

CALIFORNIA COASTAL COMMISSION

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**W-34**

April 11, 2012

TO: Coastal Commissioners and Interested Public

FROM: Charles Lester, Executive Director
 Sarah Christie, Legislative Director

SUBJECT: LEGISLATIVE REPORT FOR APRIL, 2012

CONTENTS: This report provides summaries and status of bills that affect the Coastal Commission and California's Coastal Program as well as bills that staff has identified as coastal-related legislation.

Note: Information contained in this report is accurate as of 03/28/12. Changes in the status of some bills may have occurred between the date this report was prepared and the presentation date.¹ The Governor has 30 days from the date of passage to sign or veto enrolled bills. Current status of any bill may be checked by visiting the California Senate Homepage at www.senate.ca.gov. This report can also be accessed through the Commission's World Wide Web Homepage at www.coastal.ca.gov

2012 Legislative Calendar

Jan 1	Statutes take effect
Jan 4	Legislature reconvenes
Jan 10	Budget must be submitted by Governor
Jan 27	Last day to submit bill requests to Legislative Counsel
Feb 24	Last day for bill introduction
March 29	Spring Recess begins
April 9	Legislature reconvenes
April 27	Last day for Policy Committees to hear and report 1 st House fiscal bills to the Floor
May 11	Last day for Policy Committees to hear and report 1 st House non-fiscal bills to the Floor
May 18	Last day for Policy Committees to meet prior to June 7
May 25	Last day for Fiscal Committees to hear and report 1 st House fiscal bills to the Floor
May 29-June 1	Floor Session only. No committees may meet
June 1	Last day to pass bills from house of origin
June 4	Committee meetings may resume
June 15	Budget must be passed by midnight
June 28	Last day for a legislative measure to qualify for the November General Election ballot
July 6	Last day for Policy Committees to hear and report bills to the Floor from the second house
July 6	Summer Recess begins at the end of session if Budget Bill has been enacted
Aug 6	Legislature reconvenes
Aug 17	Last day for Fiscal Committees to meet and report bills to the Floor
Aug 20-31	Floor session only. No committees may meet
Aug 24	Last day to amend bills on the Floor
Aug 31	Last day for any bill to be passed. Interim Recess begins on adjournment of session

¹ Terms used in this report relating to bill status. 1) "On Suspense" means bill is held in Appropriations because of potential costs to state agency. Bills usually heard by Appropriations near Fiscal Committee Deadline in June. 2) "Held in committee" means bill was not heard in the policy committee this year. 3) "Failed passage" means a bill was heard by policy committee but failed to get a majority vote. Reconsideration can be granted by the committee.

PRIORITY LEGISLATION

AB 482 (Williams) Ventura Port District: dredging contracts

This bill would authorize the Port of Ventura to bypass the competitive bidding process for dredging projects, provided that it contracts with a contractor who has been selected through the Federal competitive bidding process, and is currently engaged in a project that is already underway in the County of Ventura, provided that the District makes written findings that this would result in a cost savings for the District. Amendments of 1/13/12 add an urgency clause. If signed, this statute will take effect immediately.

Introduced	02/15/11
Status	Senate Transportation and Housing Committee
Last Amended	01/13/12

AB 752 (Brownley) Tidelands and submerged lands: sea level action plans

This bill would require local trustees of granted public tidelands (county, city or special districts) who receive at least \$250,000 per year in gross public trust revenues to prepare sea level action plans by July 1, 2013. The bill would also encourage, but not require, all other local trustees of granted public tidelands to prepare sea level action plans. The plans must include an assessment of impacts based on a range of sea level rise potentials, including fiscal impacts public lands, as well adaptation strategies for those impacts. The sea level rise plans shall be adopted after at least one public hearing, and submitted to the State Lands Commission.

Introduced	02/17/11
Last Amended	05/27/11
Status	Senate Natural Resources and Wildlife Committee, hearing cancelled at request of author. This is a 2-year bill.

AB 1336 (Fletcher) Coastal resources: local coastal plans

This is a spot bill.

Introduced	02/18/11
Status	Assembly Rules Committee.

AB 1776 (Fong) Western Pacific leatherback turtle

This bill would designate the Western Pacific leatherback turtle as the state's official marine reptile, and designate October 15 of every year as Western Pacific Leatherback Turtle Day.

Introduced	02/17/12
Status	Assembly Water, parks & Wildlife Committee
Commission Position	Analysis Attached

AB 2178 (Jones) Coastal resources: California Coastal Act of 1976: coastal development

This bill would specify that the construction or erection of a flag pole in the coastal zone does not is not a “structure” for the purpose of the Coastal Act. It would prohibit the denial of a flag pole based on impacts to scenic or visual resources.

Introduced 02/23/12
Status Assembly Natural Resources Committee
Commission Position Analysis Attached

AB 2211 (Jones) Coastal resources: California Coastal Act of 1976: goals and legislative findings and declarations

This bill would amend Section 30007.5 so that conflicts between Chapter 3 policies would be resolved in a manner that balances the protection of coastal resources with the economic and social benefits of a project, including regional prosperity. It would also amend Section 30001.5 to define “social and economic needs” as infrastructure and development needed to support continued population and economic growth.

Introduced 02/24/12
Status Assembly Natural Resources Committee
Commission Position Analysis Attached

AB 2595 (Hall) Desalination

This bill would require the Ocean Protection Council (OPC) to convene the Seawater Desalination Permit Streamlining Task Force to study the opportunities for streamlining the permitting process and impediments to that process, and submit a report with recommendations to the Legislature by December 31, 2013. The Commission is one of nine agencies on the task force. The bill would authorize up to \$250,000 in Prop 84 bond funding to support the effort.

