

COASTAL CONSERVANCY

Project Summary

May 18, 2005

**CONSERVANCY DELEGATION TO ITS EXECUTIVE OFFICER
TO FACILITATE ADMINISTRATION OF THE CALIFORNIA
OCEAN PROTECTION COUNCIL
AND
RESERVATION OF FUNDS FOR OCEAN PROTECTION**

File No. 05-046

Project Manger: Neal Fishman

RECOMMENDED ACTION: (1) Adopt a delegation of authority to the Executive Officer to undertake certain actions without need for specific Conservancy authorization in order to facilitate administration of the California Ocean Protection Council (OPC), and (2) reserve five million dollars (\$5,000,000) of existing Coastal Conservancy bond and other funds for ocean conservation projects and programs that are given high priority by the OPC and are consistent with the Conservancy's selection criteria.

LOCATION: Statewide

PROGRAM CATEGORY: Administration

EXHIBITS

Exhibit 1: Ocean Protection Act

Exhibit 2: Ocean Action Strategy

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31103 of the Public Resources Code, and Title 14 of the California Code of Regulations:

“ A. The State Coastal Conservancy hereby delegates the following authorities to the Executive Officer to increase the effectiveness and administer the affairs of the California Ocean Protection Council (OPC):

1. With respect to the expenditure of funds neither appropriated nor awarded to the Conservancy, negotiate and enter into grant and other agreements and take other actions necessary to carry out projects and

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programs authorized by the OPC, unless the Conservancy is legally required to make findings under the California Environmental Quality Act or other applicable law.

2. With respect to Conservancy funds, negotiate and enter into contracts for services to support and carry out projects authorized by the OPC or that the OPC finds to be of high priority, unless the Conservancy is required to make findings under the California Environmental Quality Act or other applicable law.

3. Unless there is a significant controversy involved, place on the Conservancy consent calendar all other actions that carry out programmatic priorities adopted by the OPC or that have been specifically authorized by the OPC.

- B. The Conservancy reserves up to five million dollars (\$5,000,000) from existing Conservancy funding sources, to be expended in concert with the OPC, for programs and projects authorized by the OPC or that the OPC finds to be of high priority and that are also consistent with the Conservancy's project selection criteria and priorities and the requirements of the funding sources."

Staff further recommends that the Conservancy adopt the following findings:

"Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The of authority provided through this delegation will facilitate the Executive Officer's role as Secretary to the California Ocean Protection Council and help to effectively implement Division 26.5 of the Public Resources Code, the California Ocean Protection Act.
2. The delegations are consistent with Division 26.5 of the Public Resources Code and will help to carry out the Conservancy's obligations under section 35625 to provide staff services that the California Ocean Protection Council needs to carry out Division 26.5.
3. The delegations are consistent with the authority of the Conservancy under Section 31103 of the Public Resources Code and 14 California Code of Regulations Section 13734 to appoint an Executive Officer to administer the affairs of the Conservancy and to carry out its functions under Division 21 of the Public Resources Code."

PROJECT SUMMARY:

California is the first state in the U.S. to adopt a cabinet-level ocean policy advisory council. SB 1319 (Burton, Chapter 719, Statutes of 2004) established the OPC and designated the executive officer of the Conservancy as Secretary to the Council. This bill was developed in response to the work of both the United States Ocean Commission and the Pew Ocean Commission. Over the last two years, these commissions published extensive reports documenting numerous

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troubling issues regarding the health of the ocean and specifically identifying the need for more coordinated governmental management of ocean resources. These reports were followed by the Governor's issuance of an Ocean Action Plan, and the passage of the Ocean Protection Act.

The Ocean Protection Act, establishes the OPC consisting of the Secretary for Resources, the Secretary of CalEPA, and the chair of the State Lands Commission. It also includes two non-voting legislative representatives. It designates the Executive Officer of the Conservancy as the Secretary to the council. Specifically, Section 35625 (a) states: "...the executive officer of the State Coastal Conservancy shall act as secretary to the council, administer its affairs, and provide the staff services that the council needs to carry out this division, including but not limited to, both of the following: (1) administering grants and expenditures authorized by the council from the fund or other sources, including, but not limited to, block grants from other state boards, commissions, or departments. (2) arranging meetings, agendas, and other administrative functions in support of the council." Additionally, Section 35625 (b) states: "The legislature may make appropriations to be used for the purposes of this division directly to the State Coastal Conservancy for expenditures authorized by the council."

