

CALIFORNIA COASTAL COMMISSION

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**W5b**

DATE: March 12, 2014

TO: Coastal Commissioners and Interested Public

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

SUBJECT: LEGISLATIVE REPORT FOR MARCH, 2014

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 02/26/14. 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 Homepage at www.coastal.ca.gov

 2014 Legislative Calendar

Jan 1	Statutes take effect
Jan 6	Legislature reconvenes
Jan 10	Budget must be submitted by Governor
Jan 17	Last day for Policy Committees to hear fiscal bills introduced in 2013
Jan 24	Last day to submit bill requests to Legislative Counsel
Jan 31	Last day for each house to pass 1 st House bills
Feb 21	Last day for bill introduction
April 10	Spring Recess begins
April 21	Legislature reconvenes
May 2	Last day for Policy Committees to hear and report 1 st House fiscal bills to the Floor
May 9	Last day for Policy Committees to hear and report 1 st House non-fiscal 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 meet prior to June 2
May 27-30	Floor Session only. No committees may meet
May 30	Last day to pass bills from house of origin
June 2	Committee hearings resume
June 15	Budget must be passed by midnight
June 26	Last day for Legislative measure to qualify for November ballot
June 27	Last day for Policy Committees to meet and report bills

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. 4) "Enrolled" means the Legislature has passed the bill, but the Governor has not yet acted. 5) "Chapered" means the bill has been signed.

July 3 Summer Recess begins
Aug 4 Legislature reconvenes from Summer Recess
Aug 15 Last day for Fiscal Committees to hear and report bills to the Floor
Aug 30 Last day for Fiscal Committees to meet and report bills to the Floor
Aug 18-31 Floor session only. No committees may meet
Aug 22 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
Sept 30 Last day for Governor to sign or veto bills

PRIORITY LEGISLATION

AB 158 (Levine) Solid waste: single-use carryout bags

This bill would prohibit specified retail outlets from providing plastic single-use carryout bags, and require the retail outlets to make reusable or compostable bags available to customers. The bill would allow a city or county to impose administrative civil penalties for violations of this measure, payable to the office that brought the action.

Introduced 01/22/13
Last Amended 04/09/13
Status Assembly Appropriations Committee. Suspense File.

AB 203 (Stone) California Coastal Commission: restoration and cease and desist orders: report

As amended, this bill would authorize the Coastal Commission submit an annual report to the Legislature describing all the enforcement orders acted upon during the previous year.

Introduced 01/30/13
Last Amended 01/27/17
Status Senate Rules Committee

AB 248 (Gorell) Energy: power plants: Ventura County

This bill would require the Public Utilities Commission and the Independent System Operator, in consultation with specified entities including the Coastal Commission, to submit a report to the Legislature by January 1, 2014, detailing recommended legislative actions, policies and incentives necessary to accomplish specific objectives related to once-through-cooling technologies at Ventura County's two coastal power plants.

Introduced 02/07/13
Last Amended 04/04/13
Status Assembly Natural Resources Committee. Held in Committee.

AB 288 (Levine) Coastal Resources

This bill would add PRC Section 30515.5 to require the Coastal Commission to provide a Spanish language translation of its monthly meeting notice.

Introduced 02/11/13
Last Amended 01/09/14
Status Senate N.R.&W. Committee

AB 474 (Stone) Public Resources Code: coastal resources

This bill would require the Coastal Commission to revise its standard ex-parte disclosure forms to so that ex-parte communication disclosures include the names of all individuals participating in the meeting, and a copy of all written and graphic material presented during the meeting.

