

COASTAL CONSERVANCY

Staff Recommendation

November 9, 2006

CONSERVANCY DELEGATION TO ITS EXECUTIVE OFFICER TO UNDERTAKE EMERGENCY CONTRACTS TO PROTECT CONSERVANCY PROPERTY AND PUBLIC HEALTH, SAFETY AND WELFARE

File No. 06-999

Project Manager: Sam Schuchat

RECOMMENDED ACTION: Delegate authority to the Executive Officer to negotiate and enter into emergency contracts related to Conservancy-owned real property and necessary for the preservation of the public health or welfare, or the protection of state property.

LOCATION: Statewide

PROGRAM CATEGORY: Administration

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31103 of the Public Resources Code, and Section 13734, Title 14 of the California Code of Regulations:

“The State Coastal Conservancy hereby delegates to its Executive Officer the authority to negotiate and enter into emergency contracts related to Conservancy-owned real property that are necessary for the preservation of the public health or welfare, or the protection of state property, and are consistent with applicable law and policies of the Conservancy.”

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 the proposed authorization is consistent with and will assist the Conservancy to carry out the purposes of Division 21 of the Public Resources Code.”

PROJECT SUMMARY:

Over the past two years, the Conservancy has encountered situations in which emergency repairs to levees and other structures were necessary to preserve project goals and protect

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Conservancy property following storm events. For example, in January of 2006 a levee located on the Bel Marin Keys property owned by the Conservancy breached during a major storm event. Because an adjacent pond is owned by Marin County, the County department of public works took the lead on the repair. The repair was accomplished in several days and at a cost of over \$300,000. Under the existing delegation, the Executive Officer could not enter into a contract for this amount or demonstrate explicit authority to enter into an emergency contract to effect the needed repairs to avoid further damage.

Public contracting law recognizes the need to respond to emergencies more quickly than the normal public contract award process allows. Section 10340(b)(1) of the Public Contract Code allows agencies enter into emergency contracts, defined as contracts necessary to preserve the public health, welfare, or safety, or protection of state property, and then obtain the formal contract approval(s) as soon thereafter as practicable. However, before the start of the work, the contract must be authorized by someone with clear authority to initiate a contract in such situations.

Similar to Section 10340, Section 10101(b) of the Public Contract Code allows the Conservancy to contract for emergency services where necessary to protect the health, safety, and welfare of the general public, without having to comply with portions of the State Contract Act. Where emergencies arise, agencies are not required to obtain three bids or advertise in the state contracts register before entering into a contract, though they still must comply with the other state contracting requirements. The proposed delegation is narrowly drawn to allow the Executive Officer to utilize of these provisions of the Public Contracting Code by creating authority to obtain repairs where an emergency occurs on Conservancy-owned properties.

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, the Conservancy again revised those delegations in 2001. This revision 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. More recently, the Conservancy has delegated authority to the Executive Officer as Secretary to the Ocean Protection Council to enter into contracts and other agreements on behalf of the Council.

The current delegation would add to existing delegations and be consistent with these delegations of authority, except for removing a cap on the contract amount where an emergency arises on Conservancy property.

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. Title 14, Section 13734(a) of the Conservancy's regulations authorizes the executive officer to administer the affairs of the Conservancy and carry out the affairs of the Conservancy. The proposed project will

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enable the Executive Officer to more effectively respond to a crises by providing authority to let contracts and limit the threat of, or prevent further injury to public land, resources or the public's health.

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."