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STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

MEMORANDUM

December 7, 1992

TO: Commissioners and Interested Persons

FROM: Ralph Faust, Chief Counsel
Dorothy Dickey, Deputy Chief Counsel

SUBJECT: Implementation of New Law Concerning Ex Parte Communications (AB 3459, Friedman)

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1. INTRODUCTION

At the November meeting, the Commission was briefed about AB 3459. It goes into effect on January 1, 1993 and imposes important responsibilities on both applicants and Commissioners with respect to communications with Commissioners. (The staff report from the November meeting is attached.) The Commission discussed various aspects of the bill that are subject to interpretation and may also be difficult to implement. The staff indicated that it would report to the Commission at the December meeting on approaches to address these issues, including language of possible amendments that could be discussed with the bill's author.

A. Effect of the Bill on Commissioners Who Serve On Other Public Agencies

A number of questions were raised about how the law will affect Commissioners who serve in various capacities at other local, regional and state agencies. One issue is how Commissioners who serve as members of such bodies as city counsels, boards of supervisors, local agency formation commissions, and state conservancies can participate in hearings of those bodies when comments may be made in those hearings about the Coastal Commission's actions on pending quasi-judicial matters subject to the ex parte rule. Commissioners expressed concern that fellow public officials as well as members of the public might make comments during hearings and that such comments might be reportable.

A related concern was whether the bill would require that Commissioners disclose all communications between fellow public officials and staff concerning action that the public agency might take on projects under review by the Commission. A question was also raised regarding the law's effect on attorney-client privileged communications between Commissioners who serve as public officials at other agencies and the attorneys who advise those agencies.

Although the law does not expressly exempt any of those communications, a court may determine that such comments are exempt by inference. In order to address the Commission's concern that any possible ambiguities regarding their communications as public officials at other agencies be eliminated through an amendment to the law, staff proposes to discuss the legislative changes set forth in the text below with the author. (Alternatively, the Commission may wish to consider adopting the changes as regulations.)

30322(b) The following are not ex parte communications:

. . .

(3) Any communication which takes place during an official proceeding of a local, regional or state agency that involves a Commissioner who also serves as an official of that agency.

(4) Any communication between a Commissioner, regarding an action of a local or regional government or another state agency of which he/she is an official, and other officials or staff of that agency.

(5) Attorney-client privileged communications between a Commissioner who is an official of a local, regional, or other state agency provided that the communication occurs between the Commissioner and an attorney retained to represent the other agency and concerns an action of that agency.

B. <u>Implementation of Requirements that Commissioners Notify Persons Who Communicate With Them that the Communications Must Be Reported and Provide Copies of Communications to Staff</u>

A number of Commissioners expressed concerns about the difficulties inherent in notifying persons who communicate with them "that a full report of the ex parte communication will be entered in the Commission's official record." (Section 30324(a)(1).) One of the issues raised was how Commissioners can notify persons who leave substantive telephone messages, but who do not leave phone numbers or addresses (thereby making

it impossible for the Commissioners to provide the required notice).[1/] Commissioners also commented that it might be impossible to notify each and every person if communications were voluminous. A related concern was that it could be difficult to know whether communicators had provided copies of written materials to staff.

The staff proposes to add a notice to the application form, agenda and list of Commissioners' addresses and phone numbers that would address in part these issues. The notice would read as follows:

> The Coastal Act has been amended to establish very stringent ex parte requirements that may have serious consequences. (Public Resources Code, Sections 30319-30324.) The following provides some guidance, but does not cover all requirements:
>
> No written materials should be sent to Coastal Commissioners unless the Commission staff receives copies of all of the materials at the same time. All materials transmitted to Commissioners should clearly indicate that they have also been forwarded to the staff.
>
> No substantive telephone or other messages that do not involve direct verbal contact with the Commissioner regarding an issue before the Commission should be left for Commissioners.
>
> All oral or written communications of a non-procedural nature made by an "interested person" that are not made according to the above procedures are ex parte communications which are prohibited unless reported by the Commissioner. If the Commissioner does not report the communication, the Commission's action may be subject to a court order requiring revocation.

