

CALIFORNIA COASTAL COMMISSION

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W-23

April 9, 2008

TO: Coastal Commissioners and Interested Public

FROM: Peter M. Douglas, Executive Director
 Sarah Christie, Legislative Coordinator

SUBJECT: LEGISLATIVE REPORT FOR APRIL 2008

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 4/02/08. Changes in the status of some bills may have occurred between the date this report was prepared and the presentation date.¹ 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

Legislative Calendar

| | |
|------------|--|
| Feb. 22 | Last day for bills to be introduced |
| March 13 | Spring Recess begins upon adjournment |
| March 24 | Legislature reconvenes |
| April 18 | Last day for Policy Committees to hear and report 1 st House fiscal bills to the Floor |
| May 2 | Last day for Policy Committees to hear and report 1 st House nonfiscal bills to the Floor |
| May 16 | Last day for Policy Committees to meet prior to June 2 |
| May 23 | Last day for Fiscal Committees to hear and report fiscal bills to the Floor |
| May 27-30 | Floor Session only. No committees may meet |
| May 30 | Last day to pass bills from house of origin |
| June 2 | Committee meetings may resume |
| June 3 | Statewide Primary Election |
| June 15 | Budget must be passed by midnight |
| June 27 | Last day for Policy Committees to hear and report bills to the Floor from the second house |
| July 3 | Summer Recess begins at the end of session if Budget Bill has been enacted |
| Aug. 4 | Legislature reconvenes |
| Aug. 15 | Last day for Fiscal Committees to meet and report bills to the Floor |
| Aug. 18-31 | Last day to amend bills on the Floor |
| Aug. 31 | Last day for any bill to be passed. Final Recess begins on adjournment of session |
| Sept. 30 | Last day for Governor to sign or veto bills passed by the Legislature before Sept. 1 |

¹Terms 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 837 (Levine) Oil and gas leases

This bill would prohibit the State Lands Commission (SLC) from issuing any new leases or lease extensions for the extraction of oil and gas from existing platforms in the Santa Barbara Channel, unless the SLC determines that issuing or extending a lease would not result in spillage or seepage of oil, or destruction of aesthetic values. The practical effect of this legislation is precluding future slant drilling from Platform Holly.

Introduced 02/22/07
Last Amended 09/07/07
Status Senate NR&W Committee.

AB 1066 (Laird) Coastal resources; local coastal planning

This bill would require the Governor's Office of Planning and Research (OPR) to develop guidelines, in consultation with the Coastal Commission, relating to planning for sea level rise for local governments to use when updating their general plans. The bill would require the Ocean Protection Council to convene and inter-agency task force, which would include the Coastal Commission, to gather existing information on sea level rise projections to inform the OPR guidelines.

Introduced 02/23/07
Last Amended 07/03/07
Status Senate Appropriations Committee, Suspense File.

AB 1074 (Houston) California State Conservation Permit

This bill would require the Secretary of the Resources Agency to establish the California State Conservation Permit, with a permit specific to each of the 7 regions of the Department of Fish and Game. The permit would apply to projects by private landowners to implement conservation measures that enhance and restore wildlife habitat, improve water quality and quantity, or protect endangered or threatened species; that complies with the Natural Resources Conservation Service's Conservation Practice Standards and Specifications; and that uses funds from specified federal programs.

Introduced 02/23/07
Last Amended 05/08/07
Status Senate Natural Resources and Water Committee.

AB 1338 (Huffman) Public resources: local coastal programs: nonpoint source pollution

This bill would require local governments to include an element on reducing nonpoint source pollution, when preparing or amending an LCP for Commission certification.

Introduced 02/23/07
Last Amended 08/21/07
Status Senate Natural Resources and Water Committee.
Commission Position Support

AB 1776 (Devore) Energy: nuclear powerplants

This bill would repeal the current prohibition against building new nuclear power facilities in the state. This bill would allow new nuclear power facilities to be built, providing they are not located in active seismic areas. This bill would prohibit new nuclear power facilities with ocean outfalls for once-through-cooling within 5 miles of a designated Area of Special Biological Significance (ASBS). This bill would require the Energy Commission to consider dry-cask storage as an appropriate method of storage for radioactive nuclear waste.

Introduced 01/14/08
Last Amended 02/19/08
Status Assembly Natural Resources Committee.

AB 1850 (DeVore) Office of public-private partnerships

This bill would create the office of public-private partnerships within the Office of the Governor. The purpose would be to facilitate public-private partnerships for the construction and maintenance of state infrastructure.

Introduced 01/29/08
Status Assembly Business and Professions Committee.

AB 1991 (Mullin) Subdivisions: tentative maps

This bill would deem an expired tentative tract map to be in full force and effect as part of a litigation settlement, under certain circumstances. This bill is intended to reflect a pending negotiated settlement agreement between the City of Half Moon Bay and the owners of the Beachwood Subdivision. The terms of the settlement were released 4/03/08, and have not yet been analyzed by staff.

Introduced 02/14/08
Status Assembly Local Government Committee

AB 2031 (Hancock) Oil spill prevention and response

This bill would amend the Lempert-Keene Oil Spill Prevention and Response Act (OSPR) to require the OSPR administrator to train and certify a local emergency responder designated as a "local spill response manager" by a local government with jurisdiction over or directly adjacent to marine waters. The bill would require the administrator to authorize a local spill response manager to train and certify volunteers to work under his or her direction. This bill would require the OSPR administrator to offer grants to a local governments with jurisdiction over or directly adjacent to marine waters to provide oil spill response and cleanup equipment.

This bill would also require the Office of Emergency Services to notify appropriate local government agencies when an oil spill has occurred.

Introduced 02/15/07
Status Assembly Natural Resources Committee.

AB 2032 (Hancock) Oil spill prevention and response

This bill would amend the Lempert-Keene Oil Spill Prevention and Response Act to regulate any vessel that carries oil in a single tank with a capacity of greater than 50,000 gallons. The bill would increase the limit on the Oil Spill Response Trust Fund, which is funded through a uniform fee on specified vessels, from \$109,750,000 to \$200,000,000, adjusted annually for inflation.

Introduced 02/23/07
Status Assembly Natural Resources Committee and Assembly G.O.

AB 2935 (Huffman) Oil spill prevention and response

This bill would require the OSPR administrator to develop an annual review process for updating oils spill contingency plans to incorporate “best achievable protections” technologies and practices; create a searchable online data base of information pertaining to Oil Spill Response Organizations (OSROs); require the Director of Fish and Game to close certain fisheries in the event of an oil spill.