Introduced 02/19/13
Last Amended 01/06/14
Status Senate N.R.&W. and Judiciary Committees

AB 521 (Stone) Solid waste: plastic

This bill would direct the Department of Resources Recycling and Recovery to develop a list of major sources of marine plastics pollution and notify producers of listed items that they are required to design and submit a plan to reduce the producer's proportion of covered items in the marine environment. The producer would be required to meet the marine plastic pollution reduction targets that the producer of the covered item would be required to achieve, as specified in the regulations

Introduced 02/20/13
Last Amended 05/07/13
Status Assembly Appropriations Committee. Suspense File. Died on Suspense.
Commission Position Support

AB 881 (Chesbro) Oil spill prevention and administrative fee

This bill would increase the existing \$0.07 fee on barrels of crude oil or petroleum products landed at a marine terminal, eliminate the sunset on the existing fee of \$0.065, allow the OSPR Administrator to adjust the fee annually based on the California Consumer Price Index, and transfer up to \$2,000,000 from fees collected to the Oiled Wildlife Care Network until January 1, 2016. The provisions of this section would take effect January 1, 2015, and sunset on January 1, 2016.

Introduced 02/22/13
Last Amended 09/04/13
Status Senate Inactive File
Commission Position Support

AB 976 (Atkins) Coastal resources

This bill would authorize the Commission to impose administrative penalties for violations of the Coastal Act. All funds collected under this provision would be deposited into the Violation Remediation Account, and that the Commission's administrative penalty authority would sunset after a period of three years.

Introduced 02/22/13
Last Amended 08/26/13
Status Conference Committee
Commission Position Support

AB 1102 (Allen) Public Resources Code: coastal resources

This bill would delay the implementation of any rule or regulation to eliminate or restrict beach burning in existing fire rings until such time as the local government with jurisdiction obtains a coastal development permit (CDP) to do so. The bill clarifies that any CDP issued to remove beach fire rings or restrict their use must comply with all requirements of the Coastal Act.

Introduced 02/22/13
Last Amended 01/17/14
Status Senate E.Q. Committee and Senate N.R. & W. Committee
Commission Position [Recommend Support, analysis attached](#)

AB 1142 (Bloom) State beaches and parks: smoking ban

This bill would make it an infraction to smoke a tobacco product on a state coastal beach or in a unit of the state park system.

Introduced 02/22/13
Last Amended 03/21/13
Status Assembly G.O. Committee. Died in Committee

AB 1603 (Stone) Outdoor education

This bill would establish the Outdoor Environmental Education and Recreation Program in the Department of Parks and Recreation, for purposes of increasing outdoor programs for underserved and at-risk populations. The bill would create the Outdoor Environmental Education and Recreation Fund to receive private donations and General Fund support for grants to be awarded by the Director of Parks. The California Environmental Education Interagency Network, which Coastal Commission staff participates in, would serve as an advisor to the director in developing the program components.

Introduced 02/05/14
Status Assembly Water, Parks and Wildlife Committee.

AB 2035 (Chesbro) State beaches and parks: smoking ban

This bill would require that an unspecified amount of State Tidelands revenue be made available for deposit into the State Coastal Conservancy Fund, for expenditure for the preservation and protection of coastal lands.

Introduced 02/22/13
Last Amended 03/21/13
Status Assembly G.O. Committee. Introduced 02/22/13
Last Amended 03/21/13
Status Assembly G.O. Committee.

AB 2516 (Gordon) Sea level rise planning: data base

This bill would require the Natural Resources Agency, in collaboration with the Ocean Protection Council, to create a Planning for Sea Level Rise Database on its public website describing steps being taken throughout the state to address sea level rise. The bill would require the Coastal Commission to provide information regarding which jurisdictions have adopted LCPs, which have not, and which LCPs contain sea level rise policies.

Introduced 02/21/13
Status Assembly First Reading.

SB 40 (Pavley) Safe, Clean, and Reliable Drinking Water Act of 2012

This bill declares that it is the intent of the Legislature to amend the Safe, Clean, and Reliable Drinking Water Act of 2012 for the purpose of reducing and potentially refocusing the \$11,140,000,000 bond. *Amendments of 01/06 add an urgency clause.*

Introduced 12/10/12
Last Amended 01/06/14
Status Returned to Secretary of Senate

SB 241 (Evans) Oil Severance Tax Law

This bill would impose a severance tax of 9.9% of the gross value of each barrel of oil extracted from California after January 1, 2014, for deposit into the Oil Severance Fund, which this bill creates. The Department of Conservation would allocate those revenues to the UC Regents, the California State University Trustees, the Board of Governors for the Community Colleges, and the Department of Parks and Recreation.

