

CALIFORNIA COASTAL COMMISSION

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June 09, 2012

TO: Coastal Commissioners and Interested Public

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

SUBJECT: LEGISLATIVE REPORT FOR JUNE 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 05/30/12. 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.

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 Sate Lands Commission.

Introduced 02/17/11
Last Amended 05/27/11
Status Held in Senate Natural Resources and Wildlife Committee

AB 1336 (Fletcher) Coastal resources: local coastal plans

This is a spot bill.

Introduced 02/18/11
Status Assembly Rules Committee. Died at desk.

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
Last Amended 03/22/12
Status Senate G.O. Committee
Commission Position Support

AB 1825 (Garrick) State parks: “Save the Ocean” mosaic

This bill would authorize the City of Encinitas to place the “Save the Ocean” mosaic, aka the “Surfing Madonna” mosaic, in Moonlight State Park, without first gaining approval from the Department of Parks and Recreation.

Introduced 02/21/12
Last Amended 03/29/12
Status Held in Assembly Water, parks & Wildlife Committee

AB 2005 (Garrick) Oil spills: contingency plans

This bill requires a non-tank, noncommercial vessel weighing between 300 gross tons and 400 gross tons to submit the following to the Office of Oil Spill Prevention and Response (OSPR), at least 96 hours before arriving in California waters:

- Evidence of financial responsibility to respond to an oil spill.
- Payment of the nontank vessel oil spill prevention fee.
- The vessel's particulars, such as the size and dimensions of the vessel.

The bill sunsets its provisions as of January 1, 2015.

Introduced 02/21/12
Last Amended 05/01/12
Status Senate Rules Committee

AB 2082 (Atkins) Public lands: State Lands Commission: violations

This bill would authorize the State Lands Commission to impose civil penalties of up to \$1,000 per day for persons placing unauthorized development or carrying out unauthorized uses on lands under the Commission’s jurisdiction.

Introduced 02/23/12
Last Amended 04/19/12
Status Senate Judiciary Committee

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 Held in Assembly Natural Resources Committee
Commission Position Oppose

AB 2211 (Jones) Coastal resources: California Coastal Act of 1976

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 Held in Assembly Natural Resources Committee
Commission Position Oppose

AB 2226 (Hueso) Agency proceedings: evidence: presumption

This bill would require all state agencies and local governments to adhere to Section 662 of the Evidence Code when determining who holds full beneficial title to property, rather than following the Administrative Procedures Act or their own specific statute and regulations.

Introduced 02/23/12
Last Amended 03/22/11
Status Senate Judiciary Committee
Commission Position Oppose

AB 2267 (Hall) Marine resources and preservation

This bill would revise the calculation of “cost savings” and revise the factors to be taken into account in determining “net benefit to the marine environment” for the purpose of partial oil structure removal (“rigs to reefs”) as administered by the Department of Fish and Game.

Introduced 02/24/12
Last Amended 03/26/11
Status Assembly Third Reading

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 Third Reading
Commission Position Oppose

SCR 84 (Kehoe) California Coastal Protection Week

This Senate Concurring Resolution commemorates the 40th anniversary of the passage of Proposition 20, acknowledges the ensuing accomplishments of the California Coastal Management Program, and designates the second week of September every year as California Coastal Protection Week.

Introduced 04/16/12
Last amended 05/03/12
Status Assembly desk
Commission Position Support

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 G.O. Committee

SB 162 (Anderson) Economic development: federally recognized tribes

As amended 5/21/12 and relevant to the Commission, this bill would prohibit state agencies from opposing a fee-to-trust land acquisition application that is for the purpose of housing, environmental protection or cultural preservation. It would also define a "federally recognized tribe" means a tribe that appears on the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, published pursuant to Section 479a-1 of Title 25 of the U.S. Code.

Introduced 12/06/10
Last Amended 05/21/12
Status Assembly Governance Organization Committee

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
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 authorize a lead agency conducting environmental review pursuant to CEQA to grant an exemption for a fireworks display.

Introduced 01/19/12
Last Amended 05/02/12
Status Assembly Desk

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
Last Amended 04/09/12
Status Senate Third Reading
Commission Position Support

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, hearing cancelled at author's req.

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, hearing cancelled at author's request

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
Last Amended 05/25/12
Status Assembly Desk

Government Performance and Accountability Act

The Secretary of State is currently verifying signatures submitted by California Forward to place a constitutional amendment on the November ballot that would address a variety of reforms to the legislative and budget process. Among these reforms is a provision that allows local governments to adopt provisions in local plans that would override state laws and regulations. The implications of allowing a local override of state laws could negatively impact the implementation of the Coastal Act. The Commission may want to consider taking a position on this initiative, should it qualify.

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BILL ANALYSIS
SB 162 (Anderson)
As Amended May 21, 2012

RECOMMENDED POSITION

Staff recommends the Commission **Oppose** SB162.