Introduced 02/22/08
Last Amended 04/01/08
Status Assembly Natural Resources and G.O. Committees.

AJR 49 (Nava) California gray whales: assessment: protected

This measure would request the United States Congress and the President of the United States to direct the National Marine Fisheries Service to undertake an immediate, comprehensive assessment of the California gray whale population. It would also request the California Fish and Game Commission to add the California gray whale to the State Endangered Species List.

Introduced 02/28/08
Last Amended 03/28/08
Status Assembly Water Parks and Wildlife Committee.
Commission position Recommend support. Analysis attached

SB 242 (Torlakson) Claims against the state

This bill would appropriate \$493,342.76 from the General Fund to the Dept. of Justice for payment of specified claims against the state, including a judgment of \$64,530 against the Coastal Commission in the case of Habitat for Hollywood Beach v. California Coastal Commission.

Introduced 02/14/07
Last Amended 01/29/08
Status Assembly Desk

SB 375 (Steinberg) Transportation planning: travel demand models

This bill would require the California Transportation Commission to develop regional transportation models for regional transportation agencies to incorporate into their transportation plans. This bill would set standards for evaluating projects eligible for state funding according to their consistency with these plans, and other “sustainable community” guideline. This bill would create CEQA exemptions for certain projects that are consistent with General Plan policies, provided those general plans have been updated in accordance with the provisions of the models and guidelines contained in the bill.

Introduced 02/21/07
Last Amended 03/24/08
Status Assembly Appropriations Committee

SB 412 (Simitian) State Energy Resources Conservation and Development Commission: LNG terminals

This bill would require the CEC to conduct an LNG Needs Assessment Study to be completed by November 1, 2008. The study shall include an assessment of future demand and supply, as well as a determination whether it is feasible to meet California's future natural gas needs without construction LNG terminals. It directs the CEC, in consultation with relevant state and federal agencies (including the CCC) to evaluate every proposed LNG project.

Introduced 02/21/07
Last Amended 08/20/07
Status Senate Rules Committee.
Commission Position Support

SB 821 (Kuehl) Land use: water supply planning

This bill would require the California Research Bureau, by July 1, 2008, to provide a report to the Legislature covering the 2004, 2005, and 2006 calendar years that includes information relating to how existing water subdivision planning law is addressing the provision of adequate water supplies for proposed residential developments.

Introduced 02/23/07
Last Amended 05/01/07
Status Assembly Appropriations Committee.

SB 965 (Lowenthal) Ports: navigation systems

This bill would establish the California Physical Oceanographic Real Time System (CalPORTS) of integrated marine sensors that provide critical information on tides, winds, currents, salinity, water and air temperatures for the purpose of safe navigation and the prevention of vessel collisions and oils spills. This bill would amend the Lempert-Keene-Seastrand Oil Spill Prevention Act to authorize the Legislature to appropriate funds from the Oil spill Prevention and Administration Fund for the purpose of hiring staff and purchasing equipment to administer the CalPORTS program, in cooperation with and building on the existing PORTS program administered by NOAA/NOS.

Introduced 02/23/07
Last Amended 01/16/08
Status Senate Rules Committee.

SB 1056 (Migden) Oil spill prevention and response

This bill would amend the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act to require the Office of Emergency Services to notify the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County of San Francisco of any oil spill occurring within the jurisdiction of the Bay conservation and Development Commission (BCDC). It also sets standards for response time at 2 hours or less, and requires the state to reimburse local jurisdictions for associated costs.

Introduced 01/07/08
Status Senate Environmental Quality Committee.

SB 1185 (Lowenthal) Land divisions: tract maps

This bill would extend by 24 months the life of any vesting tentative tract map that has not expired by the date that this bill takes effect.

Introduced 02/12/08
Last amended 03/24/08
Status Senate Appropriations Committee.

SB 1295 (Ducheny)

This bill would amend Section 30625(a) require the Coastal Commissioners to provide written comments to a local government in order to appeal a coastal development permit.

Introduced 02/19/08
Status Senate Natural Resources Committee.

Commission Position: Recommend oppose. Analysis attached.

SB 1473 (Calderon) Building standards; green building

This bill would require local governments to charge a minimum fee for processing applications for “sustainable” or “green” building projects. 90% of this fee would go to the California Building Standards Commission. This bill would require the Commission to develop and adopt green building standards for use by the commission, state agencies and local governments. Each state agency that adopts green building standards would pay an annual fee to the Commission for the review and publication of green building standards.

Introduced 02/21/08
Status Senate T&H and EQ Committees.

SB 1618 (Hollingsworth) Public resources: defensible space

This bill would add Section 20253.5 to the Public Resources Code to declare that vegetative clearance of up to 300 feet around any structure is consistent with Coastal Act if the clearance is proposed in the local land use authority has an NCCP approved by the Department of Fish and Game, or if the local land use authority has obtained an incidental take permit for a federally listed threatened or endangered species or a candidate species under the California Endangered Species Act, or if more than 50% of the land in the county in which the project is located is owned by the federal government.

Introduced 02/22/08
Status Senate Natural Resources Committee

Commission position Recommend oppose. Analysis attached

SB 2911 (Wolk) Oil spill prevention and response: wildlife contamination

This bill would make funding available to the oiled wildlife care network, upon appropriation by the Legislature, from the Oil Spill Prevention and Administration Fund. This bill would also require the OSPR Administrator to expand and enhance the funding, activities and capabilities of the oiled wildlife care network.

Introduced 02/22/08
Last Amended 03/25/08
Status Senate Natural Resources and Water, Parks and Wildlife Committees

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**BILL ANALYSIS**
AJR 49 (Nava)

As amended, March 28, 2008

SUMMARY

AJR 49 would call upon the United States Congress and the President of the United States to direct the National Marine Fisheries Service (NMFS) undertake an immediate, comprehensive assessment of the California gray whale (*Eschrichtius robustus*) population. It would also request that the California Fish and Game Commission (FGC) list the California gray Whale on the California Endangered Species List.

PURPOSE OF THE BILL

The purpose of the bill is to urge state and federal agencies to take steps that would lead to increased protections for the California gray whale.