The Commission may also want to consider making those directives mandatory, by adopting a regulation that would reflect the same procedures but would replace the word "should" with "shall" each time it appears.

Additionally, the staff believes that an appropriate means to address the Commission's concern about the difficulty of providing notice to each person would be to discuss with the author an amendment to the bill. The amendment that we propose would require the Commission to "<u>make reasonable efforts</u>" to notify the communicator that a full report of the ex parte communication will be entered in the Commission's official record. (Section 30324(a)(1).)

[1/] Commissioners who do not want to have their addresses and/or phone numbers provided to the public may request that these be deleted from the list of Commissioners' phone numbers and addresses.

C. Other Concerns Raised by Commissioners

1) How should date, time, and location be noted when a message is left on answering machine?

The proposed form has been revised to address this.

2) Does a phone message constitute an ex parte communication? What is the time of receipt for purposes of filling out the form required by the statute?

A phone message is an ex parte communication if it conveys a substantive or non-procedural message. The time of receipt is the time that the message is actually received.

3) Reimbursement for photocopying and mailing.

Commissioners may request reimbursement of expenses for photocopying and mailing at the time they submit forms for reimbursement of other expenses.

4) Can a Commissioner decline to open the mail? What happens if a Commissioner refuses to sign for a Federal Express package?

Commissioners can decline to open mail or receive packages.

5) Must communications with public officials be disclosed?

Communications with public officials need not be disclosed unless the official meets the definition of an "interested person." (See discussion of the definition of an "interested person" on page 4, of the attached November 3, 1992, memorandum.)

D. Questions Raised by Others

1) In section 30319, is a project "applicant" the same as project a "proponent"? Should applicants be required to disclose business partners' agents?

Section 30319 establishes a disclosure requirement that applies to "applicants." It requires that applicants provide the Commission with the "names and addresses of all persons who, for compensation, will be communicating with the commission or commission staff on their behalf." This requirement is confusing because the statute also refers to "project proponents." It provides that "[f]ull disclosure of the names and addresses must be provided prior to any communication on behalf of the project proponents." It is unclear whether the applicant must disclose the people who will communicate only on his or her behalf or must disclose a broader category of people who will communicate on behalf of other project proponents.

We do not interpret "project proponents" to mean the same as "project supporters" because the word "proponent" suggests that the person must actually be proposing the project. Furthermore, it would not be possible for applicants to disclose the people who will communicate with all "project supporters" because the identities of those persons would not be known to the applicant.

"Project proponents" may be interpreted to mean the applicant's other business partners or investors in the project before the Coastal Commission. Thus, applicants should disclose the people known to them who will communicate on behalf of such business partners or investors. (In order to clarify this ambiguity the Commission may wish to adopt this as a regulation.)

2) Should applicants be required to provide each Commissioner with a copy of the list of persons who will be representing them?

Section 30319 requires that applicants provide "the Commission" with the names and addresses of persons who will represent them. It does not specify whether one copy should be provided to the Executive Director or whether each Commissioner should receive a copy. Staff proposes that applicants be directed to submit one copy to the Executive Director, who will arrange to have it included as an attachment to the staff report on permits and appeals scheduled for Commission hearings.

E. Regulations

In addition to the possible regulatory changes noted above, the Commission may want to consider the regulations described in the November 3 staff report on page 8. (Attachment 1.) (The second proposal would be unnecessary if the bill is amended to address attorney-client privileged communications as described above.)

F. Disclosure Forms

The staff has prepared a model disclosure for adoption by the Commission at this meeting, as required by the bill. (Attachment 2.)