Introduced 05/07/13
Status Senate Appropriations Committee. Suspense File. Held in Committee

SB 257 (Hancock) Coastal resources: physical adaptations to climate change

This bill states that it is the intent of the Legislature to enact legislation to address coastal physical adaptations to climate change.

Introduced 02/13/13
Status Returned to Secretary of Senate

SB 270 (Padilla) Solid waste: single use carry out bags

This bill would prohibit retail stores in California from providing single use plastic bags to customers. The Bill would also prohibit stores from providing paper bags unless they were sold for a minimum of 10 cents per bag.

Introduced 02/14/14
Status Assembly Rules Committee

SB 418 (Jackson) Nuclear Energy Planning and Responsibility Act

This bill would require the PUC to require an applicant for relicensing a nuclear power generating facility submit a detailed study of the full needs and costs of relicensing to assess cost effectiveness of continued operation.

Introduced 02/20/13
Last Amendment 06/26/13
Status Assembly Utilities and Commerce Committee. Failed passage in committee.

SB 461 (Leno) State tide and submerged lands: mineral extraction leases: revenues

This bill creates the Coastal Adaptation Fund through re-allocation of up to \$10,000,000 in state tidelands revenues to state coastal management agencies, including the Coastal Commission for work related to sea level rise.

Introduced 02/13/13
Last Amended 06/24/13
Status Held in Assembly Appropriations Committee. Suspense File

SB 511 (Lieu) Trade promotion of California ports

This bill would require the Governor's Office of Business and Economic Development to develop a strategy for the international promotion of trade for California ports.

Introduced 02/21/13
Last Amended 01/22/14
Status Assembly First Reading

SB 700 (Wolk) Natural resources: parks: carryout bags

This bill would require retail establishments to charge a \$0.05 fee for single-use carryout bags. A portion of the fee would be deposited into the Local Environmental Enhancement Fund (LEEF), which would be created by this bill. Funds from the LEEF would be available for expenditure by the Natural Resources Agency, upon appropriation by the Legislature, as grants to local governments for parks maintenance and litter abatement.

Introduced 02/22/13
Last Amended 04/23/13
Status Held in Senate Appropriations Committee. Suspense File.

SB 848 (Wolk) Safe Drinking Water, Water Quality, and Water Supply Act of 2014

This measure would repeal the \$11,140,000,000 General Obligation Bond Water Bond of 2012 Water Bond and replace it with \$6,825,000,000 measure that, if approved by the voters, would finance a safe drinking water, water quality and water supply program.

Introduced 01/09/14
Last Amended 02/20/14
Status Senate Governance and Finance Committee.

SB 968 (Hill) Public lands: Martin’s Beach property: access

This bill would direct the State Lands Commission to exercise its eminent domain authority to initiate negotiations to purchase all or a portion of the property known as Martin’s Beach County in San Mateo for the purpose of public access.

Introduced 02/10/14
Status Senate Rules Committee
Commission Position [Recommend Support, analysis attached](#)

SB 1017 (Evans) Oil Severance Tax

This bill would impose an oil tax of 9.5%, and gas severance tax of 3.5% upon any operator for the extraction of oil or gas in California. The bill would require the board to deposit all tax revenues, penalties, and interest collected pursuant to these provisions into the California Higher Education Fund, which is established by this measure.

Introduced 02/14/14
Status Senate Rules Committee.

SB 1096 (Jackson) California Coastal Commission: appointments

This bill would repeal Section 30310.5 of the Coastal Act. The effect of this would be that a public member of the Commission would not be able to simultaneously hold two conflicting public offices.

Introduced 02/19/14
Status Senate Rules Committee

SB 1132 (Mitchell) Oil and gas development: well stimulation treatments

This bill would require the Natural Resources Agency to include additional subjects in the scientific study it is conducting under the requirements of SB 4 (Pavley, 2013) including the cumulative health and environmental impacts of both on and offshore well stimulation, aka “fracking”. It would also prohibit all fracking activities in the state until the report is complete, an independent committee has reviewed the report, and the Governor has issued findings regarding the safety of those activities.