EXISTING LAW

- 1) Provides for the listing of endangered and threatened species under the state and federal endangered species acts.
- 2) Under state law, the FGC has established a list of endangered and threatened species. The FGC may add or remove species from either list if it finds, upon the receipt of sufficient scientific information, that the action is warranted. Interested persons may petition the FGC to add or remove species from the lists. In the absence of a petition, the Department of Fish and Game (DFG) may recommend to the FGC that it add or remove a species from either list.
- 3) Provides for protection of marine mammals under the federal Marine Mammal Protection Act (MMPA), which prohibits, with certain exceptions, the take of any marine mammals in U.S. Waters. State law also makes it unlawful to take any marine mammal except in accordance with the Marine Mammal Protection Act of the United States.
- 4) The International Whaling Commission (IWC) oversees and regulates international whaling practices. Commercial whaling was phased out in 1982. However, several countries do not recognize the ban, and others continue to kill whales under a “scientific exemption” clause.

BACKGROUND

The California gray whale was one of the last species of whale to be commercially exploited for blubber, oil, and meat. Because of its propensity to attack its attackers, it was known to 19th Century whalers as the “Devil Fish.”

However, with the advent of more efficient killing technologies, and the decline of more commercially profitable species, commercial whalers began targeting gray whales in the 1700s. The Atlantic population was hunted to extinction by the end of the century, and the Pacific populations (eastern and western) were almost wiped out between 1850-1930. Their habit of returning annually to protected calving lagoons in Baja California to give birth and mate, made them particularly vulnerable to commercial slaughter.

An international treaty in 1946 slowed the trade in gray whale products until the whale was listed as “endangered” under the Federal Endangered Species Act in 1970. At that time, the population was estimated at 12,000, about half the pre-whaling population levels.

In 1994, with the population declared “recovered” at 23,000 individuals, the Gray whale was “de-listed” to much fanfare. However, since that time, population levels have proven to be quite unstable, with precipitous declines noted in 1999-2000 that reduced the population by as much as one third. Shoreline surveys from 2001-2005 estimate a static population of 18,000 individuals. In 2007, the American Cetacean Society’s official count revealed a 46.8% decline in calves; the lowest calving numbers in 30 years. Long term calf production as observed by Mexican biologists is down from one calf every 2.4 years, to one calf every 3-4 years.

Biologists observing whales at their winter calving grounds in 2006, 2007 and 2008 are reporting that as many as 12% of the whales are arriving much thinner than normal, with back bones and ribs visible in many individuals. As of February 2008, whale counts in Baja lagoons are down by more than 50%. Guerrero Negro, which typically sees 2000 whales by February, has reported just 600. San Ignacio is down from 300 to just 120.

DNA studies conducted by Stanford University and others now seem to indicate that pre-whaling population levels were likely much higher than previously thought. Current estimates indicate the historic population likely numbered between 76,000 and 118,000 individuals, nearly 5 times the previous estimate, according to proceedings published in the National Academy of Sciences in 2007.

LEGISLATIVE HISTORY

This is the first legislative attempt to re-list the California gray whale, or to call for federally-sponsored population studies.

In 2000, the California Coastal Commission passed a resolution opposing a proposed salt plant at Laguna San Ignacio, the last pristine calving lagoon in Baja California.

ANALYSIS

The California gray whale has the longest migration route, 7,000 miles, of any mammal. Unlike other whale species that migrate across open ocean waters, the gray whale’s migration from the Arctic waters of Alaska and the Bering Sea to Baja California is entirely coastal. This coastal migration route makes the gray whale particularly vulnerable to numerous human-related threats such as coastal development, pollution, underwater seismic testing, shipping strikes, and even hunting. Recently completed oil and gas lease sales in the Chukchi Sea could lead to significant further disruption of feeding grounds, with the new potential for oil spills as well as development activities. As many as 200 whales are legally killed every year under non-commercial aboriginal quotas. Many of these are used as feed for Siberian mink farms.

While the reasons for current population declines are unclear and warrant further investigation, one theory is that global climate change and certain fishery practices may be impacting critical northern feeding grounds. Whales must store enough blubber to safely make the southward journey, give birth, mate and return to their feeding grounds, and extravagant biological demand. Scientific observation seems to clearly indicate the population is once again in distress. Declining productivity, unusual behaviors, drastic swings in population and depleted body condition observed by biologists suggest that the species is in need of greater protection.

Thin whales do not reproduce well. Nor can they adequately withstand the rigors of migration, including increased predation by orcas as well as human-caused threats. If current pre-whaling population estimates of 76,000 to 118,000 are correct, then the fragile state of the current population at 1/5 that number could be a troubling indicator re: the carrying capacity of the ocean.

Current methodologies and field reports cannot be relied upon as completely accurate, according to the bill sponsors, the Gray Whale Coalition, and comprehensive study with ongoing monitoring is required to truly understand the population dynamics.

Given the dramatic declines in the population numbers post de-listing, the current scientific estimates of pre-whaling population numbers, and the numerous and growing threats to whales from coastal development, shipping and industrial activities, gray whales should be re-classified as endangered by Fish and Game Commission. In addition, if NMFS were to undertake a comprehensive population analysis, it could lead to re-listing under the Federal Endangered Species Act as well. If re-listed, the U.S. and the IWC would have to greatly reduce the current allowable quota of 140 gray whales annually.

SUPPORT/OPPOSITION (as of 4/03/08)

Support for AJR 49:

California Gray Whale Coalition (sponsor)
Hopkins Marine Station, Stanford University
Natural Resources Defense Council

Opposition to AJR 49:

None on file

RECOMMENDED POSITION

Staff recommends the Commission **Support** AJR 49.

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

Assembly Joint Resolution

No. 49

Introduced by Assembly Member Nava

February 28, 2008

Assembly Joint Resolution No. 49—Relative to California gray whales.

LEGISLATIVE COUNSEL’S DIGEST

AJR 49, as amended, Nava. California gray whales: ~~stock~~ assessment: protected status.

This measure would request the United States Congress and the President of the United States to call upon the National Marine Fisheries Service to undertake an immediate and comprehensive ~~stock~~ assessment of the California gray whale, and request the California Fish and Game Commission to change the status of the gray whale to endangered.

Fiscal committee: yes.

