



# Council Agenda Report

To: Mayor Silverstein and the Honorable Members of the City Council

Prepared by: Richard Mollica, Planning Director

Approved by: Steve McClary, City Manager

Date prepared: June 1, 2023 Meeting date: June 12, 2023

Subject: Processing Fee Requests per Assembly Bill 2160

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**RECOMMENDED ACTION:** Provide direction to staff on processing fee waiver/reduction requests for public access or habitat restoration projects requiring a Coastal Development Permit (CDP). Pursuant to 2022 legislation – Assembly Bill (AB) 2160 – an applicant who is a public agency or nonprofit organization may request that the City waive or reduce a coastal development permit fee for a public access project or habitat restoration project. If the request is denied, the applicant may bypass City processing and submit the CDP application directly to the California Coastal Commission (CCC).

**FISCAL IMPACT:** Estimated fees for a CDP application generally range between \$8,677 to \$10,741. Fees account for staff time to process the application and third-party reviews conducted by specialized City consultants (e.g., geology, biology and coastal engineering). Additional fees are required if a project triggers environmental review under the California Environmental Quality Act (CEQA). The minimum CEQA filing fee is \$75 for a categorical exemption; however, for more complex environmental documents (e.g., environmental impact report or mitigated negative declaration) the City charges actual cost plus a 30% administration fee when using a third-party environmental consultant or \$190 per hour when staff prepares the document (e.g., negative declaration).

**WORK PLAN:** This item was not included in the Adopted Work Plan for Fiscal Year 2022-2023. This project is part of normal staff operations.

**BACKGROUND:** AB 2160 was signed into law on September 13, 2022, and went into immediate effect. The bill added Section 30600.6.1 to the Public Resources Code (PRC) (i.e., the Coastal Act) allowing an applicant to request a fee waiver or reduction from a city or county for CDP application fees associated with public access or habitat restoration projects. If a city or county rejects an applicant's fee request, AB 2160 authorizes the

applicant to submit the CDP application directly to the CCC for processing. This means that the city or county would no longer be the permitting authority for the development project. Pursuant to the legislative intent of AB 2160, the bill was not intended to force cities and counties to provide relief. The intent of the bill was to provide a uniform fee waiver or reduction policy statewide in the Coastal Zone in order to incentivize public access and habitat restoration projects via cost savings and reduced barriers for CDP processing. The state desires more public access and habitat restoration projects to come forward.

The types of projects eligible for AB 2160 are described in the legislative intent as those providing “public benefits that are in line with state priorities” and those in line with the goals of Newsom Administration initiatives led by the California Natural Resources Agency including *Cutting Green Tape*, *Access for All*, and *30x30*. *Cutting Green Tape* seeks to “increase the pace and scale of ecological restoration and stewardship by amending and streamlining various government processes,” and *Access for All* seeks to “expand all Californians’ access to parks, open space, nature, and cultural amenities.” Conserving thirty percent each of the state’s lands and coastal waters by 2030 is the goal of *30x30*.

AB 2160 applies to any eligible request for CDP fee waivers or reductions following its September 2022 effective date. No applications for eligible projects have been submitted to the City since the effective date. However, the City is processing an application by the Mountains Recreation and Conservation Authority (MRCA) for a public accessway (CDP No. 07-087), and that application was submitted on July 16, 2007. Prior to September 2022, MRCA had paid a total of \$31,965.33 in review fees and this year another \$2,320 is owed to the City for an additional Coastal Engineering review. The MRCA has contacted staff and requested that the fees paid on this application be refunded because of AB 2160. Staff explained that AB 2160 does not address past fees paid (i.e., it is not retroactive); however, moving forward staff would seek direction on how to implement AB 2160 from the Council prior to charging any further fees. It should be noted that the base CDP and variance fee for this project was \$7,241, the remainder of the fees are related to costs incurred from the hourly rates charged by the City reviewers, such as the City’s Biologist, Public Works Engineers, and Geotechnical reviewers.

DISCUSSION: Pursuant to AB 2160, the following provisions must apply in order for a fee waiver or reduction request to be eligible:

1. Applicant must be a public agency or nonprofit organization; and
2. Project’s primary purpose must be for public access or for the sole purpose of habitat restoration. As defined in PRC §30600.6.1(a),

- a. “Public access project” means a project with the primary purpose of creating, enhancing, expanding, or restoring public amenities that provide access to or along the coast.
- b. “Habitat restoration project” means a project proposed for the sole purpose of restoring or enhancing the ecological function, biodiversity, or resiliency of native habitat.

