

CALIFORNIA COASTAL COMMISSION

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MEMORANDUM

February 6, 2016

TO: California Coastal Commissioners
Interested Members of the Public

FROM: Christopher Pederson, Chief Counsel

RE: **Hearing on Consideration of Potential Dismissal of the Executive Director**
(for the Commission Meeting of **February 10, 2016**)

On February 10, 2016, the Commission will hold a public hearing to consider whether to dismiss Dr. Charles Lester as its executive director. The Coastal Act provides that the executive director “serve[s] at the pleasure” of the Commission and is exempt from civil service rules. (Pub. Resources Code, § 30335.) The Commission is not required to identify any reasons for why it is considering whether to dismiss the executive director and, if it decides to dismiss him, is not required to specify the grounds for dismissal.

Under the Bagley-Keene Open Meeting Act, the executive director is entitled to request that a public hearing occur before the Commission may deliberate in closed session regarding whether to dismiss him. (Gov. Code, § 11126(a).) The executive director has exercised this right to request a public hearing. Accordingly, the executive director and interested members of the public will have the opportunity to address the Commission at the public hearing on February 10 regarding whether the Commission should dismiss the executive director. At the conclusion of the public testimony, the Commission may deliberate and vote in either open or closed session, or some combination of both. If the Commission takes an action to dismiss the executive director in closed session, it must publicly report the roll call vote when it reconvenes in open session afterwards. (Gov. Code, §§ 11122, 11125.2, 11126.3(f).)

As reflected in the public agendas of prior meetings, it is a matter of public record that the Commission has periodically conducted performance evaluations of the executive director during closed sessions. Those performance evaluations included both confidential written evaluations and confidential closed session deliberations. The personnel records of public employees, including performance evaluations, are confidential and generally not subject to public disclosure. (*Versaci v. Superior Court* (2005) 127 Cal.App.4th 805, 818-822; Gov. Code, §§ 6254(c), 11125.1(a), 11126.3(e); *see also* Cal. Const. Art. 1, § 1.) The Bagley-Keene Act does not require the executive director to waive his right to privacy in order to request a public

hearing before the Commission. Given these principles and given that the performance reviews occurred in connection with confidential closed sessions, the executive director has a reasonable expectation of the privacy of those reviews. (*See Versaci*, 127 Cal.App.4th at 818-822.) Commissioners, therefore, may not disclose the contents of the written evaluations or the closed session deliberations unless the executive director waives his privacy right to maintain their confidentiality and the Commission as a whole authorizes their disclosure. (*See* Cal. Const. Art. I, § 1; Gov. Code, § 11126.3(e); *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324.) The executive director has declined to waive his privacy right to maintain the confidentiality of these performance evaluations and the Commission has not authorized their disclosure. Therefore, the executive director's past performance evaluations will not be discussed during any public deliberations.

By requesting a public hearing, the executive director has consented to a public deliberation and vote about whether he should be dismissed. The Commission may deliberate and vote in public session regarding whether or not to dismiss him. As part of those public deliberations, commissioners may discuss points raised during the public hearing, other matters of public record, their own current thoughts regarding the executive director and management of the agency, and any other issues that they think are relevant, aside from the executive director's past performance evaluations.

If the Commission deliberates and votes in closed session, individual commissioners will have the opportunity to make public comments following the announcement of any closed session action. Commissioners may express their personal views regarding whatever action the Commission may have taken, but may not "unnecessarily divulge" closed session deliberations or disclose information that is legally required to be treated as confidential. (Gov. Code, § 11126.3(e).)