- 1 WHEREAS, Each year the California gray whale (*Eschrichtius*
2 *robustus* of the Eastern North Pacific stock) migrates along the
3 California coast to feeding grounds in the Arctic, a journey of
4 8,500 to 11,000 miles; and
5 WHEREAS, The California gray whale is important for public
6 education, recreational value, aesthetic appeal, economic
7 significance, and scientific interest to the people of California; and
8 WHEREAS, Whale watching contributes to local economies in
9 direct revenues and in the overall economic well-being of coastal
10 communities, including the creation of jobs; and

1 WHEREAS, Whale watching generates tens of millions of
2 dollars in California annually; and

3 WHEREAS, The California gray whale migrates past one of
4 the most heavily industrialized coastlines in the world, exposing
5 the California gray whale to marine pollution, marine vessel traffic,
6 industrial noise, activities associated with the development of the
7 outer continental shelf resources, fishing entanglements, bottom
8 trawling, industrial development, and military and nonmilitary
9 sonar activity; and

10 WHEREAS, Marine mammals, including the California gray
11 whale, are vulnerable to underwater sound, including high-intensity
12 mid-frequency sonar systems used off the California coast; and

13 WHEREAS, These sonar systems blast across large areas with
14 levels of underwater noise loud enough to have resulted in deaths
15 of marine mammals in incidents around the world; and

16 WHEREAS, The significant threats posed by global warming,
17 melting sea ice, and the impact of increased sea water temperature
18 in the Arctic feeding grounds of the California gray whale have
19 very serious implications for the species; and

20 WHEREAS, The federal government placed the gray whale on
21 the endangered and threatened species list in 1970 when its
22 estimated population was approximately 12,000 and removed it
23 in 1994 when the population rose to 23,000; and

24 WHEREAS, A major collapse in 1999 and 2000 is estimated
25 to have wiped out one-third to almost one-half of the population;
26 and

27 WHEREAS, There has been no proper population estimate
28 published by the National Marine Fisheries Service since 2001;
29 and

30 WHEREAS, There is no habitat protection for the Pacific Coast
31 Feeding Aggregation in California, Oregon, or Washington State;
32 and

33 WHEREAS, There are inconsistencies in the protection states
34 give to gray whales; and

35 WHEREAS, Oregon lists the gray whale as endangered; and

36 WHEREAS, Washington lists the gray whale as sensitive; and

37 WHEREAS, California lists the gray whale as recovered; now,
38 therefore, be it

39 *Resolved by the Assembly and the Senate of the State of*
40 *California, jointly*, That the Legislature respectfully requests the

1 United States Congress and the President of the United States to
2 call upon the National Marine Fisheries Service to undertake an
3 immediate and comprehensive ~~stock~~ assessment of the California
4 gray whale. This assessment should include all current research
5 covering the migration routes, population dynamics, and mortality
6 of the California gray whale, and the impacts of threats to the
7 California gray whale, including the impact of global warming on
8 critical feeding grounds; and be it further

9 *Resolved*, That the National Marine Fisheries Service publish,
10 and make available to the public, the results of the comprehensive
11 ~~stock~~ assessment of the California gray whale; and be it further

12 *Resolved*, That the California Fish and Game Commission is
13 requested to change the status of the gray whale to endangered;
14 and be it further

15 *Resolved*, That the Chief Clerk of the Assembly transmit copies
16 of this resolution to the California Fish and Game Commission,
17 the President and Vice President of the United States, the Speaker
18 of the House of Representatives, the Majority Leader of the Senate,
19 and to each Senator and Representative from California in the
20 Congress of the United States.

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BILL ANALYSIS
SB 1295 (Ducheny)
As Amended, April 02, 2008

SUMMARY

SB 1295 would amend Section 30625 of the Coastal Act to require the Coastal Commission to provide written comments prior to final action on a local development proposal before any two Coastal Commissioners could file an appeal of a locally approved coastal development permit (CDP).

PURPOSE OF THE BILL

The purpose of the bill is to require the Commission to participate early in the local CDP review process and to establish "standing" before being allowed to appeal a locally approved CDP project.

EXISTING LAW

Section 30625 of the Coastal Act provides:

...any appealable action on a coastal development permit or claim of exemption for any development by a local government or port governing body may be appealed to the commission by an applicant, any aggrieved person, or any two members of the commission.

After certification of a local coastal program (LCP), an action taken by the local government to approve a CDP application may be appealed for the following development (See section 30603 for complete wording):

1. Development between the first public road and the sea or within 300 feet of any beach or the mean high tide line where there is no beach.
2. Development on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of any coastal bluff.
3. Development in coastal counties any development not designated as *the* principal permitted use in the LCP.

PROGRAM BACKGROUND

Once a local government's LCP is certified by the Commission, permitting authority is delegated to the local government. The Coastal Act requires local governments to notify the Commission of all final actions taken under this delegated authority. In addition, the Commission's regulations require local governments to notify the Commission of pending CDP actions. Some, but not all, of those actions are appealable.

The Coastal Act provides for Commission appeals of *some* local government development permit actions in a relatively small portion of the coastal zone in local government jurisdictions (the appeal areas) for a very significant reason: *This is the primary way regional and statewide public interests and values associated with coastal resources protections, such as public access, recreation, sensitive habitats, highly scenic areas, agricultural lands and marine resources can be ensured.* This vital oversight function is intended to promote and protect broader public interests in the more sensitive appeal areas of the coast than do the more narrowly

focused development decisions of local government. This is a most important purpose underlying California's coastal conservation program.

In addition to initiating appeals, any two commissioners may also become appellants in appeals brought by others. This provides a critical safety net in instances where public appellants withdraw an appeal after the filing period has closed. By joining a local appeal, commissioners ensure that important Coastal Act issues are considered by the full Commission even if local entities drop the appeal.

Once an appeal is filed, the Commission must, by action of the full Commission, determine whether the appeal raises a Substantial Issue (SI) relative to conformity with the LCP and the public access policies of the Coastal Act. Only if the Commission finds the appeal raises a substantial issue can it act on the merits of the proposed project that is the object of the appeal. If the Commission finds that the appeal raises "No Substantial Issue" (NSI), the matter ends there and the local action becomes final.

If the Commission finds that the appeal does raise a substantial issue, the appeal proceeds to a *de novo* hearing, where the Commission acts on the merits of the proposed project. The Commission may approve the permit as submitted, approve it with conditions, or deny the permit.

Because the appeal period is so short, 10 days from the Commission's receipt of a final local action notice (FLAN), and because FLANs often do not contain adequate information to enable staff to determine whether LCP and Coastal Act policies have been correctly applied, Commissioners are sometimes asked to appeal projects to allow staff to gather additional information, or to work with local planning staff to resolve outstanding issues. If additional information reveals that the permit was properly issued, or if problematic issues are resolved administratively, the appeal can be, and often is withdrawn. Nearly one-fourth (24%) of all commissioner appeals are withdrawn prior to the SI hearing.