Introduced 02/20/14
Status Senate Rules Committee

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**BILL ANALYSIS****AB 1102 (Allen)**

As Amended, January 17, 2014

SUMMARY

AB 1102 states that it is the preference of the Legislature to avoid the net loss of beach fire rings. The bill would add PRC Section 30607.8 to the Coastal Act to clarify that a public agency seeking to comply with an Open Burning rule or regulation issued by the South Coast Air Quality Management District (SCAQMD) relating to beach fire rings must first obtain a coastal development permit (CDP) from the Coastal Commission. The bill would require the CDP application to include an analysis of alternatives to fire ring removal, and requires that any such permit must be consistent with all requirements of the Coastal Act. The bill would prevent applicants from utilizing Section 30005 to avoid permit review by claiming a nuisance exemption.

The bill would also amend the Health and Safety Code to delay the implementation of any SCAQMD rule or regulation to eliminate or restrict beach burning in existing fire rings until such time as the local government with jurisdiction obtains a coastal development permit (CDP) to do so.

PURPOSE OF THE BILL

The purpose of the bill is to ensure that no beach fire rings are removed from public beaches in Orange and Los Angeles Counties without Coastal Act review as local governments attempt to comply with new air quality requirements. Additionally, it is the author's intent to prevent the SCAQMD from issuing fines to local governments for non-compliance until they have had an opportunity to apply for a coastal development permit in accordance with existing law.

EXISTING LAW

Under existing law, the California Coastal Commission is charged with implementing the California Coastal Act of 1976 (<http://www.coastal.ca.gov/coastact.pdf>). Chapter 3 of the Coastal Act establishes strong resource protection and public access policies for California's coastal zone. The Act's core policies include protection of sensitive coastal resources, enhancing and providing for maximum public access to and along the shoreline, and establishing priorities for coastal-dependent development and visitor-serving land uses over other types of private development.

Typically, until local governments in the coastal zone adopt a certified Local Coastal Program (LCP), the Commission retains permitting authority for all new development above the mean high tide line in the coastal zone of that jurisdiction. The Commission also retains limited appellate authority in areas governed by a certified LCP, including over development approved between the first public road and the sea. Removal, limitation, change in use or restriction of

BILL ANALYSIS AB 1102 (Allen)

Page 2

access to beach fire rings falls under the Coastal Act definition of development and hence the Commission's permit and/or appellate jurisdiction.

The responsibility for establishing air quality control programs and emission standards rests with the California Air Resources Board and local air pollution control districts. Under the Public Health and Safety Code and the Clean Air Act, the State Air Resources Board and air pollution control districts, including the SCAQMD, are the principal public agencies responsible for the establishment of ambient air quality and emission standards and air pollution control programs through, in part, the promulgation of rules and regulations, and the imposition of administrative fines and penalties.

The SCAQMD adopted Rule 444 in 1976, relating to a variety of regulated and prohibited activities that affect air quality. As originally adopted, Rule 444 did not apply to open burning for the "Preparation or warming of food for human consumption; or Generating warmth at a social gathering." These exemptions for recreational burning were repeated in Rule 445, adopted in 2008, which applied to wood burning devices in residences (fire places and wood stoves) but specifically exempted open outdoor fires.

In 2013, the SCAQMD amended Rule 444 to prohibit burning of wood or wood products in public sandy beach areas unless the beach burning occurs in devices that are:

- (1) At least 700 feet from the nearest residence;
- (2) At least 100 feet apart from one another; or
- (3) At least 50 feet apart from one another, if there are no more than 15 devices per contiguous beach area within the city's boundaries.

The Rule applies only to open beach burning in Orange and LA Counties, but its impact appears to be focused primarily on the City of Newport Beach. The amendment to Rule 444 becomes effective March 1, 2014. The amendment also refers to the authority of local governments to restrict beach burning pursuant to their nuisance abatement authority.