Introduced 02/24/12
Status Assembly Water Parks and Wildlife Committee
Commission Position Analysis Attached

SB 1 (Kehoe) 22nd Agricultural Association: Del Mar Racetrack: sale of state property

As introduced, this bill would divide the 22nd Ag District in San Diego County into two separate entities. The newly created Agricultural District 22a would be comprised of the Del Mar Racetrack and Fair Grounds. The bill would authorize the Department of General Services to sell the assets of District 22a to the City of Del Mar, at which time Agricultural District 22a would be dissolved. Amendments of 01/10/12 would delete a provision in the Food and Agriculture Code that dissolves the State Race Track Leasing Commission. The result of this amendment would be the permanent establishment of the State Race Track Leasing Commission. This is the body that leases the Del Mar Race Track from the 22nd Ag District.

Introduced 12/06/10
Last Amended 01/04/12
Status Assembly Desk.

SB 568 (Lowenthal) Recycling: polystyrene food containers

This bill would prohibit any food vendor, after January 1, 2016, from dispensing prepared food to a customer in a polystyrene foam food container. The measure would not apply to correctional facilities, school districts, or food vendors selling freshly cut meat. Amendments taken on 5/23 and 5/15 would allow a school district or local government to dispense food in a polystyrene container if the applicable governing board elects to adopt a policy or ordinance elects to implement a verifiable recycling program for polystyrene foam food containers, effective July 1, 2017.

Introduced 02/17/11
Last Amended 07/12/11
Status Assembly Inactive File. This is a 2-year bill.

Commission Position Support

SB 588 (Evans) Coastal Commission: enforcement

This bill would authorize the Coastal Commission to collect administrative civil penalties up to \$50,000 per violation. The bill would require that any penalties collected for violation of the Coastal Account be deposited into the Coastal Act Services Fund.

Introduced 02/17/11
Status Returned to Secretary of Senate.

Commission position Support

SB 973 (Vargas) Environmental quality: California environment

This bill would exempt certain types of "limited duration" events from the California Environmental Quality Act (CEQA). Such events include recreational tournament, sporting event, youth tournament, racing or walking event, fireworks display, holiday celebration, concert, military appreciation event, block party, wedding, job fair, festival and parade, street fair, beach and neighborhood cleanup, farmers' market, art market, or other similar event lasting 48 hours or less.

Introduced 01/19/12
Status Senate Environmental Quality Committee

SB 1066 (Lieu) Coastal resources: climate change

This bill would authorize the Coastal Conservancy to fund and undertake projects related to climate change, giving priority to projects that maximize public benefits.

Introduced 02/13/12
Status Senate Rules Committee

SB 1283 (Alquist) San Francisco Bay Area Sea Level Rise Planning Act

This bill would establish the San Francisco Bay Area Sea Level Rise Planning Act, which would authorize a regional sea level rise management group, as defined, or local government agency to prepare and adopt an integrated sea level rise management plan for the San Francisco Bay area, in accordance with specified requirements. The bill would require a state agency that elects to develop an integrated sea level management plan to include specified criteria in that plan, and to prioritize funding for the plan, as prescribed.

Introduced 03/23/12
Status Senate Natural Resources and Wildlife Committee

SB 1447 (Walters) Artificial reefs

This bill would amend the Fish and Game Code to change the definition of an artificial reef to eliminate references to duplicating conditions of natural reefs and stimulating kelp growth, and include a reference to recreational scuba diving.

Introduced 02/24/12
Status Senate Natural Resources Committee

SB 1496 (Simitian) Energy: natural gas

This bill would require the Energy Commission to conduct an assessment of the need for liquefied natural gas (LNG) imports to meet the state's energy demand. The bill would also require an applicant for an LNG facility to consult with the Department of Defense.

Introduced 02/24/12
Status Senate First Reading

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**BILL ANALYSIS
AB 1776 (Fong)**

As Amended March 22, 2012

RECOMMENDED POSITION

Staff recommends the Commission **Support** AB 1776.

SUMMARY

AB 1776 would designate the Pacific leatherback sea turtle as the official state marine reptile, and designate October 15 as the annual Pacific Leatherback Sea Turtle Conservation Day. The bill also urges state and federal agencies to take proactive conservation measures and prevent future threats to leatherback sea turtles and their environment.

PURPOSE OF THE BILL

The purpose of the bill is to promote public awareness of the need to protect leatherback sea turtles.

EXISTING LAW

The Coastal Commission has regulatory authority over development in state waters out to the 3-mile limit. Pursuant to the Coastal Zone Management Act, the Commission has review authority over federal activities and federally permitted activities in federal waters that could affect coastal resources. The Pacific leatherback is listed as endangered under the Endangered Species Act.

PROGRAM BACKGROUND

On February 27, 2012, the United States Fish and Wildlife Service designated a total of 16,910 square miles of state coastal and ocean waters were designated as critical habitat for leatherbacks under the U.S. Endangered Species Act.

ANALYSIS

The Pacific leatherback sea turtle is an important and threatened coastal resource. The leatherback is the largest of all sea turtles, weighing up to 2,000 pounds. Since the 1980s, the Pacific leatherback sea turtle population has declined more than 90 percent, due to industrial fishing techniques, habitat degradation, egg poaching, ship strikes, sea level rise and ocean pollution. Drift gillnet and longline fisheries in particular have proven devastating to leatherbacks and other sea turtle species. The Pacific Fisheries Management Council has designated a Pacific Leatherback Conservation Area along the California and Oregon coast, from Point Sur, California to Lincoln City, Oregon. This area prohibits drift gillnet fishing from August to November. Longline fishing is prohibited in California state waters.