LEGISLATIVE HISTORY

In 1993, the Legislature reviewed the Coastal Act appeal process and enacted SB 303 (Beverly) (Chapter 753, Statutes of 1999, see Section 30602 (d)), allowing the Executive Director to dismiss frivolous appeals.

ANALYSIS/COMMENTS

SB 1295 is infeasible and unnecessary. The Commission's appeal process has worked well for thirty years and continues to work well. Only 5% of all appealable projects are actually appealed to the Commission, and only one quarter of these have been Commissioner-only appeals. Thus, less than 1.4% of appealable projects are brought to the Commission by Commissioners, for a total of 293 in the Commission's history. Of these, 89 were either withdrawn or found to raise no substantial issue (NSI). In the remaining 204 instances, the appealed project was either approved as submitted or approved with conditions.¹ Only 13 projects, or 0.0575% of all appealable projects, have been appealed by commissioners and subsequently denied by the Commission. .

As noted, only projects in the most sensitive coastal areas or those that impact public access or critical public infrastructure are appealable to the Commission. Despite the statistically low number of Commission-generated appeals, the ability of two commissioners to appeal locally issued CDPs performs a critical oversight function that the Commission must carry out to ensure that regional and statewide public interests in coastal resource protections are properly implemented through the LCPs. It is the only meaningful mechanism for the Commission to monitor local jurisdictions for post-certification LCP compliance in the most critical coastal areas.

¹ Semi-Annual Post Certification Report, cumulative totals through December, 2007.

While the 04/02/08 amendments are ambiguous with regard to the timing of when the Commission would be required to provide written comments to a local government, the author has clarified that the intent of SB 1295 is to require coastal commissioners/staff to essentially establish “standing” relating to a local permit action in order to appeal a new development project, by providing written comments *during* the local review process. Given the Commission’s critical staffing shortage, this presents an impossible burden for the Commission to meet. The end result would be to eliminate Commissioner appeals in many cases that should be reviewed at the State level. This reduction in state oversight would result in a significant net loss of coastal protection, and an increase of inappropriate development.

Currently, the Commission does its best to provide timely comments to local governments in the permitting process. Participation at the front end of the local process is limited however, by severe staffing shortages. With the existing backlog of permits, appeals and LCP amendments, meeting existing statutory deadlines under the Permit Streamlining Act as well as the Coastal Act is already challenging to the point of very real risk that permits and LCP amendments will be automatically approved by operation of law. Adding a significant new procedural requirement to gain standing for appeals would only serve to further undermine the effectiveness of California’s coastal protection program and further overburden staff resources.

Currently Commission staff are already hard pressed to review at the end of the local process the approximately 1500-1700+ permits approved annually by local governments.² To require staff review and comment at the front end of the local permitting process where even more applications are filed than are eventually approved, and where very little information about the proposed project and permit action is provided or even available, is not feasible and, as a practical matter, is highly inefficient and serves no meaningful purpose. Even if staff could review all local CDP applications at the front end (which cannot be done), staff would have to review the application *again* at the far end of the process when FLANs are sent to the Commission that set forth the specifics of the final local action. The local permit review process includes multiple stages. If SB 1295 were to become law it could only work if at the same time substantial increases in staffing for the Commission is made available – a possibility that is , in these constrained fiscal times, extremely unlikely.

Specifically, the reasons SB 1295 is not feasible include the following:

- Local approvals can take up to a year or more in some cases, and it is not uncommon for projects to be substantially revised more than once during the process. Problematic issues may get resolved early in the process regardless of the Commission’s participation, thereby wasting valuable staff time. Conversely, seemingly non-problematic projects that do not warrant comments from the Commission as proposed can be revised at the final hearing, creating a situation where an appeal is warranted but the Commission would be precluded from doing so.
- If staff were required to review CDP applications at the front end of the local process in order to provide written comments they would have to review the final CDP action again at the far end of the process when the FLAN is sent to the Commission. This double review would be costly and serve no meaningful purpose.

² Data from annual LCP Status Reports, 2001, 2004-2007

- Even though local governments are required to notify the Commission of all pending CDP applications, the Commission frequently does not receive notice of a local project until AFTER the final action is taken. In these cases, staff would be unable to provide written comments for the record and failure to establish “standing” would bar any appeal. While the Commission continues to try to work with local jurisdictions to improve noticing procedures, there is no feasible way to compel cities or counties to change their practices.
- Local jurisdictions are inconsistent in the way they notice the Commission of pending projects. Local noticing is not uniform throughout the coastal zone. Notices of pending local projects at the front end of the review process usually lack sufficient specificity to adequately describe what is being proposed and what the Coastal Act issues are (e.g., they do not include staff report and recommendations, environmental documents or site plans).
- Notices of pending local actions are frequently not received in a timely fashion to be able to respond prior to the local public hearing, particularly if critical information is lacking (see above).
- The Commission has, on more than one occasion, appealed projects which the local jurisdiction has determined administratively to be exempt from permit requirements. In these instances there was no opportunity for the Commission or any member of the public to review or comment on the determination. Under SB 1295, the Commission would not have “standing” to appeal an administrative CDP waiver or determination of exemption.
- Noticing requirements are different for appealable v. non-appealable projects. For example, Ports are not required to send notice of non-appealable projects until after a final action is taken. However, the Commission often disagrees with local governments whether or not a specific project is or is not appealable. SB 1295 would make it much more difficult for the Commission to appeal these “gray area” projects, and would create an incentive for local governments to err on the side of “non-appealability” whenever questions arise.
- In order to fully and fairly carry out these new requirements, local governments would have to provide much more information to the Commission much earlier and throughout the process. This would impose a significant new responsibility on local governments as well as the Commission, with associated workload implications.

Because the Commission has never been able to carry out its statutory responsibility to conduct periodic reviews of certified LCPs as required by Section 30519.5, and because the Legislature eliminated the Commission’s Local Government Assistance Grant Program in 2002 which was a source of funding for local governments to update their LCPs, many LCPs are out of date and do not reflect current conditions on the ground, changed circumstances and legal requirements or generally accepted principles of modern planning. For these reasons, jurisdictions with out-of-date LCPs typically generate higher numbers of appeals, and the Commission’s ability to review local actions through the appeal process is the only meaningful tool to ensure that Coastal Act policies are adequately implemented.