Section 30414 of the Coastal Act acknowledges that the establishment and regulation of air quality and emission standards and air pollution control programs rests with the State Air Resources Board and the air pollution control districts and states:

- (a) The State Air Resources Board and air pollution control districts established pursuant to state law and consistent with requirements of federal law are the principal public agencies responsible for the establishment of ambient air quality and emission standards and air pollution control programs. The provisions of this division do not authorize the commission or any local government to establish any ambient air quality standard or emission standard, air pollution control program or facility, or to modify any ambient air quality standard, emission standard, or air pollution control program or facility which has been established by the state board or by an air pollution control district.
- (b) Any provision of any certified local coastal program which establishes or modifies any ambient air quality standard, any emission standard, any air pollution control program or facility shall be inoperative.

- (c) The State Air Resources Board and any air pollution control district may recommend ways in which actions of the commission or any local government can complement or assist in the implementation of established air quality programs.

Section 30005(b) provides that the Coastal Act does not limit the power of any city or county to declare, prohibit, and abate nuisances.

BACKGROUND

Corona del Mar State Beach is owned by the state Department of Parks and Recreation and operated by the City of Newport Beach under a 30-year agreement that expires in August 2029. In 2009, the city began discussing changes to its fire ring policy. The City's Parks, Beaches and Recreation Commission (PB&R Commission) proposed amendments that would more closely regulate the types of materials burned in the fire rings. Some Council members expressed a desire to simply remove all of the fire rings, due to health concerns, trash, odors, public safety and noise cited by beachfront residents. One council member expressed concern over the fact that the police have received calls as early as 4:00 a.m. on busy beach days "because people are there two hours before the beach opens trying to reserve [fire rings]." The council directed staff to bring back a report to the council that would outline the process for removing the rings.

The action caused considerable local controversy. Due to the public outcry over the issue the council tabled the idea in favor of waiting for "calmer waters".

Two years later, the issue was revisited. In March of 2012, the City Council unanimously voted to remove all 60 fire rings from the City's beaches including 27 rings at Corona del Mar State Beach and 27 rings on either side of the Balboa Pier. The city based its action on testimony from neighbors regarding the negative health impacts of wood smoke, including personal anecdotes and general published studies. Because the city does not have a certified LCP, it applied to the Commission for a Coastal Development Permit (CDP) to remove the fire rings.

On March 4, 2013, the Commission held a hearing on the city's permit application. The staff report recommended denial, citing inconsistencies with Chapter 3 policies protecting public access, low cost visitor-serving recreational opportunities, and coastal-dependent recreation, and lack of specific scientific evidence demonstrating that air quality impacts from the fire rings warranted their removal. In addition, the staff report noted the fact that the SCAQMD did not regulate open beach burning.

During that hearing, the Commission was informed that the SCAQMD may soon be considering the possibility of amending its regulations to include open beach fires. Accordingly, the Commission continued the item so that its final action could be informed by any new information that might be generated by any future SCAQMD action.

The SCAQMD did address the issue shortly thereafter. As originally proposed, the amendments to Rule 444 would have banned all outdoor beach fires in Orange and LA Counties. There was significant public opposition to this approach which was extremely heated, and the proposal generated national media coverage. Ultimately, the final rule adopted on July 12, 2013, was drafted in such

BILL ANALYSIS AB 1102 (Allen)

Page 4

a way that as a practical matter, it applies only to public beach fire rings in the city of Newport Beach and to a lesser extent, Huntington Beach. The amended rule prohibits open wood fires on sandy beaches within 700 feet of residences and 100 feet from other fire rings. There has been continuing public controversy over the new rule, including a law suit seeking a temporary injunction on the rule, which was denied, and an Assembly Resolution in support of retaining the fire rings, which passed both houses of the Legislature with unanimous support.