Leatherbacks migrate between breeding beaches in Indonesia and feeding grounds off the west coast of North America, making them particularly vulnerable to ocean industrialization. Climate change is also affecting egg incubation. This ancient species which existed virtually unchanged for 100 million years is now listed by the International Union for the Conservation of Nature (IUCN) as a critically endangered “red list” species. AB 1776 seeks to raise public awareness about the challenges facing this species. Specifically the bill would:

- Designate the Pacific leatherback sea turtle as the official state marine reptile.
- Establish October 15 Pacific Leatherback Sea Turtle Conservation Day.
- Encourage public schools to include Pacific leatherback sea turtles lessons in their curriculum whenever possible.
- Encourage residents and stakeholders to create and participate in a statewide, voluntary leatherback sea turtle watch program.
- Encourage state and federal agencies to take proactive steps toward Pacific leatherback conservation measures

Supporting efforts to protect the Pacific leatherback is consistent with the Coastal Commission’s mandate to protect coastal resources, including marine wildlife and their habitats. Supporting efforts to further public awareness, education and outreach and encourage public participation is also consistent with Coastal Act policies, specifically PRC Section 30012.

Section 30012 Legislative findings and declarations; public education program

(a) The Legislature finds that an educated and informed citizenry is essential to the well-being of a participatory democracy and is necessary to protect California's finite natural resources, including the quality of its environment. The Legislature further finds that through education, individuals can be made aware of and encouraged to accept their share of the responsibility for protecting and improving the natural environment.

(b) (1) The commission shall, to the extent that its resources permit, carry out a public education program that includes outreach efforts to schools, youth organizations, and the general public for the purpose of promoting understanding of, fostering a sense of individual responsibility for, and encouraging public initiatives and participation in programs for, the conservation and wise use of coastal and ocean resources. Emphasis shall be given to volunteer efforts such as the Adopt-A-Beach program.

Establishing the Pacific leatherback as the state’s marine reptile, designating an annual day of species conservation, encouraging educational activities and voluntary participation will bring awareness to the conservation efforts needed to protect this critically endangered coastal resource.

Staff recommends the Commission **Support AB 1176.**

**BILL NUMBER: AB 1776
AMENDED
BILL TEXT**

AMENDED IN ASSEMBLY MARCH 22, 2012

**INTRODUCED BY Assembly Member Fong
(Coauthors: Senators Evans and Leno)**

FEBRUARY 17, 2012

An act to amend Section 422.5 of, and to add Chapter 29.5 (commencing with Section 7593.5) to Division 7 of Title 1 of, the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1776, as amended, Fong. State government: ~~Western~~ Pacific leatherback sea turtle.

(1) Existing law establishes the state flag and the state's emblems, including, among other things, the poppy as the official state flower, the California redwood as the official state tree, and the California desert tortoise as the official state reptile.

This bill would establish the ~~Western~~ Pacific leatherback sea turtle as the official state marine reptile.

(2) Existing law designates certain periods of time for specified purposes ~~—including, among other things, the first week in January as Braille Literacy Week of celebration or recognition.~~

This bill would designate October 15, ~~2012-2013~~, and every October 15 thereafter, as ~~Western~~ Pacific Leatherback Sea Turtle Conservation Day. ~~This~~ The bill would encourage public schools, state and federal agencies, nongovernmental agencies, fishers, ~~whale-watch~~ coastal tour operators, and other interested stakeholders to engage in certain activities, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) California is a coastal state that is dedicated to the protection of ocean resources, fisheries, and marine wildlife.

(b) Sea turtles, fish, *seabirds*, and marine mammals are a central component of California's natural heritage and marine biodiversity.

(c) The Legislature acknowledges that the Pacific leatherback sea turtle population has experienced a catastrophic decline over the past two decades and might be on the verge of ~~extirpation~~ *extinction*.

(d) The Legislature further acknowledges that Pacific ~~leatherbacks~~ *leatherback sea turtles* are among the most imperiled of any sea turtle population in any ocean basin on Earth and that populations of the Pacific leatherback sea turtle, a 100-million-year-old species that outlived the dinosaurs, have declined by approximately 90 percent in the last 25 years.

(e) ~~Leatherbacks~~ *Pacific leatherback sea turtles* foraging off the coast of California are part of a distinct Western ~~pacific~~ *Pacific* breeding stock that nests on beaches in Indonesia, Papua New Guinea, and the Solomon Islands.

(f) California's coastal waters are high-use foraging areas for summer nesters from this critically endangered population of ~~Western~~ Pacific leatherback sea turtles, according to the National Marine Fisheries Service.

(g) Satellite tracking conducted over the past decade has determined that after nesting hundreds of individual ~~Western~~ Pacific leatherback sea turtles swim more than 6,000 miles over 10 to 12 months to cross the Pacific to feed on jellyfish in California coastal waters every year.

(h) The ~~leatherbacks~~ *Pacific leatherback sea turtles* ' trans-Pacific migration involved multiple years of migrating between California coastal waters during the summer and lower latitude wintering areas without returning to ~~western~~ *Western* Pacific nesting beaches.

(i) These movements and foraging strategies underscore the importance of and the need for ecosystem-based management and coordinated Pacific wide conservation efforts.

(j) The Legislature supports efforts to recover and preserve the ~~Western~~ Pacific leatherback sea turtle population in oceanic feeding and migration areas, which are identified as important strategies for their continued survival.

(k) On February 26, 2012, the National Marine Fisheries Service designated more than 16,000 square miles of California's coastal waters, and a total of nearly 42,000 square miles along the United States West Coast, as critical habitat to protect high-use foraging areas and primary prey species for the endangered ~~Western~~ Pacific leatherback sea turtle under the federal Endangered Species Act.

SEC. 2. Section 422.5 of the Government Code is amended to read:

422.5. (a) The California desert tortoise ~~(gopherus)~~ *(Gopherus agassizii)* is the official state reptile.

(b) The ~~Western~~ Pacific leatherback sea turtle ~~(dermochelys)~~ *(Dermochelys coriacea)* is the official state marine reptile.

SEC. 3. Chapter 29.5 (commencing with Section 7593.5) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 29.5. ~~WESTERN~~ PACIFIC LEATHERBACK SEA TURTLE

7593.5. (a) October 15, ~~2012~~ 2013, and every October 15 thereafter, is hereby designated as ~~Western~~ Pacific Leatherback Sea Turtle Conservation Day.