Pursuant to the Coastal Act, the City has jurisdiction to process the majority of CDP applications within the City. CDPs are decided by the Planning Commission in a public hearing and may be appealed to the City Council. Only those projects located within the CCC’s appeal jurisdiction are eligible for a secondary appeal to the CCC following the City’s final action on a CDP. Projects outside the appeal jurisdiction are not eligible for a secondary appeal to the CCC and the City’s final action stands. For public access and habitat restoration projects, AB 2160 seemingly provides an option for direct CCC processing in the event the City denies an applicant’s request to waive or reduce CDP processing fees. This means that the City would not be the permitting authority for the project and all public hearings would be conducted by the CCC – not the City.

As described in *Fiscal Impact*, the City charges fees for processing CDP applications to compensate for staff time and specialized reviews by City consultants. The City’s primary CDP fee is a “CDP Level 2” currently set at \$6,627. Additional City staff review fees include: \$726 (Public Works) and \$454 (Environmental Health, if a project is developed private property with an onsite wastewater treatment system). City consultant review fees include: \$1,720 (Biology with Environmentally Sensitive Habitat Area (ESHA) present) or \$860 (no ESHA present), \$750 (Coastal Engineering) and \$464 (Geology). Additional fees may also include CEQA preparation and filing fees.

While AB 2160 allows an applicant to request a fee waiver or reduction, the plain text of the statute posits that the reduction request is solely geared toward “a coastal development permit fee.” Thus, this would apply to the City’s primary CDP fee (\$6,624). However, should the Council so desire, the City could also consider a request for a fee waiver or reduction for its other fees also applicable to the projects contemplated by AB 2160.

#### Council Direction Item 1

The City Council is asked to make a determination as to which of the three metrics should be considered for a fee waiver or reduction:

1. CDP fee (all other fees would be charged for staff time and City consultants); or

2. CDP fee and City fees for staff time (only fees for City consultants would be charged as these are direct costs to the City); or
3. CDP fee and City fees for staff time and consultants (City would absorb direct costs to the City).

#### Council Direction Item 2

The City Council is asked for direction on how it would prefer to handle eligible fee waiver or reduction requests. Options could include, but are not limited to the following:

1. Requests decided by City Manager. If directed, staff could bring back a City Council policy authorizing this protocol and any other factors to be considered by the City Manager when reviewing fee requests; or
2. Requests decided by the Planning Commission or the City Council. Staff would bring each eligible fee request to the Planning Commission or the City Council as part of a noticed public hearing. Council is requested to indicate which body is preferred and any other factors to be considered by the body when reviewing fee requests.

ENVIRONMENTAL IMPACT: The proposed City Council direction does not constitute an “approval” or a “project” under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines §15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the City adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of the City Council’s direction that requires the City or the City Council’s discretionary approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. The current City Council direction in no way limits the exercise of the City or the City Council’s sole and absolute discretion. Therefore, no further CEQA review is required.

CONCLUSION: Staff requests the City Council provide direction on processing fee waiver or reduction requests for eligible public access or habitat restoration projects.

ATTACHMENTS: PRC §30600.6.1 (AB 2160)

## Assembly Bill No. 2160

### CHAPTER 280

An act to add Section 30600.6.1 to the Public Resources Code, relating to coastal resources.

[Approved by Governor September 13, 2022. Filed with Secretary of State September 13, 2022.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2160, Bennett. Coastal resources: coastal development permits: fees.

Existing law, the California Coastal Act of 1976, requires any person wishing to perform or undertake any development in the coastal zone, as defined, in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, to obtain a coastal development permit, as provided. The act further provides for the certification of local coastal programs by the California Coastal Commission. The act prohibits the commission, except as provided, from exercising its coastal development permit review authority, as specified, over any new development within the area to which the certified local coastal program, or any portion thereof, applies. Existing law requires a local government, if it has been delegated authority to issue coastal development permits, to recover any costs incurred from fees charged to individual permit applicants. Existing law authorizes the local government to elect to not levy fees, as provided.

This bill would, at the request of an applicant, as defined, for a coastal development permit, authorize a city or county to waive or reduce the permit fee for specified projects. The bill would authorize the applicant, if a city or county rejects a fee waiver or fee reduction request, to submit the coastal development permit application directly to the commission.

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

SECTION 1. Section 30600.6.1 is added to the Public Resources Code, to read:

30600.6.1. (a) For purposes of this section, the following terms shall apply:

(1) "Applicant" means a public agency or a nonprofit organization, as that term is defined in Section 31013.

(2) "Habitat restoration project" means a project proposed for the sole purpose of restoring or enhancing the ecological function, biodiversity, or resiliency of native habitat.

(3) “Public access project” means a project with the primary purpose of creating, enhancing, expanding, or restoring public amenities that provide access to or along the coast.

(b) At the request of an applicant for a coastal development permit, a city or county may waive or reduce a coastal development permit fee for a public access project or habitat restoration project. If a city or county rejects a fee waiver or fee reduction request, the applicant may, notwithstanding Section 30519, submit the coastal development permit application directly to the commission.

(c) Nothing in this section shall be construed to impact, address, or change a local coastal plan or program.