In summary, SB 1295 would significantly weaken the Commission’s most critical and currently most effective oversight function to ensure meaningful protection of statewide and regional public interests and values inherent in coastal resources.

SUPPORT/OPPOSITION (as of 4/03/08)

Support for SB 1295:

Oceanside City Councilmember Jerome Kern
2 Individuals

Opposition to SB 1295:

Amigos de Bolsa Chica
California Coastal Protection Network
City of Huntington Beach
City of Santa Cruz
Committee for Green Foothills
Sierra Club California
Surfrider Foundation
Wetland Action Network
More than 2,500 individuals

RECOMMENDED POSITION

Staff recommends the Commission **OPPOSE** SB 1295 as currently amended.

AMENDED IN SENATE APRIL 2, 2008

SENATE BILL

No. 1295

Introduced by Senator Ducheny

February 19, 2008

An act to amend Section 30625 of the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1295, as amended, Ducheny. California Coastal Act of 1976: coastal development permit: appeal.

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. Existing law provides that, after certification of a local program, any appealable action on a coastal development permit or claim of exemption for any development by a local government or port governing body may be appealed to the California Coastal Commission by an applicant for a permit, any aggrieved person, or any 2 members of the commission.

This bill would revise that provision to ~~eliminate~~ *add a condition for* an appeal by *any* 2 members of the California Coastal Commission *to require that the commission or its staff provide comments, in writing, to the local government or port governing body, on the project.*

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

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

1 SECTION 1. Section 30625 of the Public Resources Code is
2 amended to read:

1 30625. (a) Except as otherwise specifically provided in Section
2 30602, any appealable action on a coastal development permit or
3 claim of exemption for any development by a local government
4 or port governing body may be appealed to the commission by an
5 applicant ~~or an aggrieved person~~, *an aggrieved person, or any two*
6 *members of the commission, but an action may be appealed by*
7 *any two members of the commission only if the commission or its*
8 *staff provides comments, in writing, to the local government or*
9 *port governing body, on the project that is being considered for*
10 *appeal. The commission may approve, modify, or deny such*
11 *proposed development, and if no action is taken within the time*
12 *limit specified in Sections 30621 and 30622, the decision of the*
13 *local government or port governing body, as the case may be, shall*
14 *become final, unless the time limit in Section 30621 or 30622 is*
15 *waived by the applicant.*

16 (b) The commission shall hear an appeal unless it determines
17 the following:

18 (1) With respect to appeals pursuant to Section 30602, that no
19 substantial issue exists as to conformity with Chapter 3
20 (commencing with Section 30200).

21 (2) With respect to appeals to the commission after certification
22 of a local coastal program, that no substantial issue exists with
23 respect to the grounds on which an appeal has been filed pursuant
24 to Section 30603.

25 (3) With respect to appeals to the commission after certification
26 of a port master plan, that no substantial issue exists as to
27 conformity with the certified port master plan.

28 (c) Decisions of the commission, where applicable, shall guide
29 local governments or port governing bodies in their future actions
30 under this division.

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BILL ANALYSIS
SB 1618 (Hollingsworth)
As Introduced, February 22, 2008

SUMMARY

SB 1618 would, in relevant part, (Section 4) add Section 30253.5 of the Coastal Act to allow for “defensible space” brush clearance around buildings and structures not to exceed 300 feet if the local land use authority has obtained an HCP from the federal government, entered into an NCCP agreement with the Department of Fish and Game, or more than 50% of the land in the county is owned by the federal government.

Sections 1 and 2 of the bill create similar exemptions in the California Environmental Quality Act (CEQA) and California Endangered Species Act (CESA). Section 3 of the bill re-numbers Section 30253 of the Public Resources Code, without amending any of the text.

PURPOSE OF THE BILL

The purpose of the bill is to eliminate Coastal Act, CEQA and CESA policies from being applied to brush clearance for defensible space under the circumstances set forth in the bill.

EXISTING LAW

Section 30106

Definition of development includes removal of major vegetation.

Section 30231

Requires the maintenance of vegetation buffers to protect water quality and riparian areas.

Section 30253

Requires that new development minimize risk to life and property from natural hazards, including fire.

PROGRAM BACKGROUND

California wildfires occur have been increasing in frequency and intensity, due to drought, changing weather patterns, and decades of fire suppression in Southern California’s fire-dependent ecosystem. Coastal Act policies provide for measures that reduce fire hazard risk through avoidance (site design, construction materials, etc) as well as reduction/modification of fuel loads. Coastal Act policies also provide for the protection of sensitive habitat and water quality, both of which can be affected by brush clearance.

Specific polices related to brush clearance for fire protection in the coastal zone vary by jurisdiction, and, for those with certified LCPs, are locally crafted to reflect topography and conditions on the ground. But generally speaking, coastal brush clearance around existing, combustible structures is authorized in concentric zones, with the innermost zone (on average, 30') consisting of clear-cut, irrigated managed landscaping of non-combustible materials. Subsequent zones authorize varying amounts of thinning, pruning and topping of native vegetation to reduce fuel load, for up to 100' or more in certain instances. If clearance is required on adjacent public lands, mitigation may be required.

For new structures and/or new subdivisions of land in high fire prone areas, the Commission typically requires that habitable structures be located in the least sensitive areas on site, that appropriately fire resistant materials be used in building design, and that footprints be minimized, in addition to requiring clearance zones. This effectively minimizes fire hazards for new development by directing residential structures out of harm's way in high fire hazard areas. Specific brush clearance requirements are typically included as conditions of approval, and apply for the life of the permit.

ANALYSIS

Section 4 of the bill adds Section 30253.5 to the Public Resources Code, declaring that vegetation and brush clearance of up to 300 feet around structures would be deemed consistent with Coastal Act if the project were located in a jurisdiction with an approved state NCCP, federal HCP, or is located in a county in which more than 50% of the land is owned by the federal government.

These standards are irrelevant in terms of determining how to regulate fire clearance activities.

Natural Community Conservation Plans (NCCPs) and Habitat Conservation Plans (HCPs) were never intended to supersede Coastal Act policies. These voluntary, stakeholder-driven plans were conceived of as programs that would obviate the need for individual property owners to obtain incidental take permits under the Federal and State Endangered Species Acts. While they may have some merit in their potential to conserve habitat, they neither include nor replace coastal resource protection policies contained in the Coastal Act, nor do they eliminate the need to obtain a coastal development permit for projects in the coastal zone. In fact, the Commission has been unable to participate in most of the NCCP/HCP planning efforts undertaken in the coastal zone, due to staffing shortages. Our experience with these plans is that they are not drafted consistent with Coastal Act or Local Coastal Program (LCP) policies, and in fact create numerous conflicts with coastal protection policies, both in statute and local ordinance. The Commission has consistently been on record as opposing any legislative or other attempts to use NCCPs or HCPs as a means to override the Coastal Act or approved LCPs.