Attachments

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CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

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November 3, 1992

TO: Commissioners and Interested Persons

FROM: Ralph Faust, Chief Counsel
Dorothy Dickey, Deputy Chief Counsel D. Dickey

SUBJECT: Implementation of New Law Concerning Ex Parte Communications (AB 3459, Friedman)

I. INTRODUCTION

A new law goes into effect on January 1, 1993, that imposes important responsibilities on both applicants and Commissioners with respect to communications with Commissioners. The requirements are somewhat complicated and may be difficult to implement. It is important to note that the law imposes serious penalties on both applicants and Commissioners for violation of the new requirements. This memorandum summarizes the most important provisions of the law, which fall into two areas:

- Permit applicants are required to identify persons who will communicate with Commissioners on their behalf.

- Commissioners are required to report communications with "interested persons" concerning a wide range of matters within the Commission's jurisdiction. Commissioners are also required to notify those interested persons that the communication will be reported.

II. SUMMARY OF NEW REQUIREMENTS

A. Applicants' Disclosure Of Persons Who Communicate On Their Behalf (sections 30319 and 30319.5)

1. What must be disclosed?

Applicants must disclose the names and addresses of "persons who, for compensation, will be communicating with the Commission or commission staff on their behalf." (Public Resources Code section 30319)

2. Is it sufficient to identify a firm that will represent the applicant?

The law requires that applicants disclose the names of the persons who will be communicating on their behalf with the Commission and staff. It does not refer to firms or organizations, thus it may be interpreted to require that applicants must disclose the names of all individuals who will communicate on behalf of the applicant, rather than just the firm or organization. (Section 30319.)

3. What types of proceedings are affected?

This requirement only applies to Commission coastal development permit proceedings. Because appeals of locally issued coastal development permits are Commission coastal development permit proceedings, applicants for permits that have been appealed to the Commission will also be subject to this requirement. (Section 30319.)

4. When must the disclosure be made?

The law provides that disclosure must be made prior to the time communication occurs on behalf of coastal development permit applicants. Because it applies only to persons "applying . . . for a permit", it may be interpreted to affect only those communications that occur after an application is submitted. Application forms will be revised to require that the information be provided at the time that an application is submitted and to remind applicants of their obligation to update the information, as appropriate. When appeals are received, staff will notify the applicants whose permits have been appealed of their obligation to list all persons who will be communicating for compensation on their behalf with Commissioners or staff. (Section 30319.)

5. What are the penalties for failure to comply?

If an applicant fails to comply he or she may be charged with a misdemeanor that is punishable by a fine of $5000 or imprisonment in county jail for up to six months. Additionally, the permit is "subject to immediate denial". An applicant whose application is denied pursuant to this requirement may not reapply for an identical or similar project for two years. (Sections 30319 and 30319.5.)

6. What is meant by "subject to immediate denial" of the permit?

A. Does the Commission retain discretion to approve the permit?

The law provides that the permit is "subject to immediate denial" rather than that it "shall be immediately denied". The words "subject to" may be interpreted to provide the Commission with discretion to determine whether to approve or deny the permit. (Section 30319.) If it is alleged that a violation of this

disclosure requirement has occurred, the hearing on the permit should include testimony on the alleged violation to allow the Commission to consider the alleged violation in determining whether to approve or deny the permit.

B. Does this section provide the Commission with authority to revoke a permit if a violation has occurred?

This law only expressly authorizes the Commission to deny a permit. The fact that the Legislature provided for revocation in another part of this bill but did not provide for revocation with respect to applicant disclosure of consultants means that the Legislature did not intend to expand the Commission's revocation authority in this instance. (The bill would not limit the Commission's existing authority to revoke a permit.) (Section 30319.)

7. When does the law go into effect?

These requirements apply to all permits submitted to the Commission commencing on January 1, 1993.

B. Commissioner Reporting of Ex Parte Communications

1. What types of proceedings are affected?

This requirement applies to "matters within the Commission's jurisdiction" which are permits, federal consistency, appeals, local coastal programs, port master plans, public works plans, long-range development plans, categorical exclusions, "other exclusions from coastal development permit requirements" and "any other quasi-judicial matter requiring Commission action." (Sections 30321 and 30322.)