(b) The Legislature encourages California public schools to include ~~Western~~ Pacific leatherback sea turtles ~~into~~ in their teaching lessons and curriculum whenever possible.

(c) The Legislature encourages state and federal agencies, nongovernmental agencies, fishers, ~~whale watch~~ ~~coastal~~ tour operators, and other interested stakeholders to establish and participate in a statewide, voluntary *Pacific* leatherback sea turtle watch to record sightings of the ~~Western~~ Pacific leatherback sea turtle in California and West Coast waters.

(d) The Legislature encourages state and federal agencies to build cooperative relationships with the *Western Pacific* island nations where ~~Western~~ Pacific leatherback sea turtles return to nest in order to increase awareness and conservation of this critically endangered species.

(e) The Legislature urges state and federal agencies to take proactive conservation measures and prevent further threats to Pacific leatherback sea turtles and their habitats.

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**BILL ANALYSIS****AB 2178 (Jones) Coastal resources: coastal development**

As Introduced February 23, 2012

RECOMMENDED ACTION

Staff recommends the Commission **Oppose AB 2178**.

SUMMARY

AB 2178 would amend Section 30106 of the Public Resources Code to specify that the construction or erection of a flag pole in the coastal zone is not a "structure" for the purposes of the Coastal Act. It would also prohibit a flagpole from being determined to adversely impact the scenic or visual qualities of coastal areas, as described in Coastal Act Section 30251.

PURPOSE OF THE BILL

The purpose of the bill is to create a partial regulatory exemption for flag poles in the coastal zone.

EXISTING LAW

Under Public Resource Code 30106, the construction of a flag pole in the coastal zone meets the definition of development in the coastal zone, as well as the definition of a structure. Depending on the location of a specific flag pole project and its potential impacts, a flag pole may be exempt from permit requirements, may qualify for a permit waiver, or may require a coastal development permit. The unpermitted placement of a non-exempt flag pole in the coastal zone may be subject to an enforcement action.

PROGRAM BACKGROUND

Like every other type of development in the coastal zone, flagpole placement may have impacts on coastal resources that must be evaluated on a site-specific basis. The Commission's regulatory and enforcement record on flagpoles reflects this. For instance, in 1992, the Commission issued a De Minimis Waiver for a 70-foot flagpole in Crescent City with a concrete and tamped sand foundation (1-02-024-W). In 2009, the city of Rancho Palos Verdes approved a 70-foot high flag pole at the Trump National Golf Course despite a 16' height restriction in the City's certified LCP. The project is within the Commission's appeal jurisdiction, and was conditioned upon Commission approval. The Commission has not yet acted on this permit item. In 2010, the Commission resolved a violation concerning the placement of a flag pole in ESHA in a deed restricted area protected by an open space easement. The flag pole was removed as soon as the violation was discovered. In other situations, flag poles have qualified as exempt improvements to existing structures.

ANALYSIS

The coastal zone has countless examples of appropriately sited and designed flag poles that have been installed without controversy—on public buildings, at parks and related facilities, veterans centers, retail establishments and even private residences. When included as part of a comprehensive design/permit application or as stand-alone development consistent with LCP or Coastal Act policies, the current permit process allows the appropriate agency to review the impacts and act accordingly.

It appears that the intent of AB 2178 is to exempt the placement and/or erection of flag poles from Coastal Commission and local government review for the purpose of issuing a coastal development permit. However, no information has been provided that supports the need for legislation that singles out flag poles as a class of development that should be considered differently than other types of development. Nor have bill supporters produced any data to indicate that the current planning and permitting process has been excessively restrictive or problematic for the placement or construction of flag poles. Indeed, flag poles have rarely risen to the level of a heightened review through the coastal permitting process.

Notwithstanding, this bill could result in a proliferation of flag poles in the coastal zone without regard to height, girth, placement or method of construction. Despite the finding in the bill that no determination of adverse visual impact can be made, there is little question that such proliferation could result in adverse visual impacts. Flag poles may also have other coastal resource impacts, such as to ESHA, wetlands, or public access, that should be reviewed as all other potential development impacts are reviewed.

The bill is also technically ambiguous. Simply declaring that a flag pole is not a structure does not necessarily exempt it from the definition of “development,” as the erection of a flag pole would almost certainly require the placement of “solid materials” and may also change the type or intensity of use within an area. If AB 2178 were enacted without amendment, this ambiguity would create confusion with respect to whether or not a particular flag pole project would require a CDP or not.

This ambiguity is compounded by the declaration that a flag pole “shall not be determined to adversely impact the scenic or visual qualities of coastal areas.” While this would preclude the denial of a flag pole for visual impacts, it would not preclude the denial of a flag pole for other impacts, such as impacts to wetlands, ESHA or public access. Proscribing certain grounds for denial also presumes that the threshold of development has already been met. Otherwise the question of impacts to visual resources would not be before the Commission or a local government.

Absent any compelling public purpose for exempting flagpoles from Commission and local government coastal development review, this bill would arbitrarily limit the Coastal Commission’s authority by carving out a categorical exception for a specific activity that could have a detrimental impact on coastal resources.

Staff recommends the Commission **Oppose AB 2178**.

BILL NUMBER: AB 2178

**INTRODUCED
BILL TEXT**

INTRODUCED BY Assembly Member Jones

FEBRUARY 23, 2012

An act to amend Section 30106 of the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 2178, as introduced, Jones. Coastal resources: California Coastal Act of 1976: coastal development.

The California Coastal Act of 1976 provides for the planning and regulation of development, under a coastal development permit process, within the coastal zone, as defined. For purposes of the act, "development" is defined to mean, on land, or in water, among other things, the placement or erection of any solid material or structure, as defined. For purposes of that definition, "structure" includes, but is not limited to, any buildings, road, pipe, flume, conduit, siphon, aqueduct, telephone line, or electrical power transmission and distribution line. The act requires that the scenic and usual qualities of coastal areas be considered and protected as a resource of public importance.