Because participation in NCCPs and HCPs is entirely voluntary, there is no guarantee that property owners will seek inclusion in an NCCP/HCP. Therefore, it is possible that the bill, as currently drafted, would confer the ability to clear up to 300 feet of vegetation to property owners who aren't even participating in an NCCP or HCP, but simply live within a jurisdiction that has chosen to create one.

Further, there is no nexus between federal ownership of land and vegetative brush clearance. There is no rational policy justification for this proposal.

Staff is not aware of any jurisdiction in the coastal zone that currently authorizes complete brush clearance of 300'. Creating an exemption of this nature would result in significantly greater habitat impacts, without any review or mitigation. This could also undermine the Commission's current practice of prioritizing site design over clearance to avoid habitat impacts.

SUPPORT/OPPOSITION (as of 4/03/08)

Support for SB 1618:

Fallbrook Area Chamber of Commerce
Lemon Grove Chamber of Commerce
North County Fire Protection District
San Diego Board of Supervisors

Opposition to SB 1618:

California Native Plant Society
Defenders of Wildlife
Endangered Habitats League
Sierra Club

RECOMMENDED POSITION

Staff recommends the Commission **OPPOSE** SB 1618.

AMENDED IN SENATE APRIL 3, 2008

SENATE BILL

No. 1618

Introduced by Senator Hollingsworth

February 22, 2008

An act to add Section 2083.5 to the Fish and Game Code, and to amend Section 30253 of, and to add Sections 21082.3 and 30253.5 to, the Public Resources Code, relating to public resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1618, as amended, Hollingsworth. Public resources: defensible space.

(1) The California Endangered Species Act prohibits the taking of specified species that are deemed to be endangered or threatened.

This bill would exempt from this prohibition the taking of endangered or threatened species during specified activities related to creation *and maintenance* of a defensible space for fire safety for a building or structure under specified conditions.

(2) The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and to certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect.

This bill would prohibit a lead agency from deeming, as having a significant environmental impact, specified activities related to creation *and maintenance* of a defensible space for fire safety for a building or structure under specified conditions. Because a lead agency, including a local agency, would be required to make a determination as to whether any of the specified conditions exists, this bill would increase the level

of service provided by a local agency, thereby imposing a state-mandated local program.

(3) The California Coastal Act of 1976 requires new developments under the jurisdiction of the California Coastal Commission to, among other things, minimize risks to life and property in the areas of high geologic, flood, and fire hazard.

This bill would provide that specified activities related to creation *and maintenance* of a defensible space for fire safety for a building or structure under specified conditions are deemed to be consistent with the California Coastal Act of 1976.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 2083.5 is added to the Fish and Game
 2 Code, to read:

3 2083.5. This article does not apply to the taking of a species
 4 listed by the commission as an endangered species or a threatened
 5 species for either of the following situations:

6 (a) Creation and maintenance of a defensible space for fire safety
 7 involving the clearance of brush and flammable vegetation around
 8 a building or structure in an amount that is approved *for cause* by
 9 a local fire official with jurisdiction over the building or structure
 10 that does not exceed 300 feet and any of the following:

11 (1) The local land use authority has entered into an agreement
 12 with the Department of Fish and Game for a Natural Community
 13 Conservation Plan pursuant to the Natural Community
 14 Conservation Planning Act (Chapter 10 (commencing with Section
 15 2800) of Division 3).

16 (2) The local land use authority has obtained from the Secretary
 17 of the Interior or the Secretary of Commerce an incidental take
 18 statement pursuant to Section 1536 of Title 16 of the United States
 19 Code or an incidental take permit pursuant to Section 1539 of Title
 20 16 of the United States Code that authorizes the taking of an

1 endangered species or a threatened species that is listed pursuant
2 to Section 1533 of Title 16 of the United States Code and that is
3 an endangered species, threatened species, or a candidate species
4 pursuant to this chapter.

5 (3) More than 50 percent of the land of the county in which the
6 project is located is owned by the federal government.

7 (b) (1) ~~Vegetation management activities for fire safety that do~~
8 ~~not involve clearance of brush and flammable vegetation to bare~~
9 ~~mineral ground in an amount that is approved by a local fire official~~
10 *involve clearance in an amount that is approved for cause to avoid*
11 *needless removal of vegetation by a local fire official with*
12 *jurisdiction over the building or structure that does not exceed*
13 *1,000 feet and any of the following:*

14 (1)

15 (A) The local land use authority has entered into an agreement
16 with the Department of Fish and Game for a Natural Communities
17 Conservation Plan pursuant to the Natural Community
18 Conservation Planning Act ~~Chapter~~ (Chapter 10 (commencing
19 with Section 2800) of Division 3).

20 (2)

21 (B) The local land use authority has obtained from the Secretary
22 of the Interior or the Secretary of Commerce an incidental take
23 statement pursuant to Section 1536 of Title 16 of the United States
24 Code or an incidental take permit pursuant to Section 1539 of Title
25 16 of the United States Code that authorizes the taking of an
26 endangered species or a threatened species that is listed pursuant
27 to Section 1533 of Title 16 of the United States Code and that is
28 an endangered species, threatened species, or a candidate species
29 pursuant to this chapter.

30 (3)

31 (C) More than 50 percent of the land of the county in which the
32 project is located is owned by the federal government.

33 (2) *For purposes of this subdivision, “vegetation management*
34 *activities” consist of all of the following activities while, at the*
35 *same time, maintaining the natural habitat values of the area:*

36 (A) *Effectively managing fuels by pruning vegetation.*

37 (B) *Reducing dead, dying, or diseased materials within*
38 *vegetation.*

39 (C) *Thinning native vegetation to reduce flame length.*

1 SEC. 2. Section 21082.3 is added to the Public Resources Code,
2 to read:

3 21082.3. (a) For the purposes of this division, a lead agency
4 shall not consider, as having a significant environmental impact,
5 either of the following:

6 ~~(a)~~

7 (1) For a project that does not impact a threatened or endangered
8 species, either of the following:

9 ~~(1)~~

10 (A) The creation and maintenance of a defensible space for fire
11 safety involving the clearance of brush and flammable vegetation
12 around a building or structure in an amount that is approved *for*
13 *cause* by a local fire official with jurisdiction over the building or
14 structure that does not exceed 300 feet.

