

CALIFORNIA COASTAL COMMISSION

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April 24, 2020

TO: California Coastal Commissioners and Interested Public

FROM: John Ainsworth, Executive Director

SUBJECT: Waiver of Coastal Permitting Requirements for Coastal Access Restrictions and Closures Due to COVID-19

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission concur with the determination of the Executive Director that the actions taken by various entities to temporarily restrict public access to beaches and other recreational areas, as listed in Table A-1, are a public service that is necessary to protect life and property in the COVID-19 emergency and that they qualify for waivers of coastal permitting requirements pursuant to Public Resources Code Section 30611. Section 30611 permits the Executive Director to waive otherwise applicable permit requirements “[w]hen immediate action by a person or public agency performing a public service is required to protect life and public property from imminent danger . . . or in other cases of emergency.” Here, the outbreak of COVID-19 is an emergency, and the public access restrictions are currently necessary to help implement the social distancing mandates and shelter-in-place requirements issued by public health departments and other government agencies across the state. The Executive Director’s waivers only apply for the duration of the applicable shelter-in-place orders and to the extent the access restrictions are the minimum actions necessary to protect public health and safety. The restrictions also may not involve the erection of any permanent structures.

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Appendix A: Table A-1. Section 30611 Waiver Notifications Related to COVID-19

I. COMMISSION CONCURRENCE

The Commission hereby concurs with the Executive Director's approval of waivers of coastal development permitting requirements for the development described in Table A-1 of this report and adopts the findings set forth below on grounds that the development described in Table A-1 complies with the requirements of Coastal Act Section 30611.

II. FINDINGS AND DECLARATIONS

A. Background and Notification Process

The COVID-19 virus outbreak is significantly impacting life in California and many actions have been taken to protect public health from imminent danger from the virus. Unified efforts among federal, state, local, and tribal governments are necessary to ensure that people are doing everything possible to limit the spread of COVID-19. Limiting exposure by avoiding contact with other people and obeying statewide and local shelter-in-place orders is critical. This includes "social distancing," which entails staying at least 6 feet from other people, using masks and gloves as needed, and not participating in group activities. Although Californians are permitted to leave their homes for essential activities, including exercise, and although some parks, trails, and other public spaces remain open for use, it is not possible to maintain necessary social distancing if too many people congregate in open spaces. Unfortunately, since this crisis began, there have been instances in which Californians have not been adequately practicing social distancing directives, especially in public spaces, such as coastal parks and beaches. As a result, local, state and federal government agencies have closed or limited access to some parking lots, picnic areas, beaches and trails.

The Coastal Act allows the Executive Director to waive coastal permit requirements for persons or public agencies that are performing a public service to protect life and property in cases of emergency (Pub. Res. Code section 30611). Under this provision, the Executive Director may exercise his discretion to waive coastal permitting requirements (including emergency permits) for public agencies and persons who would otherwise be responsible for obtaining permits. The person or public agency must notify the Executive Director of the actions within three days of the disaster or discovery of the danger.

Section 30611 states:

When immediate action by a person or public agency performing a public service is required to protect life and public property from imminent danger, or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by natural disaster, serious accident, or in other cases of emergency, the requirements of obtaining any permit under this division may be waived upon notification of the executive director of the commission of the type and location of the work within three days of the disaster or discovery of the danger, whichever

occurs first. Nothing in this section authorizes permanent erection of structures valued at more than twenty-five thousand dollars (\$25,000).

B. Executive Director Actions on Waivers

On March 24, 2020, the Executive Director sent a memo to local coastal agencies asking that they submit proposed or adopted COVID-19 closures or restrictions to the Commission. Beginning on March 30, 2020, the Executive Director has taken action to waive permitting requirements for restrictions or closures where the restriction or closure is not longer than the duration of the applicable shelter-in-place order, is the minimum action necessary to protect public health and safety, and does not involve the erection of any permanent structures. All such waivers will expire automatically when applicable shelter-in-place orders are lifted.

As of April 24, 2020, a total of 56 waiver letters, to 49 entities, to temporarily restrict access to and use of coastal resources and recreational facilities have been issued in response to the COVID-19 pandemic. Waiver letters have been issued for 36 local coastal governments, eight special districts, two State agencies, and three private entities (see Table A-1).

In general, waiver letters were requested to temporarily restrict access to beaches, piers, wharfs and harbors, coastal access points and trails, parking lots, and recreational facilities such as playgrounds, bicycle paths, and exercise equipment and sports courts. These closures were implemented through the use of fencing, gates and other barricades, as well as signage to encourage social distancing and detail access restrictions.

In addition, many Federal coastal recreation areas have been closed or restricted for access, including areas in National Parks, Forest Service Land, Bureau of Land Management properties, National Estuary, and National Wildlife Refuge facilities. Similar to State and local recreation areas, most of the Federal developed recreation sites, campgrounds, parking areas and restrooms have been closed, while many trails have been left open. These closures have been undertaken pursuant to the authority of the emergency provisions of Section 15 CFR 930.32(b) of the federal consistency regulations, and therefore do not require a waiver of coastal permitting requirements pursuant to Section 30611.

A complete list of waiver letters issued by the Executive Director is provided in Table A-1 of this staff report. In addition, Commission staff has also provided a comprehensive list of beach restrictions in the coastal zone on its homepage. The comprehensive list of beach restrictions has been reviewed and updated daily based on new information from news reports and other publicly accessible information. The list includes, in some instances, closures and other restrictions where waiver letters have not yet been issued by the Executive Director. Accordingly, Commission staff is working to reach out to entities that have not yet submitted waiver letter requests, but appear to have closures as identified on our public closures/restrictions list.

Coastal Access Restrictions and Closures Due to COVID-19

The COVID-19 beach closures and restrictions present many challenges. First and foremost, the situation is extremely fluid and changing sometimes on a daily basis. The Commission recognizes the need for local public health departments to make quick decisions to protect public health based on the most up to date and local information about the spread of the virus and the locally-available resources to protect public health.

At the same time, and because recreational beach and coastal access also play important roles in maintaining mental and emotional health, especially during times of stress, public agencies and local governments have been advised to strongly consider maintaining access to such public spaces where recreational users are practicing safe social distancing and there is no increased risk to public health, or if other measures are deemed sufficient in a given area.

Perhaps the most difficult challenge lies ahead as local public health agencies determine when it is safe to resume some activities. When shelter in place orders are lifted, some public health officers may still determine that it is necessary to limit access to coastal areas in order to maintain social distancing requirements – new waivers would need to be sought at that time, as the waivers being reported to the Commission at this time expire when current shelter in place orders are lifted. The Commission recognizes that there is already an inequity in coastal access and strongly encourages local governments to consider approaches that balance public health order requirements and equitable public access. It will be increasingly important to ensure that longer term restrictions are carried out in a way that is fair and equitable.