This bill would specify that, for purposes of the act, "structure" does not include the construction or erection of a flagpole on land or water in the coastal zone. The bill would further prohibit the construction or erection of a flagpole on land or water in the coastal zone from being determined to adversely impact the scenic or visual qualities of coastal areas.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 30106 of the Public Resources Code is amended to read:

30106.(a)(1) "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are

in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

~~As~~(2) As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line. *"Structure" does not include the construction or erection of a flagpole on land or water in the coastal zone. The construction or erection of a flagpole on land or water in the coastal zone shall not be determined to adversely impact the scenic or visual qualities of coastal areas, as described in Section 30251.*

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BILL ANALYSIS

AB 2211 (Jones) Coastal resources: goals and legislative findings and declarations

As Introduced February 24, 2012

RECOMMENDED ACTION

Staff recommends the Commission **Oppose AB 2211**

SUMMARY

AB 2211 would amend Section 30007.5 of the Public Resources Code so that conflicts between Chapter 3 policies would be resolved in a manner which balances the protection of coastal resources with the economic and social benefits of a project, including "regional prosperity." It would also amend PRC 30001.5 to define "social and economic needs" to include infrastructure and development needed to support continued population and economic growth.

PURPOSE OF THE BILL

The purpose of this bill is to change the way the Coastal Commission resolves Chapter 3 policy conflicts so that the Commission could legally approve new development that would not otherwise be allowable under the Coastal Act because of its impacts to coastal resources.

EXISTING LAW

Under existing PRC sections 30007.5 and 30200, whenever conflicts arise between policies of Chapter 3 of the Coastal Act, the Commission must resolve those conflicts in a manner that, "on balance is the most protective of significant coastal resources."

PROGRAM BACKGROUND

Section 30007.5 of the Coastal Act is judiciously utilized by the Commission when conflicts between Chapter 3 policies arise. The law currently requires the Commission to resolve those conflicts in a manner which is, "on balance, the most protective of significant coastal resources." For instance, if a development proposal would remove some agricultural acreage from grazing in order to fence cattle out of a wetland--thus protecting water quality, wetlands and ESHA--the Commission could legally approve such development even though the Coastal Act also calls for the protection of agricultural lands.

Most recently, the Commission has utilized this provision to approve improvements to public transit lines between San Diego and Los Angeles that involved some minor impacts to habitat. Viewed in isolation these impacts would have precluded approval of the public access tracking improvements. When balanced against the project's significant improvements to public transit and public access, which are also Coastal Act objectives, and combined with mitigation measures for habitat impacts, the Commission was able to resolve the policy conflict and make

findings for approval. Similarly, the Commission recently approved a large lower-cost visitor-serving campground in Marin County (a Coastal Act priority use), notwithstanding certain impacts to wetlands and sensitive habitats).

ANALYSIS

Project proponents sometimes mistakenly assert that the Commission can invoke Section 30007.5 to approve projects that are otherwise inconsistent with the Coastal Act, even when no Chapter 3 policies are in conflict. A recent example of this was the proposal to construct a toll road in Orange County. Proponents asserted that the Commission should approve the project based on its mitigation measures and improvements to overall public access. However, a comprehensive analysis of the project indicated that the project would not significantly improve public access, and would, in fact, diminish public access in addition to impacts to habitat, water quality, cultural resources and public views. Therefore, no policy conflict arose and the “balancing provision” could not be applied in that case. Again, the test for utilizing Section 30007.5 is whether two competing Chapter 3 policies are in conflict. If they are, those conflicts must be resolved in a manner that is most protective of coastal resources.

AB 2211 would not change the circumstances under which the Commission could *utilize* Section 30007.5. A project would still have to create a conflict between Coastal Act policies. But AB 2211 would fundamentally shift the balance of how the Commission applies the “balancing provision.” Currently the Commission resolves the conflicts in a manner which supports and furthers the basic goals and policies of the Coastal Act by protecting coastal resources. AB 2211 would allow the Commission to resolve Chapter 3 conflicts in a way that allowed impacts to significant coastal resources, if that new development contributes to the economic prosperity of the region or supports social and economic needs or provides for future population growth.

This proposed balance would be a significant departure from the fundamental purposes of the Coastal Act, and the way the Commission has historically utilized PRC Section 30007.5. Directing the Commission to consider “social and economic needs” to support population and economic growth so as to potentially override coastal resource protection is contrary to the basic premise of coastal management, and would open the door to inappropriate development at the expense of rare and dwindling coastal resources. The legislation would define “social and economic needs” as infrastructure and development needed to support continued population and economic growth. By placing economic growth on a par with resource protection, the amendment would allow for the potential approval of nearly any proposed coastal development, including, expanded urbanization into agricultural areas, filling of wetlands, removal of sensitive habitats, and development in sensitive viewsheds, as well as specific projects, such as the toll road project that otherwise could not be found consistent with the Coastal Act.

Section 30007.5 is an infrequently used but important tool for resolving occasional Coastal Act conflicts. It is not appropriate to amend this section in a way that would potentially allow for a fundamental re-interpretation of how to implement the Coastal Act. Numerous other Coastal Act policies allow for industrial and other development that benefits regional prosperity and provides for critical infrastructure needs.

Staff recommends the Commission **Oppose AB 2211**.

BILL NUMBER: AB 2211

**INTRODUCED
BILL TEXT**

**INTRODUCED BY Assembly Member Jones
FEBRUARY 24, 2012**

An act to amend Sections 30001.5 and 30007.5 of the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 2211, as introduced, Jones. Coastal resources: California Coastal Act of 1976: goals and legislative findings and declarations.