15 ~~(2)~~

16 (B) Vegetation management activities for fire safety that do not
17 ~~involve clearance of brush and flammable vegetation to bare~~
18 ~~mineral ground in an amount that is approved by a local fire official~~
19 *involve clearance in an amount that is approved for cause to avoid*
20 *needless removal of vegetation by a local fire official with*
21 *jurisdiction over the building or structure that does not exceed*
22 *1,000 feet.*

23 ~~(b)~~

24 (2) For a project that has an impact on threatened or endangered
25 species, either of the following:

26 ~~(1)~~

27 (A) Creation and maintenance of a defensible space for fire
28 safety involving the clearance of brush and flammable vegetation
29 around a building or structure in an amount that is approved *for*
30 *cause* by a local fire official with jurisdiction over the building or
31 structure that does not exceed 300 feet and any of the following:

32 ~~(A)~~

33 (i) The local land use authority has entered into an agreement
34 with the Department of Fish and Game for a Natural Community
35 Conservation Plan pursuant to the Natural Community
36 Conservation Planning Act (Chapter 10 (commencing with Section
37 2800) of Division 3 of the Fish and Game Code).

38 ~~(B)~~

39 (ii) The local land use authority has obtained from the Secretary
40 of the Interior or the Secretary of Commerce an incidental take

1 statement pursuant to Section 1536 of Title 16 of the United States
2 Code or an incidental take permit pursuant to Section 1539 of Title
3 16 of the United States Code that authorizes the taking of an
4 endangered species or a threatened species that is listed pursuant
5 to Section 1533 of Title 16 of the United States Code and that is
6 an endangered species, threatened species, or a candidate species
7 pursuant to the California Endangered Species Act (Chapter 1.5
8 (commencing with Section 2050) of Division 3 of the Fish and
9 Game Code).

10 (C)

11 (iii) More than 50 percent of the land of the county in which
12 the project is located is owned by the federal government.

13 (Z)

14 (B) Vegetation management activities for fire safety that do not
15 ~~involve clearance of brush and flammable vegetation to bare~~
16 ~~mineral ground in an amount that is approved by a local fire official~~
17 *involve clearance in an amount that is approved for cause to avoid*
18 *needless removal of vegetation by a local fire official with*
19 *jurisdiction over the building or structure that does not exceed*
20 *1,000 feet and any of the following:*

21 (A)

22 (i) The local land use authority has entered into an agreement
23 with the Department of Fish and Game for a Natural Communities
24 Conservation Plan pursuant to the Natural Community
25 Conservation Planning Act (Chapter 10 (commencing with Section
26 2800) of Division 3 of the Fish and Game Code).

27 (B)

28 (ii) The local land use authority has obtained from the Secretary
29 of the Interior or the Secretary of Commerce an incidental take
30 statement pursuant to Section 1536 of Title 16 of the United States
31 Code or an incidental take permit pursuant to Section 1539 of Title
32 16 of the United States Code that authorizes the taking of an
33 endangered species or a threatened species that is listed pursuant
34 to Section 1533 of Title 16 of the United States Code and that is
35 an endangered species, threatened species, or a candidate species
36 pursuant to the California Endangered Species Act (Chapter 1.5
37 (commencing with Section 2050) of Division 3 of the Fish and
38 Game Code).

39 (C)

1 (iii) More than 50 percent of the land of the county in which
 2 the project is located is owned by the federal government.

3 (b) For purposes of this section, “vegetation management
 4 activities” consist of all of the following activities while, at the
 5 same time, maintaining the natural habitat values of the areas:

- 6 (1) Effectively managing fuels by pruning vegetation.
- 7 (2) Reducing dead, dying, or diseased materials within
 8 vegetation.
- 9 (3) Thinning native vegetation to reduce flame length.

10 SEC. 3. Section 30253 of the Public Resources Code is
 11 amended to read:

12 30253. New development shall:

13 (a) Minimize risks to life and property in areas of high geologic,
 14 flood, and fire hazard.

15 (b) Assure stability and structural integrity, and neither create
 16 nor contribute significantly to erosion, geologic instability, or
 17 destruction of the site or surrounding area or in any way require
 18 the construction of protective devices that would substantially alter
 19 natural landforms along bluffs and cliffs.

20 (c) Be consistent with requirements imposed by an air pollution
 21 control district or the State Air Resources Control Board as to each
 22 particular development.

23 (d) Minimize energy consumption and vehicle miles traveled.

24 (e) Where appropriate, protect special communities and
 25 neighborhoods which, because of their unique characteristics, are
 26 popular visitor destination points for recreational uses.

27 SEC. 4. Section 30253.5 is added to the Public Resources Code,
 28 to read:

29 30253.5. In furtherance of subdivision (a) of Section 30253,
 30 the creation and maintenance of defensible space for fire safety
 31 involving the clearance of brush and flammable vegetation around
 32 a building or structure in an amount that is approved *for cause* by
 33 a local fire official with jurisdiction over the building or structure
 34 that does not exceed 300 feet shall be considered consistent with
 35 this division if any of the following conditions exist:

36 (a) The local land use authority has entered into an agreement
 37 with the Department of Fish and Game for a Natural Community
 38 Conservation Plan pursuant to the Natural Community
 39 Conservation Planning Act (Chapter 10 (commencing with Section
 40 2800) of Division 3 of the Fish and Game Code).

1 (b) The local land use authority has obtained from the Secretary
2 of the Interior or the Secretary of Commerce an incidental take
3 statement pursuant to Section 1536 of Title 16 of the United States
4 Code or an incidental take permit pursuant to Section 1539 of Title
5 16 of the United States Code that authorizes the taking of an
6 endangered species or a threatened species that is listed pursuant
7 to Section 1533 of Title 16 of the United States Code and that is
8 an endangered species, threatened species, or a candidate species
9 pursuant to the California Endangered Species Act (Chapter 1.5
10 (commencing with Section 2050) of Division 3 of the Fish and
11 Game Code).

12 (c) More than 50 percent of the land of the county in which the
13 project is located is owned by the federal government.

14 SEC. 5. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 a local agency or school district has the authority to levy service
17 charges, fees, or assessments sufficient to pay for the program or
18 level of service mandated by this act, within the meaning of Section
19 17556 of the Government Code.