

COASTAL CONSERVANCY

Project Summary
February 3, 2006

**CONSERVANCY DELEGATION TO ITS EXECUTIVE OFFICER
TO FACILITATE ADMINISTRATION OF THE CALIFORNIA
OCEAN PROTECTION COUNCIL**

File No. 05-046
Project Manger: Neal Fishman

RECOMMENDED ACTION: Delegate to the Executive Officer authority to expend funds appropriated or awarded to the Conservancy for ocean protection purposes, consistent with the California Ocean Protection Act, to hire staff, complete studies and plans, and for related activities when authorized California Ocean Protection Council.

LOCATION: Statewide

PROGRAM CATEGORY: Administration

EXHIBITS

Exhibit 1: Delegation of Authority

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:

“With respect to funds appropriated or awarded to the Conservancy for the purpose of ocean protection, consistent with the California Ocean Protection Act, the State Coastal Conservancy hereby delegates authority to the Executive Officer to expend these funds through contracts, grants or other means to hire staff, complete studies and plans, and for related activities necessary to administer the affairs of the California Ocean Protection Council (OPC), provided such activity has been authorized by the OPC, and provided the Conservancy is not legally required to make findings under the California Environmental Quality Act or other applicable law.”

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:

DELEGATION AND RESERVATION OF FUNDS

1. The delegation is 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.
 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."
-

PROJECT SUMMARY:

California is the first state in the U.S. to adopt a cabinet-level ocean policy advisory council. The Ocean Protection Act (SB 1319 Burton 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 Commission on Ocean Policy (2004) and the Pew Ocean Commission (2003). These commissions published extensive reports documenting numerous 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, composed 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."

In response to these new duties, staff is requesting that the Conservancy add to its existing delegations of authority to the Executive Officer (See Exhibit 1: Paragraph 1 is the previously approved delegation of authority; Paragraph 2 is the additional delegation proposed by this staff recommendation). Staff is recommending that the Conservancy authorize the Executive Officer, when approved or authorized by the OPC, to expend funds appropriated or allocated to the Conservancy specifically for ocean conservation, to hire staff, complete studies and plans, and undertake other related activities necessary to administer the affairs of the OPC, through contracts, grants or other means. The Conservancy currently delegates authority to the Executive Officer to enter into contracts for services up to \$200,000. The language of this delegation does not include activities in furtherance of OPC activities. The proposed action would apply only to plans, studies and activities needed to administer the affairs OPC and would only apply to funds specifically allocated for this purpose either through direct appropriation or otherwise allocated

DELEGATION AND RESERVATION OF FUNDS

to the Conservancy through a grant or interagency agreement. It would not apply to current bond funds allocated to the Conservancy.

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 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 otherwise authorized by the OPC. It would allow the Executive Officer to function as Secretary to the OPC with respect to funds appropriated or provided for OPC purposes.

At its May meeting the Conservancy did delegate various authorities related to the OPC to the Executive Officer. The Conservancy authorized 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 specifically authorized 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.

At its May meeting, the Conservancy specifically did not agree to a much broader delegation of that applied to any funds allocated to the Conservancy for ocean purposes, when authorized by the OPC, without regard to the intended purpose. Bearing the board's concerns in mind, the current proposal is limited to planning, studies, staffing, and related administrative purposes, needed to administer the OPC. Consistent with the prior delegations, this authority would not apply to projects where the Conservancy is required to make findings for the project to proceed.

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 authorizes the executive officer to administer the affairs of the Conservancy to carry out the affairs of the Conservancy and to appoint staff to the Conservancy. Section 31220(10) authorizes the Conservancy to carry out projects and activities consistent with Division 26.5 (the Ocean Protection Act).

COMPLIANCE WITH CEQA:

DELEGATION AND RESERVATION OF FUNDS

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.”