August 25, 2014

VIA EMAIL

Honorable Pedro Nava
Little Hoover Commission
925 L Street, Suite 805
Sacramento, CA 95814

Re: 2009 Amendments to the Bagley-Keene Act

Dear Chair Nava,

Thank you for the opportunity to comment on the effects of the Bagley-Keene Open Meeting Act amendments, enacted in 2009, on the ability of state boards and commissions to effectively conduct business. I am the most senior member of the Coastal Commission, having served as a Commissioner for 10 years and the only current member who has served both before and after the 2009 Bagley-Keene amendments were adopted. I served as the Chair of the Coastal Commission from June 2011 until December 2013, and frequently consulted with staff to ensure compliance with the requirements of the Open Meeting Act and the Coastal Act. For the 30 years before being appointed to the Coastal Commission, I worked in state public service, including in the Legislature, and worked extensively on topics related to the Coastal Commission, as well as with numerous other boards and commissions. I am familiar with the requirements and effects of the Bagley-Keene Act.

There has been no noticeable difference in the way Coastal Commissioners are able to interact with the public, one another, staff or conduct its business since the 2009 amendments. The Commission meets monthly and conducts the Commission's business in an open, publicly noticed meeting. Although the Commission's primary role is to hear and decide coastal development permit applications, local coastal programs and amendments, and other decisions authorized by the Coastal Act, the Commission regularly holds public briefings and workshops during Commission meetings on various topics of interest to the Commission and relevant to the Coastal Act. Just a few of such topics in recent years include: Sea Level Rise; Desalination; Takings Law and Unity of Ownership; Local Government Workshops; Coastal Agriculture; Wetlands; Condo/Hotels; and Public Participation and Ex Parte Communications. These public sessions provided an opportunity for the Commission to hear from staff, experts in the field, stakeholders and other members of the public. These hearings were well-attended, provided an opportunity for all participants and viewers to learn more about these important public policy topics and have their own voices heard by other stakeholders, staff and commissioners. Further, because all of the Coastal Commission meetings are webcast, these sessions can be viewed on the web by any interested member of the public at any time. These workshops and briefings are an excellent demonstration of conducting public policy discussion in an open, transparent and public manner. I would be happy to provide the dates of these workshops and web links if viewing them would assist the Little Hoover Commission in its work.

Commissioners are, from time-to-time, afforded the opportunity to work in smaller groups in subcommittees on particular topics. Because the Bagley-Keene Act requires that subcommittees of three or more members meet in publicly noticed open meetings, and, in the interest of conserving limited staff resources and travel funds, Commission subcommittees typically are comprised of two commission members and are supported by one or a small number of staff members. Over the years, I have served on various subcommittees such as the Budget subcommittee and the Road-Edge subcommittee. As the Chair, I appointed commissioners to other subcommittees, such as to the Hotel/Travel subcommittee and the Strategic Plan Metrics subcommittee. These subcommittees have no authority to make decisions on behalf of the Commission, but do report back in open session, providing the Commission and public an airing of the substance of subcommittee meetings and any recommendations from subcommittees. This subcommittee process works well, because, as a 15-person commission with 12 voting members, two commissioners can easily meet and confer without nearing a quorum. In a smaller size commission or board, however, use of this type of subcommittee may not be feasible or appropriate.

Finally, I would like to address the overlap between the 2009 Bagley-Keene Act amendments and the Coastal Act's ex parte provisions. The purpose of disclosing ex parte communications is for transparency and fairness to all parties. People who are not present during those communications can hear and respond to the statements and allegations made ex parte, and disclosure ensures that any relevant information relied on by one or more commissioners becomes part of the public record of decision. The Coastal Act requirements for ex parte disclosure will require complete disclosure as of January 1, 2015, emphasizing the concern that this important information is brought into the public record. Full and complete disclosure of ex parte communications also ensures that any decision of the Commission challenged in court is reviewable based on a complete record. The Bagley-Keene amendments have not changed that understanding; if anything, they further explain to commissioners and the public the ways in which serial meetings can inadvertently occur and risk conducting the public's business behind closed doors.

Thank you for the opportunity to comment on this topic.

Sincerely,

Mary K. Shallenberger

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