Note that the scope of this requirement pertaining to Commissioners is more broad than that described above pertaining to disclosure of representatives of applicants. It will apply to almost every action that the Commission takes, with limited exceptions such as actions on regulations, reviews of the Executive Director's performance, positions on legislation and adoption of scientific reports.

2. When does the law become applicable?

The law is effective on January 1, 1993 and applies to communications after that date concerning the above types of proceedings after an application is submitted to the Commission. (Section 30321.)

3. What is an ex parte communication?

An ex parte communication is defined in relevant part in the law to be "any oral or written communication between a member of the Commission and

an interested person about a matter within the Commission's jurisdiction and which does not occur . . . in a public hearing . . . or on the official record of the proceeding on the matter." (Section 30322(a).)

A. What is an "interested person"?

The law provides for various categories of interested persons:

- applicant, agent[2/] or employee of the applicant, person who receives consideration for representing the applicant,

- participant in the proceeding,

- person[1/] with a financial interest in the matter before the Commission, or an agent[2/] or employee of the person with a financial interest, or a person receiving consideration for representing the person who has a financial interest. ("Financial interest" is defined to be the same as that applicable to Commissioners pursuant to the State's conflict of interest laws, which are set forth at Government Code section 87100 et seq.),[3/]

- "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." (Section 30323.)

B. Are there exceptions to the definition of ex parte communications?

The law expressly provides for two exceptions:

- communication between a Commission staff member acting in his or her official capacity and a Commission member or interested person, and

- communication limited entirely to procedural issues. (Section 30322(b).)

1/ Public Resources Code section 30111 defines "person" to mean "any individual, organization, partnership, or other business association or corporation, including any utility, and any federal, state, local government, or special district or an agency thereof."

2/ Black's Law Dictionary defines "agent" in relevant part to be a "person authorized by another to act for him ..." Neither the definition nor the statute require that compensation be provided to an agent.

3/ The Commission has previously received separate briefing materials on what constitutes a financial interest. Additional copies can be requested from the legal office.

In addition, other exceptions are warranted based upon the new law and existing laws:

- attorney-client privileged communications between Commissioners and Deputy Attornies General or other attorneys assigned or retained to represent the Commission,

- attorney-client privileged communications between Commissioners who are local officials and their local governmental attorneys, provided that the communications concern actions taken as a local government official,

- communications between Commissioners (subject to the other limitations under the law, such as the Open Meetings Act),

- written communications between an interested person and a Commissioner, when the Commission staff is also listed as having received a copy (Providing a copy to the staff makes the communication part of the record of the proceeding.), and

- communications between Commissioners who are locally elected officials and "interested parties" who are also their constituents, provided that the communications concern the Commissioner's actions as a locally elected official <u>or</u> occur prior to the time that the quasi-judicial matter has been submitted to the Commission. (Thus, after a matter has been submitted to the Commission, a conversation with a constituent who is an interested person would be an ex parte communication if it concerns the official's actions as a Coastal Commissioner on the "matter within the Commission's jurisdiction".)

C. <u>Are there special considerations for a Commissioner who is a locally elected official whose local government is an "interested party"</u>?

- A communication between a Commissioner who is a locally elected official whose local government is an "interested party" and local government staff would be an ex parte communication if the communication occurs after the quasi-judicial matter has been submitted to the Commission and concerns the "matter within the Commission's jurisdiction". (Sections 30321 and 30322.)

- It may be inferred that the law would allow such a Commissioner to communicate with other Commissioners, without regard to ex parte requirement, despite the fact that the Commissioner may technically be an "employee" of the applicant local government. This inference is based upon the assumption that the Commissioner would be acting as a Commissioner rather than a local official at the time of the communication. (Section 30323(a).)

4. What requirements apply once an ex parte communications has occurred?

There are two major requirements. First, the Commission member must notify the interested person "that a full report of the ex parte communication will be entered in the Commission's official record." This notice must be provided by the Commissioner, regardless of whether the Commissioner or the interested party initiates the communication. (Section 30324(a)(1).)