Staff is requesting that the Conservancy make the following additions to its existing delegations of authority to the Executive Officer in response to these new duties placed upon the Executive Officer:

- 1) Authorize the Executive Officer to spend funds authorized by the Council that have not been appropriated to the Conservancy or given to the Conservancy for expenditure. Currently there are no funds available to the Council that fall under this proposed delegation, but there may be in future budget years. This delegation would specifically authorize the Executive Officer, as an employee of the Conservancy and as Secretary to the OPC, to take the necessary administrative actions to spend such funds, when or if funds are made available directly to the OPC. The delegation would not apply if counsel to the Conservancy determined that the Conservancy would need to make findings relating to the expenditure of such funds.
- 2) Authorize the Executive Officer to enter into contracts expending Conservancy funds for ocean conservation when specifically authorized by the OPC or when such expenditure is for an activity that has been given high priority by the OPC. The Conservancy currently delegates authority to the Executive Officer to enter into contracts for services up to \$200,000. This in effect removes that cap for contracts when the OPC has authorized it or if it is for a project or program that has been given high priority by the OPC. This delegation would not apply to the award of grants or the expenditure of Conservancy grant funds.
- 3) Authorize the Executive Officer to place non-controversial grants or other expenditures for ocean conservation on the Conservancy's consent agenda when these grants have been previously authorized or prioritized by the OPC. Currently the Executive Officer generally places items on the consent agenda that are under \$100,000 or are continuations of previous grants.

Staff is also requesting that the Conservancy agree to set aside a total of five million dollars in bond and other funds now available to the Conservancy or that are expected to be available in the

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next fiscal year, for projects found to be of high priority for ocean conservation by the OPC. The OPC is now in the process of developing project selection guidelines, a number of model projects, a list of potential projects, and new processes for soliciting projects to implement the Governor's Ocean Action Plan. Some funds may be available shortly to the OPC, including up to \$10 million in tidelands oil revenue, and a possible pledge of \$10 million from the State Water Resources Control Board from Proposition 50. Staff is recommending that the Conservancy make a similar pledge of \$5 million from various bond and other sources for projects and programs developed by the OPC. This will provide much-needed immediate funding to ensure that the OPC's efforts stay in the forefront of ocean policy. It will also help raise interest by federal agencies in the OPC's work and is expected to generate federal funds.

Conservancy staff will be instrumental in developing and administering the OPC's project and program selection. Conservancy funds allocated to OPC selected projects will be administered by staff. Under the proposed delegation of authority, any expenditures of these funds as grants will also have to be authorized by the Conservancy.

The proposed reservation of funds will not radically change the current direction for the use of either Proposition 40 or 50 funds. The bond sources and the Conservancy's own criteria will still obtain. But this reservation of funds will mean that there will be additional emphasis on using these funds for ocean-related projects. This is consistent with the Conservancy's enhanced marine-related projects authority under Chapter 5.5 of Division 21 and the role of the Executive Officer as Secretary to the OPC.

HISTORY: Since at least 1977, the Conservancy has, at various times, delegated specified functions to its Executive Officer for reasons of practicality or efficiency. In December of 2000 the Conservancy adopted a resolution to collect, restate, and make current the Conservancy's delegations. At staff's request, it again revised those delegations in 2001. This included: (1) limiting the Executive Officer's authority to enter into contracts of all kinds to those costing \$200,000 or less; and (2) permitting the use of the consent agenda for consideration of grants and other items costing \$100,000 or less, where there is no evident controversy.

The current delegation would add to existing delegations and be consistent with these delegations of authority, except for the lack of a contract cap where the activity has been reviewed or given priority by the OPC.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

Section 31103 of the Public Resources Code authorizes the Conservancy to appoint and set the terms of employment for the Executive Officer. Section 13734 of the Conservancy's regulations authorize the executive officer to administer the affairs of the Conservancy and carry out the affairs of the Conservancy.

COMPLIANCE WITH CEQA:

The proposed delegation of authority is not a project as that term is defined under 14 Cal. Code Regs. § 15378(b)(2). This subsection excludes from the definition of the term "project" "[c]ontinuing administrative or maintenance activities, such as ... general policy and procedure making." With respect to the reservation of five million dollars, no specific project has been identified for use of these funds. Appropriate CEQA review will occur as is usually done on projects authorized by the Conservancy. Hence, the reservation is similarly not a project under 14 Cal. Code Regs. § 15378(b)(4), which exempts from the definition of a project "government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment."