zone in order to accommodate new development.

EXISTING LAW

Under existing law, the coastal zone boundary is defined by maps adopted by the Legislature in 1976. The Commission may make limited, minor boundary adjustments of up to 200 yards upon the request of local governments and with the permission of landowners. However, major amendments to the coastal zone boundary must be enacted by the Legislature. All prior coastal zone boundary revisions are contained in Chapter 2.5 of the Coastal Act, PRC Sections 30150 through 30174. No coastal zone boundary changes have been approved since 1982.

PROGRAM BACKGROUND

Laguna Niguel incorporated on December 1, 1989. On November 14, 1990, the Commission certified the Laguna Niguel LCP, utilizing the applicable portions of the previously certified Orange County LCP. Prior to certification, in 1986, the Commission approved CDP 5-86-459, authorizing the construction of 48 condominium units and professional offices on an approximately 60-acre parcel known as the Hon property. The coastal zone boundary bisects the property in half from north to south, along a ridge line. The project was never built and the permit expired. In 1993, the City requested and the Commission certified an amendment to the Laguna Niguel LCP that changed the land use and zoning designations on the Hon property from Commercial and Multi-Family Residential to Open Space with some limited areas of Single-Family Residential. This is the current land use and zoning designation.

In 2007, Hon Development/Area "O" Partners applied to the Commission for a coastal zone boundary adjustment, to facilitate new development on the site. Specifically, the letter requested that the Commission adjust the coastal zone boundary 200 yards to the west, in order to exclude the property from the coastal zone. As justification for this request, the applicant cited Coastal Act Section 30103 (a), which describes criteria for determining the location of the coastal zone boundary, and Section 30103 (b) which sets forth the authority for the Commission to make minor boundary adjustments. The letter contained a reference to four existing parcels (County APNs 658-011-41, 42, 43 & 44) collectively referred to as Area O. Upon further investigation, Commission staff determined that the applicant never received a coastal development permit for the subdivision, which was apparently approved by the local government in 1996. The commission rejected the request for a boundary adjustment on 9/28/07, as the incomplete file rendered the request inconsistent with Section 13255 et seq. of California Code of Regulations (the Coastal Commission Administrative Regulations).

ANALYSIS

The primary argument put forth by the author's office and the property owner in support of this bill is that the subject and surrounding properties should not be included in the coastal zone because they do not meet the criteria in Section 30103, the "Definitions" chapter of the Act.

Section 30103 Coastal zone; map; purpose

(a) "Coastal zone" means that land and water area of the State of California from the Oregon border to the border of the Republic of Mexico, specified on the maps identified and set forth in Section 17 of that chapter of the Statutes of the 1975-76 Regular Session enacting this division, extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less, and in developed urban areas the zone generally extends inland less than 1,000 yards. The coastal zone does not include the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, established pursuant to [Title 7.2 \(commencing with Section 66600\) of the Government Code](#), nor any area contiguous thereto, including any river, stream, tributary, creek, or flood control or drainage channel flowing into such area.

Notwithstanding the foregoing definition, the Legislature adopted specific maps delineating the inland extent of the coastal zone in the 1975-76 Legislative Session. These maps were adopted after a series of high profile public hearings that generated extensive public input on where the lines should be drawn, and what coastal resources warranted the protection of the statute. This process resulted in the adoption of specific and detailed maps of the coastal zone, drawn to be protective of important coastal resources as defined by the Act. In enacting the maps, the Legislature was fully aware of the definition included in Section 30103. It was also fully aware of the definitions of "environmentally sensitive habitat" and "sensitive coastal resource areas," the broad goals of conservation and protection, as well as the findings and declarations in Chapter 1, including Section 30009 which states:

Section 30009 Construction

This division shall be liberally construed to accomplish its purposes and objectives.

As a matter of long-standing legal precedent, the specific maps delineating the specific boundaries of the coastal zone, take precedence over the general language contained in Section 30103. After the Legislature adopted the coastal zone maps in 1976, the Legislature passed a series of bills in 1979, 1980, 1981 and 1982, making specific amendments to the maps. After the passage of SB 29 (Mello) in 1982 (Chapter 43, Stats. 82) it became apparent that the integrity of the coastal zone boundary was in danger of being severely compromised by the number of requests to exclude particular properties. As a matter of policy, the Legislature declared it would not entertain any more legislative revisions to the boundary after the passage of SB 29.

While it is preferable that the coastal zone boundary not bisect individual parcels, the reality is that there are literally dozens of examples throughout the coastal zone where this is the case. If the goal is simply to avoid bisection of parcels, one could argue that the coastal zone boundary should be expanded in this case, to afford the resource protections of the Coastal Act to the entire site. In this case, the location of the coastal zone boundary provides an important function of protecting scenic public views, as the slope and ridgeline is

prominently visible from Pacific Island Drive, so locating the boundary along the ridgeline of the property has a rational base.

A substantial portion of Area O is currently zoned Open Space, due to its high habitat value. Plant communities identified in the 1993 staff report for the LCP amendment include coastal sage/chaparral scrub, maritime chaparral, and numerous sensitive plant species. Listed species such as the gnatcatcher and crownbeard are known to occur in the area and may be present on site.

The property also contains steep slopes in excess of 30%. Residential development (Niguel Summit) less than a mile away constructed by Hon Development on very similar geologic terrain was the subject of a massive landslide on March 19, 1998 that resulted in the loss of five homes. There is evidence that Area O is part of the same ancient landslide, and as such is extremely unstable from a geologic perspective and presents significant hazards in terms of future development.

Clearly, this is an area where Coastal Act policies relating to habitat, scenic public views and geologic hazards would not support the required LCP amendment to allow additional development on Area O or the surrounding properties. From a Coastal Act perspective, the existing restrictions are appropriate. The landowner is seeking exclusion from the coastal zone in order to facilitate future development on the site. Essentially, the landowner is trying to pursue the type and intensity of development that the Coastal Act was specifically enacted to prevent. If this were allowed, innumerable other requests from property owners would likely follow, putting the integrity of the coastal zone and the Coastal Act at risk once again.

SUPPORT/OPPOSITION (from Author's Office 3/4/09)

Support for SB 801:

None on file

Opposition to SB 801:

None on file

RECOMMENDED POSITION

Staff recommends the Commission **Oppose** SB 801.

BILL NUMBER: SB 801
INTRODUCED
BILL TEXT

INTRODUCED BY Senator Walters
FEBRUARY 27, 2009

An act relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 801, as introduced, Walters. Coastal resources: coastal zone: City of Laguna Niguel.

The California Coastal Act of 1976 imposes certain restrictions on development in the coastal zone of the state and requires each local government located within the coastal zone to prepare a local coastal program. The act defines "coastal zone" for these purposes and makes revisions to the coastal zone boundary.

This bill would state the intent of the Legislature to enact legislation to conform the coastal zone boundary in the City of Laguna Niguel to the most westerly and seaward existing built-out development edge of the city.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature intends to enact legislation to revise the coastal zone boundary for the City of Laguna Niguel to the most westerly and seaward existing built-out development edge of the city excluding existing residences and city streets, while continuing to preserve and protect those natural and manmade features seaward of the developed areas, including public open space, public parkland, linkages to the California Coastal Trail, fire access roads, and buffer and fuel modification zones.