Second, an ex parte communication must be reported by the Commissioner. Once such a communication is reported, it is no longer an ex parte communication. (Section 30324(a)(2).)

5. Is the Commission required to adopt a specific form for the notice to the interested party?

The law does not include any specific requirements for the notice to the interested party other than that quoted immediately above. Thus, it may be inferred that either an oral or a written notice would be appropriate.

6. How does a Commissioner report an ex parte communication?

There are two ways in which an ex parte communication must be reported, depending upon when it occurs. If the communication occurs seven or more days in advance of the meeting at which the item will be considered by the Commission, the Commissioner must report the communication in writing to the Executive Director within seven days after the communication occurs. If the communication occurs within seven days of the hearing on the matter, the Commissioner must make an oral report "on the record of the proceeding at that hearing". (Section 30324(a)(2).)

7. Is the Commission required to adopt a specific form for reporting the ex parte communication?

The law requires that the Commission adopt "standard disclosure forms" that include the following types of information:

a) date, time and location of the communication,

b) identity of persons initiating and receiving the communication, and

c) complete description of the content of the communication, together with the complete text of any written material.

The information required on the forms must be filled in and provided to the Executive Director or provided orally on the record at the meeting. (Section 30324(b).)

8. How should written reports be transmitted to the Executive Director?

The law does not address how the written report should be forwarded. In light of the bill's clear intent that ex parte communications be reported so as to allow public response either before or during the hearing on the matter, the law should be interpreted to require that the means of transmission should be that which will ensure that the Executive Director has actual knowledge of the communication prior to the commencement of the hearing. Thus, if it is reasonable to believe that the communication will not arrive by U.S. mail prior to the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

9. At what point during a Commission meeting must a Commissioner disclose an ex parte communication?

The law is silent as to exactly when a disclosure must be made. The Attorney General's office has previously recommended that the Commission disclose ex parte communications at the beginning of the hearing so that parties and other interested persons can address the substance of the communications in their oral presentations.

10. If all Commissioners receive a letter that has not been forwarded to staff, are all Commissioners required to notify the interested party and to report if either to the Executive Director or on the record to the Commission?

The law imposes the requirement that each Commissioner who has an ex parte communication shall notify the interested party of the obligation to file a report on the communication and provide a report, including the text of a written communication to the Executive Director or on the record to the Commission. (Section 30324(a)(1) and (b)(1)(c).)

11. Are non-voting Commissioners and alternates subject to the ex parte requirements?

The laws applies to "member[s] of the Commission". Public Resources Code sections 30301 and 30301.5 provide that the non-voting Commissioners are "members" of the Commission, thus the law is fully applicable to non-voting Commissioners. (Section 30322.) Similarly, section 30304 provides that alternates are Commission members, therefore the law also applies to alternates.

12. What penalties apply to violation of these requirements?

A. Prohibition on participation

The law provides that a Commissioner who has knowingly had an unreported ex parte communication shall not "make, participate in

making, or any other way attempt to use his or her official position to influence a Commission decision about which the member or alternate" had the communication. (Section 30327.)

B. Revocation

An aggrieved person may sue the Commission to obtain a writ of mandate requiring that the Commission "revoke its action and rehear the matter" if a violation occurs and a Commission "decision may have been affected by the violation." (Section 30328.)

C. Civil fines

If a Commissioner knowingly violates either the requirement to notify the interested party or the requirement to report the communication as described above, the Commissioner may be subject to a civil fine of up to $7500 plus attorney's fees and costs. (Section 30824.)

III. IMPLEMENTATION

A. Regulations

A number of issues concerning the new requirements are subject to interpretation. In order to provide guidance to the Commission and the public and to help ensure that a reviewing court will agree with the interpretations followed by the Commission, we recommend that the Commission adopt regulations that reflect the Commission's interpretation. (Whether or not the Commission adopts regulations, the new law will be effective on January 1, 1993.)