The California Coastal Act of 1976 provides for the planning and regulation of development, under a coastal development permit process, within the coastal zone, as defined. The act makes legislative findings and declarations regarding the resolution of conflicts under the act and declares that the basic goals of the state include, among other things, assuring the orderly, balanced utilization and conservation of coastal zone resources, taking into account the social and economic needs of the people of the state. The act also specifies that the Legislature declares that, in carrying out the provisions of the act, conflicts be resolved in a manner that, on balance, is the most protective of significant coastal resources.

This bill would revise the above-described goal to specify that "social and economic needs" includes both the infrastructure and development that are needed to support the continued economic and population growth of the state. The bill would instead specify that the Legislature declares that, in carrying out the provisions of the act, conflicts be resolved in a manner that balances the protection of significant coastal resources with the economic and social benefits provided by a proposed coastal development project to the community at large, which includes, but is not limited to, the economic prosperity of the region.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 30001.5 of the Public Resources Code is amended to read:

30001.5. The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state. *For purposes of this subdivision, "social and economic needs" includes both the infrastructure and development that are needed to support the continued economic and population growth of the state.*

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

SEC. 2. Section 30007.5 of the Public Resources Code is amended to read:

30007.5. The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division ~~such those~~ conflicts be resolved in a manner ~~which on balance is the most protective of~~ *that balances the protection of significant coastal resources with the economic and social benefits provided by a proposed coastal development project to the community at large, which includes, but is not limited to, the economic prosperity of the region.* In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

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BILL ANALYSIS

AB 2595 (Hall) Coastal resources: coastal development

As Introduced February 23, 2012

RECOMMENDED ACTION

Staff recommends the Commission **Oppose AB 2595**.

SUMMARY

AB 2595 would require the Ocean Protection Council to convene a "Seawater Desalination Permit Streamlining Task Force" for the purpose of evaluating regulatory and administrative impediments in the current statewide process for the planning, design, construction, monitoring and operation of desalination facilities. The Task Force would be required to issue a report to the Legislature by December 31, 2013, making recommendations for legislative and administrative actions that would streamline those processes. Participants on the Task Force include the California Coastal Commission, and a variety of public and private stakeholder groups.

PURPOSE OF THE BILL

The purpose of this bill is to evaluate the desalination project permitting process and identify potential administrative and legislative actions for streamlining the permitting process while maintaining current regulatory protections.

EXISTING LAW

Under existing law, various federal, state and local agencies play a role in the planning, permitting, construction and monitoring of public and private desalination facilities. The Coastal Commission has regulatory jurisdiction over desalination facilities in the coastal zone, either through federal consistency review or through coastal development permit review. Of all the permits needed for a seawater desalination facility, the CDP is the most comprehensive, including addressing land use, terrestrial and marine environmental resources, water quality, and coastal hazards concerns.

PROGRAM BACKGROUND

In 2003, the Commission was one of 27 public and private stakeholder groups that participated in a similar effort mandated by AB 2717 (Chapter 957, Statutes of 2002). That task force, convened by the Department of Water Resources, specifically looked at the regulatory impediments to desal permitting, as well as whether and to what extent the state should fund the development of desalination technology. The task force issued its report, *Water Desalination – Findings and Recommendations*, on October 9, 2003 (http://www.water.ca.gov/desalination/pud_pdf/Findings-Recommendations.pdf.)

Although the Commission fully participated in the process, ultimately, the Commission was not a signatory to the report, as some recommendations were inconsistent with Coastal Act policies. However, the report provided valuable guidance to stakeholders on what considerations should be included in planning for new desal water supplies, and also acknowledged the need to conduct site-specific evaluation and recognize specific existing regulatory requirements. The report's recommendations were not restricted to legislative actions or other statutory changes. Many could be implemented by project proponents or State and local agencies without further legislative authorization or mandate. The recommendations drew upon the experience of many agencies and experts, and provided advice and guidance that could be used by those applicants or interested parties to help facilitate planning efforts. To date, most of the report's 29 recommendations have not been implemented.

In 2004, the Coastal Commission held an informational hearing on desalination. The staff report for that presentation identified key design and location elements for desal proposals that either facilitate or hinder the permit process. For example, facilities designed without an open-ocean intake would not raise the same marine resource impact issues and related information requirements as those that did propose open-ocean intakes. The report emphasized the need for coordination among various agencies and stakeholders. Since that time, Commission staff has been involved in numerous coordination efforts and has provided review and permitting guidance to a number of desalination proponents. In general, those proposals that follow past guidance of the Commission proceed relatively expeditiously through the permit process. For example, the Commission's permit review and approval of the Sand City desalination facility (on appeal), took approximately three months. This was due in large part to early coordination between the City and the Commission during project design and local review phases.

ANALYSIS

The potential for increased use of desalination in California includes opportunities for providing water supply from seawater and brackish water desalination as well as recovering contaminated groundwater. Although most estimates project that desalination will contribute less than 10 percent of the total water supply needs in California over the next 20 years, this still represents a significant portion of the State's water supply portfolio.

As major water supply projects, desalination facilities are subject to a wide variety of reviews and permits – ranging from various environmental reviews to ensuring drinking water standards and public health requirements are met. With respect to the coastal development permitting process, the Commission has previously evaluated and provided procedures and guidance already to facilitate a more efficient and resource-protective permitting process. In particular, when project proponents coordinate with the Commission early to identify Coastal Act concerns, and use these concerns as a design tool to avoid and minimize environmental impacts, the permit process is more likely to be considerably shorter.²

² Proposed projects that take the longest to review are those that have not incorporated recommendations and guidelines previously provided by the Commission. Thus far, the key component of a "problematic" project is to propose the continued use of power plant intakes for desal, even though most of those intakes are being retired for power plant use due to their highly destructive effects on marine life. Utilizing these ocean water intakes for desalination would increase their lifespan and would extend for decades marine life impacts that would otherwise end with the retirement of the power plant cooling systems.

