

RESOLUTION NO. 2016-37

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA, AUTHORIZING CITY MANAGER TO REQUEST THE CALIFORNIA COASTAL COMMISSION TO ASSIST THE CITY WITH AND/OR ASSUME RESPONSIBILITY FOR, IN COORDINATION AND CONSULTATION WITH THE CITY, ANY ENFORCEMENT PROCEEDINGS THAT MAY BE PURSUED RELATIVE TO POSSIBLE VIOLATIONS OF THE CALIFORNIA COASTAL ACT AND THE MARINA LOCAL COASTAL PROGRAM BY THE CEMEX SAND MINING OPERATIONS

WHEREAS, at the City Council meeting on December 1, 2015, the Council held a discussion, received public comments, and then voted unanimously to write a letter to the California Coastal Commission to support the completion of its investigation of the environmental impacts of the Cemex Sand Mining on the City of Marina and the Monterey Peninsula.

WHEREAS, recently the City Manager was contacted by a Statewide Enforcement Analyst from the Coastal Commission, who inquired as to whether the City would like to request the assistance of the Commission with, and/or the Commission's assuming of responsibility for, any enforcement proceedings that may be appropriate and necessary, and pursued relative to possible violations of the California Coastal Act and the City's Local Coastal Program (which consists of both a land use plan and a coastal implementation plan). Further conversations regarding such a request have been held by that Analyst and also a Senior Staff Counsel from the Commission with the City Attorney, and

WHEREAS, it is clear that the lengthy investigation by the Commission of the Cemex mining operations is wrapped up or is wrapping up, and that some plans for appropriate enforcement actions by the Commission will commence in the near future, and

WHEREAS, the only alternate process for such coordination, apart from the City making the requested request, would be for the Commission to request that the City proceed with enforcement actions against Cemex regarding an alleged violation that could cause significant damage to coastal resources, and the City then declines or fails to act. This alternate process would seem to indicate for the record that the City does not share the cited environmental concerns about this issue and in addition is not interested in cooperating with the Coastal Commission about this matter impacting our coastal lands. Further, as the City Manager has previously noted, the City does not have the staffing, time or expertise to handle on our own a matter of this nature and considerable importance, and

WHEREAS, by making the request that has been asked by the Commission the City would not be waiving any of its authority and jurisdiction over its Local Coastal Program and its constituent elements, save for this discrete matter involving the present operations of Cemex, regarding which the City would retain a full consulting, coordination and advisory role.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve this Resolution, and
2. Authorize the City Manager to request the California Coastal Commission to assist the City with and/or assume responsibility for, in coordination and consultation with the City, any enforcement proceedings that may be pursued relative to possible violations of the California Coastal Act and the Marina Local Coastal Program by the Cemex Sand Mining operations.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 15th day of March, 2016, by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Brown, Morton, O'Connell, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

Bruce Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

March 11, 2016

Item No. **11c**

Honorable Chair and Members
of the Marina City Council

City Council Meeting
of March 15, 2016

**CITY COUNCIL CONSIDER AND ADOPT RESOLUTION NO. 2016-,
AUTHORIZING THE CITY MANAGER TO REQUEST THE CALIFORNIA
COASTAL COMMISSION TO ASSIST THE CITY WITH AND/OR
ASSUME RESPONSIBILITY FOR, IN COORDINATION AND
CONSULTATION WITH THE CITY, ANY ENFORCEMENT
PROCEEDINGS THAT MAY BE PURSUED RELATIVE TO POSSIBLE
VIOLATIONS OF THE CALIFORNIA COASTAL ACT AND THE MARINA
LOCAL COASTAL PROGRAM BY THE CEMEX SAND MINING
OPERATIONS**

REQUEST:

It is requested that the City Council:

1. Consider and adopt Resolution No. 2016-, authorizing the City Manager to Request the California Coastal Commission to assist the City with and/or assume responsibility for, in coordination and consultation with the City, any enforcement proceedings that may be pursued relative to possible violations of the California Coastal Act and the Marina Local Coastal Program by the Cemex Sand Mining Operations.

BACKGROUND:

At your City Council meeting on December 1, 2015, the Council held a discussion, received public comments, and then voted unanimously to write a letter to the California Coastal Commission to support the completion of its investigation of the environmental impacts of the Cemex Sand Mining on the City of Marina and the Monterey Peninsula. A copy of that letter which was sent by the City Manager is attached hereto.

Recently the City Manager was contacted by a Statewide Enforcement Analyst from the Coastal Commission, who inquired as to whether the City would like to request the assistance of the Commission with, and/or the Commission's assuming of responsibility for, any enforcement proceedings that may be appropriate and necessary, and pursued relative to possible violations of the California Coastal Act and the City's Local Coastal Program (which consists of both a land use plan and a coastal implementation plan). Further conversations regarding such a request have been held by that Analyst and also a Senior Staff Counsel from the Commission with the City Attorney. It is clear that the lengthy investigation by the Commission of the Cemex mining operations is wrapped up or is wrapping up, and that some plans for appropriate enforcement actions by the Commission will commence in the near future. Hence the request of the Commission for the City's cooperation and coordination in the matter, to be instituted by a request from the City (for the assistance of the Commission and/or that the Commission assume responsibility in the matter).

ANALYSIS:

The City Manager and City Attorney have assumed, and have so advised the Commission staff, that the City will be willing to work cooperatively with the Coastal Commission in this matter. The only alternate process for such coordination, apart from the City making the requested request, would be for the Commission to act to request that the City proceed with enforcement actions against Cemex regarding an alleged violation that could cause significant damage to coastal resources, and the City then declines or fails to act. This alternate process would seem to indicate for the record that the City does not share the cited environmental concerns about this issue and further is not interested in cooperating with the Coastal Commission about this matter impacting our coastal lands. This alternate process would also involve a considerable amount of delay in the matter, which Commission staff has indicated it wishes to avoid. In addition, as the City Manager has previously noted, the City does not have the staffing, time or expertise to handle on our own a matter of this nature and considerable importance. By making the request that has been asked for by the Commission the City would not be waiving any of its authority and jurisdiction over its Local Coastal Program and its constituent elements for all matters, save for this discrete matter involving only the present operations of Cemex, regarding which the City would retain a full consulting, coordination and advisory role.

I will not be present at the council meeting on March 15th, so if any of you (Members of the City Council) would like further information or have any questions regarding this matter prior to the meeting on Tuesday, please feel free to contact me.

CONCLUSION:

The request is that the City Council consider this matter and authorize the action proposed.

Respectively submitted,



Robert R. Wellington, City Attorney

REVIEWED/CONCUR:

Layne P. Long
City Manager
City of Marina