We recommend that regulations be adopted to address the following issues:

a. Provide that disclosure of applicants' representatives is not required before an application is submitted.

b. Identify the types of communications that are exempt, based on other laws:

1. Commissioner communications with the Attorney General's Office or other attorneys retained to represent the Commission,

2. Attorney-client privileged communications between Commissioners who are local government officials and local governmental attorneys are exempt if they concern actions taken as a local government official, and

3. Communications between other Commissioners and a Commissioner whose local government is an interested party.

B. **Disclosure Forms**

The staff will prepare a model disclosure form for Commission adoption at the December meeting. Attached to this report as Appendix 2 is a draft form so that the Commission may provide direction to the staff at the November meeting.

C. **Application Form**

The staff will modify the coastal development permit application form to require that applicants list all persons who will be communicating for compensation on their behalf with Commissioners or staff.

D. **Notice to Applicants Whose Permits Are Appealed to the Commission**

The staff will notify applicants whose permits are appealed to the Commission of their obligation to list all persons who will be communicating for compensation on their behalf with Commissioners or staff.

The Commission may wish to direct staff to draft regulations or take other actions to address additional issues.

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Assembly Bill No. 3459

CHAPTER 1114

An act to add Sections 30319, 30319.5, and 30824 to, and to add Article 2.5 (commencing with Section 30320) to Chapter 4 of Division 20 of, the Public Resources Code, relating to coastal resources.

[Approved by Governor September 28, 1992. Filed with Secretary of State September 29, 1992.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3459, T. Friedman. California Coastal Commission.

(1) Existing law, the California Coastal Act of 1976, gives the California Coastal Commission specified powers, duties, and responsibilities under the act. The commission consists of 12 voting members and 3 ex officio nonvoting members.

This bill would prohibit a commission member and any interested person, as defined, from conducting an ex parte communication, as defined. The bill would require a commission member to report an ex parte communication, as specified. A commission member or alternate would be prohibited from influencing a commission decision if the member or alternate has knowingly had an ex parte communication which has not been reported. The bill would authorize an aggrieved person to seek a writ of mandate with regard to a violation that would require the commission to revoke its action and rehear a matter. Any commission member who knowingly commits an ex parte communication violation would be subject to a civil fine not exceeding $7,500.

(2) The bill would require any person applying to the commission for approval of a development permit to provide the commission with the names and addresses of all persons who , for compensation, will be communicating with the commission or commission staff on their behalf. The bill would require full disclosure of those names and addresses to the commission prior to any such communication. The bill would provide that failure to make that disclosure is a misdemeanor and would specify the penalties for the violation, thereby imposing a state-mandated local program by creating a new crime. The bill would also subject the violator to immediate permit denial.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 30319 is added to the Public Resources Code, to read:

30319. Any person applying to the commission for approval of a development permit shall provide the commission with the names and addresses of all persons who, for compensation, will be communicating with the commission or commission staff on their behalf. Full disclosure of the names and addresses must be provided to the commission prior to any communication on behalf of the project proponents. Failure to comply with this disclosure requirement is a misdemeanor and, upon conviction, the person shall be punished by a fine of five thousand dollars ($5,000) or imprisonment in the county jail not exceeding six months, and, in addition, shall be subject to immediate denial of the permit.

SEC. 2. Section 30319.5 is added to the Public Resources Code, to read:

30319.5. An applicant whose permit is denied due to his or her failure to comply with Section 30319 may not apply to the commission for approval of an identical or similar project for two years from the date of the permit denial.

SEC. 3. Article 2.5 (commencing with Section 30320) is added to Chapter 4 of Division 20 of the Public Resources Code, to read:

Article 2.5. Fairness and Due Process

30320. (a) The people of California find and declare that the duties, responsibilities, and quasi-judicial actions of the commission are sensitive and extremely important for the well-being of current and future generations and that the public interest and principles of fundamental fairness and due process of law require that the commission conduct its affairs in an open, objective, and impartial manner free of undue influence and the abuse of power and authority. It is further found that, to be effective, California's coastal protection program requires public awareness, understanding, support, participation, and confidence in the commission and its practices and procedures. Accordingly, this article is necessary to preserve the public's welfare and the integrity of, and to maintain the public's trust in, the commission and the implementation of this division.