In general, assessing the current desalination facility regulatory process and identifying improvements thereto would appear to be unobjectionable. However, in light of the extremely constrained budgetary and staffing context of the Commission, and the prior history of attention to this specific issue, Staff does not believe that this bill should be supported. In particular:

- **The bill is duplicative of past and on-going efforts.** At least two other processes are currently underway that address desalination – the State Board’s development of a desal policy (expected to be adopted in early 2013) and the Ocean Protection Council’s recently adopted Strategic Plan. These two processes are likely to address several concerns about desal permitting without the need for legislation. Any issues of concern expressed in the bill that are not resolved through these two processes could be handled through future legislative action, if necessary. In addition, as discussed above, the Commission has previously participated in a similar effort made by the State Desal Task Force in 2003.
- **Workload and budget constraints:** Coastal Commission staff are already involved in the State Board process and other desal-related initiatives, and participated in the mandated 2003 DWR report. Participation on a new Task Force would mean additional workload demand at a time of highly constrained budgets and would likely reduce the staff time available to review proposed projects, contributing to delays in coastal development permitting.
- **Many issues of concern identified in the bill can be addressed by implementing existing recommendations:** The bill references recommendations made by the State Desal Task Force in 2003; however, it does not acknowledge that few of those recommendations have been implemented. Before creating a new Task Force and a new set of recommendations, it may be more beneficial to revisit implementation of the relevant recommendations already developed.
- **Other issues of concern identified in the bill can be addressed through improved early coordination, which does not require legislative action:** For the most part, issues identified in the bill can be addressed through improved and early coordination among applicants and agencies, and do not require legislative changes in permit requirements, standards of review, or existing procedures.

More specifically, most of the bill’s direction to the proposed Task Force is to make recommendations to the Legislature on components of the permitting process for which procedures are already in place or for which statewide recommendations are not needed. Each bullet below is an element of the bill’s direction to the proposed Task Force on a subject area on which to provide recommendations to the Legislature:

- ***“Establish a clear pathway for obtaining state permits”*** – The specific permitting pathway for any particular facility varies based on its location, design, identified impacts, etc. The most efficient pathway for any given proposal can be determined through early coordination with and among agencies. A “one-size fits all” approach is likely not appropriate for the diverse set of issues raised by different proposed projects. See 2003 DWR Report.
- ***“Define the regulatory scope of each permitting agency”*** – This is already well-defined for each agency, through statute, regulations and case law. Communicating this scope does not require legislative action.
- ***“Eliminate redundant requirements between agencies”*** – To the extent there may be overlapping permit review authorities, these can be addressed through early coordination among applicants and agencies. For some projects, there may be perceived redundancies – for example, State and Regional Boards, the CCC, and CDFG each review marine life impacts, though under different standards of review that emphasize different aspects of a project and its impacts. These perceived redundancies can be readily addressed through early coordination.
- ***“Describe the data needed to complete each permit”*** – This varies by the location, design, and identified impacts of each proposed facility, and cannot be legislatively determined outside of a specific review process.
- ***“Develop best practices for communicating among agencies and the regulatory community”*** – This is best addressed through early project review coordination and does not require legislative action.

For all of the foregoing reasons, staff recommends the Commission **Oppose AB 2595**.

BILL NUMBER: AB 2595

**INTRODUCED
BILL TEXT**

INTRODUCED BY Assembly Member Hall

FEBRUARY 24, 2012

An act to add Section 35616 to the Public Resources Code, relating to water, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2595, as introduced, Hall. Desalination.

The Cobey-Porter Saline Water Conversion Law authorizes the Department of Water Resources, either independently or in cooperation with public or private entities to conduct a program of investigation, study, and evaluation in the field of saline water conversion, to provide assistance to persons or entities seeking to construct desalination facilities, and after submission of a written report and upon appropriation from the Legislature, to finance, construct, and operate saline water conversion facilities. Existing law required the department, not later than July 1, 2004, to report to the Legislature, on potential opportunities and impediments for using seawater and brackish water desalination, and to examine what role, if any, the state should play in furthering the use of desalination technology. Existing law required the department to convene a Water Desalination Task Force, comprised of representatives from listed agencies and interest groups, to advise the department in carrying out these duties and in making recommendations to the Legislature.

The California Ocean Protection Act establishes the Ocean Protection Council in state government. Existing law requires the Ocean Protection Council to coordinate activities of state agencies that are related to the protection and conservation of coastal waters and ocean ecosystems to improve the effectiveness of state efforts to protect ocean resources within existing fiscal limitations, to establish policies to coordinate the collection, evaluation, and sharing of scientific data related to coastal and ocean resources among agencies, and to identify and recommend to the Legislature changes in law needed to achieve these goals.

This bill would require the council to report to the Legislature, by December 31, 2013, on opportunities for streamlining the current statewide permitting processes for seawater desalination facilities, including an evaluation of impediments to desalination projects relative to the current permitting process and to recommend potential administrative and legislative actions for streamlining the permitting process while maintaining current regulatory protections.

The bill would require the council to convene the Seawater Desalination Permit Streamlining Task Force to review the current permitting processes required by all state regulatory agencies for the planning, design, construction, monitoring, and operation of seawater desalination

facilities, to identify opportunities for streamlining the permitting process, and to advise the council in making the report.

Existing law, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, an initiative bond act approved by the voters as Proposition 84 at the November 7, 2006, statewide general election, authorizes the issuance of general obligation bonds in the amount of \$5,388,000,000, of which \$1,000,000,000 is made available to the department, upon appropriation by the Legislature, for grants for projects that assist local public agencies to meet the long-term water needs of the state, including the delivery of safe drinking water and the protection of water quality and the environment. Eligible projects are required to implement integrated regional water management plans that meet certain requirements.