SUMMARY

In relevant part to the Commission, SB 162 would prohibit any state agency from opposing a tribal “fee-to-trust” acquisition application if the acquisition was intended for the purpose of housing, environmental protection or cultural restoration. The bill would also define a “federally recognized tribe” as a tribe that has been included on the list of “Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs”, published pursuant to Section 479a-1 of Title 25 of the United States Code.

EXISTING LAW

Section 465 of Title 25 of the United States Code authorizes the federal government to acquire land in trust for an Indian tribe’s benefit. This process is known as a “fee-to-trust acquisition.” The Bureau of Indian Affairs (BIA), under the Department of the Interior (DOI), has jurisdiction over fee-to-trust applications. Once land is annexed in a federal fee-to-trust process, the land is taken out of city/county/state jurisdiction in perpetuity and added to the reservation of the tribal applicant. The practical effect of this within the coastal zone is that tribal lands taken into trust are removed from the coastal zone for purposes of the Commission’s review authority under the Coastal Act or the Coastal Zone Management Act (CZMA). Because federally recognized tribes are considered sovereign nations, state and local land use laws and regulations have no force and effect on trust lands. Once taken into trust, the regulations in 25 CFR Part 151 do not authorize the Department to impose restrictions on a Tribe's future use of land, or revoke its status. Only Congress can revoke trust status.

Because a fee-to-trust acquisition is a federal action, the Coastal Commission has review authority under the Coastal Zone Management Act. The Commission and other state agencies also have the ability to comment as part of the NEPA consultation process. This process allows state agencies to concur with or object to the acquisition. The BIA’s action is subject to appeal and ultimately to judicial review. Plaintiffs must have standing in order to litigate.

ANALYSIS

The Commission’s authority over fee-to-trust acquisitions is expressed through federal consistency review. Recognizing that fee-to-trust acquisitions may be an important mechanism for facilitating Native American self-determination, the Commission has generally been supportive of these acquisition applications when they are for purposes, such as economic development, that can be carried out consistent with Coastal Act policies. Since 2000, the Commission has concurred with nine of the ten fee-to-trust applications it has considered. At least three of the Commission’s concurrence determinations relied upon changes pre-negotiated with the tribes relating to future uses of the lands taken into trust. The Commission concurred

with every fee-to-trust application since 2000 except for one: the Big Lagoon Rancheria's application to take five acres of land into trust for housing. The Commission's objections were based on cumulative impacts and concentration of development. The Commission is currently participating in an administrative appeal regarding this matter.¹

While the Commission rarely objects to applications for fee-to-trust acquisition, the ability to do so when necessary is important, because there is little state oversight once an acquisition is complete. The development that follows fee-to-trust acquisition has the potential to cause significant environmental and land use impacts, including impacts to traffic and circulation, sensitive habitat, public access and public service impacts. Subsequent development does not undergo environmental review under CEQA, nor any local permit process. Because local governments cannot regulate tribal trust lands, LCP standards do not apply to development. Nor do standard regulatory instruments such as coastal development permits, discharge permits, streambed alteration permits.

Because there is no prohibition for a change of use once land is taken into trust by a tribal government, a tribe can apply to the federal government to take land into trust for purposes of non-gaming activities such as housing, environmental protection, or cultural preservation and upon approval of the application immediately begin planning and implementation of a gaming facility or other type of project. This has occurred on some fee-to-trust lands in the past, including Big Lagoon. While many fee-to-trust acquisitions don't raise public agency concerns, those that have been pursued to facilitate controversial projects such as casinos, golf courses, and resorts have generated controversy with surrounding communities and local governments.

Because federally recognized tribes are sovereign nations and trust lands are not subject to the same regulatory process as land uses on other privately held lands, the only meaningful opportunity for the State to influence the outcome of a fee-to-trust acquisition is before the land is taken into trust. Aside from the federal consistency review process, this occurs during the public comment period when the BIA is considering the application and conducting NEPA review. If state agencies are prohibited from objecting to these acquisition applications, the State will forfeit this opportunity to raise issues and objections on the part of the state and local communities where the impacts are most significant. At least one such action is currently pending. On May 14 of this year, the Attorney General objected to a 535-acre fee-to-trust acquisition in the City of San Jacinto, based on the impacts to city residents and municipal services.

If SB 162 were to become law, the Commission would retain its federal consistency review authority under the Coastal Zone Management Act. However, the language prohibiting a state agency from opposing a fee-to-trust acquisition would arguably prevent the Commission from either objecting to, or conditionally concurring with, future consistency determinations by the BIA regarding fee-to-trust acquisitions.

The Commission would also lose the benefit of other agencies' review of such applications. In its own analysis, the Commission would not be able to utilize information generated by the Department of Fish and Game, State Parks, Caltrans, the State Water Resources Control Board, etc. SB 162 would significantly diminish state authority in these matters, and has the potential to undermine the Commission's existing authority under the CZMA. **For the forgoing reasons, staff recommends the Commission oppose SB 162.**

¹ The Commission's concurrence was conditional. The Big Lagoon Rancheria did not accept the conditions. The practical effect of this is the same as an "objection."