(b) The people of California further find that in a democracy, due process, fairness, and the responsible exercise of authority are all essential elements of good government which require that the public's business be conducted in public meetings, with limited exceptions for sensitive personnel matters and litigation, and on the official record. Reasonable restrictions are necessary and proper to prevent future abuses and misuse of governmental power so long as all members of the public are given adequate opportunities to present their views and opinions to the commission through written or oral communications on the official record either before or during

the public hearing on any matter before the commission.

30321. For purposes of this article, "a matter within the commission's jurisdiction" means 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.

30322. (a) For purposes of this article, except as provided in subdivision (b), an "ex parte communication" is any oral or written communication between a member of the commission and an interested person about a matter within the commission's jurisdiction and which does not occur in a public hearing, workshop, or other official proceeding, or on the official record of the proceeding on the matter.

(b) The following communications are not ex parte communications:

(1) Any communication between a staff member acting in his or her official capacity and any commission member or interested person.

(2) Any communication limited entirely to procedural issues, including, but not limited to, matters such as the hearing schedule, location, format, or filing date.

30323. 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.

30324. (a) No commission member, nor any interested person, shall conduct an ex parte communication, except in accordance with both of the following requirements:

(1) The commission member shall notify the interested party that a full report of the ex parte communication will be entered in the commission's official record.

(2) The commission member shall fully disclose and make public the ex parte communication by providing a full report of the communication to the executive director within seven days after the communication or, if the communication occurs within seven days of

the next commission hearing, to the commission on the record of the proceeding at that hearing.

(b) (1) The commission shall adopt standard disclosure forms for reporting ex parte communications which shall include, but not be limited to, all of the following information:

(A) The date, time, and location of the communication.

(B) The identity of the person or persons initiating and the person or persons receiving the communication.

(C) A complete description of the content of the communication, including the complete text of any written material that was a part of the communication.

(2) The executive director shall place in the public record any report of an ex parte communication.

(c) Communications shall cease to be ex parte communications when fully disclosed and placed in the commission's official record.

30325. Nothing in this article prohibits any person or any interested person from testifying at a commission hearing, workshop, or other official proceeding, or from submitting written comments for the record on a matter before the commission. Written comments shall be submitted by mail or delivered to a commission office, or may be delivered to the commission at the time and place of a scheduled hearing.

30326. Any person, including a commission member, may request the commission staff to conduct a workshop on any matter before the commission or on any subject that could be useful to the commission. When the executive director determines that a request is appropriate and feasible, a workshop shall be scheduled at an appropriate time and location.

30327. No commission member or alternate shall make, participate in making, or any other way attempt 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 that has not been reported pursuant to Section 30324.

30328. If a violation of this article occurs and a commission decision may have been affected by the violation, an aggrieved person, as described in Section 30801, may seek a writ of mandate from a court requiring the commission to revoke its action and rehear the matter.

SEC. 4. Section 30824 is added to the Public Resources Code, to read:

30824. In addition to any other applicable penalties, any commission member who knowingly violates Section 30324 is subject to a civil fine, not to exceed seven thousand five hundred dollars ($7,500). Attorneys fees and costs may be granted pursuant to Section 1021.5 of the Civil Code.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district

will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

Date and time of communication: _____

Location of communication: _____
(If communication was sent by mail or facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication: _____

Identity of person(s) receiving communication: _____

Name or description of project: _____

Description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

_____

_____

_____

_____

_____

_____ _____
Date Signature of Commissioner

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

APPENDIX 2

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

Date and time of communication: _____

Location of communication: _____
(If communication was sent by mail or facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication: _____

Identity of person(s) receiving communication: _____

Name or description of project: _____

Description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

_____

_____

_____

_____

_____

_____ _____
Date Signature of Commissioner

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

APPENDIX 2