This bill would appropriate \$250,000 of these funds to the department to pay the costs of convening the Seawater Desalination

Permit Streamlining Task Force and preparation of the report.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) A growing population, climate change uncertainty, and the need to grow the state's economy while protecting and restoring our fish and wildlife habitats make it essential that the state manage its water resources as efficiently as possible.

(b) Diversifying regional water supply portfolios will increase water supply reliability and advance state policies for regional self-sufficient water supplies. In addition to stormwater capture, water recycling, and conservation, water agencies located in coastal areas are considering seawater desalination to help diversify their water supply portfolios. These water agencies include seawater desalination as potential future supplies in their most recent urban water management plans. Seawater desalination projects are also elements of several integrated regional water management plans.

(c) In addition to providing much needed water supply reliability against future uncertainties, seawater desalination projects have the potential to create new jobs in the state over the next 10 years and generate much needed investment in local economies. Reverse osmosis and other seawater desalination technologies were pioneered and developed in California, and desalination technology remains an important industrial sector in San Diego County and other regions.

(d) Proponents for seawater desalination projects must obtain close to 30 local, state, and federal permits and related approvals.

The procedure for obtaining key state permits is not always clear, and there can be significant redundancy in the requirements between some of the permitting agencies. As a result, both the cost and the timeframe for obtaining state permits has become a potential impediment for some proposed desalination projects.

(e) As a result of Chapter 62 of the Statutes of 2003 (Senate Bill No. 600), a Water Desalination Task Force was convened and delivered a report to the Legislature that included the following recommendation: "To improve communication, cooperation, and consistency in permitting processes, encourage review processes for each desalination project to be coordinated among regulators and the public."

(f) Section 12947 of the Water Code states the intent of the Legislature that the Department of Water Resources undertake to find economic and efficient methods of desalting saline water so that desalted water may be made available to help meet the growing water requirements of the state.

(g) Existing law requires the State Water Resources Control Board to formulate and adopt a water quality control plan for ocean waters of the state known as the California Ocean Plan. The board is currently updating the California Ocean Plan with environmentally protective, science-based regulations, specifically for seawater desalination projects. These new regulations will be implemented through existing National Pollution Discharge Elimination System permits managed by regional water quality control boards.

SEC. 2. Section 35616 is added to the Public Resources Code, to read:

35616. (a) (1) Not later than December 31, 2013, the Ocean Protection Council shall report to the Legislature on opportunities for streamlining the current statewide permitting processes for seawater desalination facilities in California. The report shall evaluate impediments to desalination projects relative to the current permitting process and investigate opportunities to improve the process. The report shall also recommend potential administrative and legislative actions for streamlining the permitting process while maintaining current regulatory protections.

(2) The report submitted pursuant to this subdivision shall comply with Section 9795 of the Government Code.

(3) This subdivision shall become inoperative on January 1, 2018, pursuant to Section 10231.5 of the Government Code.

(b) The Ocean Protection Council shall convene a task force, to be known as the Seawater Desalination Permit Streamlining Task Force, to review the current permitting processes required by all state regulatory agencies for the planning, design, construction, monitoring, and operation of seawater desalination facilities, to identify opportunities for streamlining the permitting process, and to advise the Ocean Protection Council in implementation of subdivision (a), including making recommendations to the Legislature on the following:

- (1) Establishing a clear pathway for obtaining state permits.
- (2) Defining the regulatory scope for each permitting agency.
- (3) Eliminating redundant requirements between California permitting agencies.
- (4) Describing the data needed to complete each permit.
- (5) Developing best practices for communication among regulatory agencies and the regulated community.
- (6) Ensuring that any recommended changes maintain the current regulatory protections.

(c) (1) The recommendations developed by the Seawater Desalination Permit Streamlining Task Force shall focus on how state regulations are applied by permitting agencies and commissions during the permitting process.

(2) The recommended actions should review the scope for each permitting agency and commission, while maintaining current regulatory protections.

(3) The recommended actions shall accommodate any new regulations developed by the State Water Resources Control Board for the California Ocean Plan.

(d)(1) The Seawater Desalination Permit Streamlining Task Force shall include one representative from each of the following state entities:

- (A) Department of Water Resources.
- (B) State Water Resources Control Board.
- (C) California Coastal Commission.
- (D) State Lands Commission.
- (E) State Department of Public Health.
- (F) State Energy Resources Conservation and Development Commission.
- (G) California Environmental Protection Agency.
- (H) Natural Resources Agency.
- (I) Department of Parks and Recreation.

(2) The Seawater Desalination Permit Streamlining Task Force shall include one representative from each of the following, as determined by the Ocean Protection Council:

- (A) Commission for Economic Development.
- (B) A coastal regional water quality control board in which is located at least one proposed seawater desalination facility.
- (C) A recognized environmental advocacy group.
- (D) A water purveyor, as defined in Section 512 of the Water Code, that is a public entity, as defined in Section 514 of the Water Code, that is developing or proposing to develop a seawater desalination facility.
- (E) An entity that supplies water at wholesale to urban water suppliers, as defined in Section 10617 of the Water Code.
- (F) A nonprofit association created to further the use of seawater desalination that includes both private and public members.
- (G) A recognized environmental justice advocacy group.
- (H) A recognized business advocacy group.
- (I) A representative of a recognized organization representing public union members.
- (J) A representative of a recognized organization representing private union members.

(3) A member of the Seawater Desalination Permit Streamlining Task Force may appoint an alternate to represent the member at a meeting of the task force.

(4) A representative of the Ocean Protection Council shall convene the Seawater Desalination Permit Streamlining Task Force and act as chair of the task force.

(e) Pursuant to Section 75026, the sum of two hundred fifty thousand dollars (\$250,000) is hereby appropriated to the Department of Water Resources for expenditure by the department to pay the costs for convening the Seawater Desalination Permit Streamlining Task Force and for preparation of the report pursuant to subdivision (a).