Soon after the new rule was adopted, Newport Beach withdrew its CDP application, and approved a plan to remove 33 of the 60 fire rings and begin a pilot project to replace the wood-burning rings with gas-fired rings near the Balboa Pier. The Council has stated its intention to apply to the Commission for a CDP, but it has not yet done so. Commission staff have been working with the city staff to find an approach that complies with Rule 444 without reducing the number or significantly diminishing the public experience of these important recreational amenities and can thus be found consistent with the Coastal Act. However, the rule will take effect before the City will be able to obtain a CDP from the Commission

The City of Huntington Beach has not taken any action to comply with Rule 444.

ANALYSIS

Southern California beach fire rings are a long-standing recreational tradition with immense public support. Fire rings are one of the most popular beach activities enjoyed by the public at the beaches affected by the new restrictions. They provide the opportunity for important recreational activities like family reunions, birthdays, anniversaries, and baptisms. They are used by those who celebrate Persian New Year in March by symbolically burning all of the misfortunes of the previous year in small bonfires that they congregate around with family and friends. The fire rings also contribute significantly to the local economies in surrounding areas.

Among the most important requirements of the Coastal Act is the mandate to protect, provide, enhance, and maximize public recreational access opportunities to and along the coast consistent with strong resource conservation principles and private property rights. The Coastal Act also emphasizes the protection of existing lower cost recreational facilities. The California Coastal Act requires the Commission to maximize opportunity for coastal access and contains the following relevant policies:

Section 30001.5 of the California Coastal Act declares that the basic goals of the state for the coastal zone include maximizing public access to and along the coast and maximizing public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

Section 30210 of the Coastal Act requires that maximum recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30213 of the Coastal Act requires that: "Lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. Developments providing public recreational opportunities are preferred."

BILL ANALYSIS AB 1102 (Allen)

Page 5

Section 30221 requires that oceanfront land suitable for recreational use shall be protected for recreational use and development.

In addition, Section 30003 of the Coastal Act states that all public agencies shall comply with the provisions of the California Coastal Act.

The newly amended Rule 444 does not override the Coastal Act statutory requirement for a permit to remove the fire rings. The Commission does not dispute that individuals can have adverse health effects from wood smoke. Nor does it question the scientific research that has concluded that particulate matter in wood smoke in high concentrations can be a public health hazard. The Commission considers public health and safety matters when implementing the public access policies of the Coastal Act, and would consider all substantial evidence related to the issue when and if an application is submitted. The Commission is also precluded from establishing or modifying ambient air quality or emission standards which have been established by the state board or by an air pollution control district.

However, the removal, placement and/or use of beach fire rings is not the same as establishing or modifying an air quality or emission standard. Removal of the fire rings would deny a diverse visitor population access to those lower cost visitor and recreational facilities and therefore raises questions of consistency with the Coastal Act. The current dilemma is that leaving existing fire rings in place in locations like Newport Beach would put the affected cities in conflict with Rule 444 and potentially subject them to daily fines from the SCAQMD. But removing them without a permit would violate the Coastal Act.

AB 1102 seeks to resolve this conflict by delaying the implementation of the rule until a public agency seeking to comply with Rule 444 gets a coastal development permit from the Coastal Commission to do so. It also clarifies that Section 30005 cannot be invoked to avoid Coastal Commission review by declaring a “nuisance”. In applying for a permit, the bill would require the public agency to conduct an analysis of ways to meet the rule without reducing the number of fire rings. The bill does not prohibit the Commission from issuing a permit to remove fire rings, but the Commission could exercise its discretion under the Coastal Act to condition any such permit to achieve full compliance with the Act.

Although AB 1102 is partially declaratory of existing law with respect to the existing requirement to obtain a CDP for the restricted use or removal of fire rings, the bill is warranted because it seeks to harmonize the overlapping jurisdictions of two state agencies. By clarifying that any local response to Rule 444 must also be consistent with Coastal Act policies, it is directly supportive of Section 30003 of the Coastal Act, which states that all public agencies shall comply with the provisions of the California Coastal Act. Most importantly, it precludes the application of Section 30005 to avoid Coastal Act review by declaring beach bonfires a “nuisance,” and gives local governments’ additional time to apply for permits without risk of fines.

It is important to note that compliance with Rule 444 and the Coastal Act are not mutually exclusive. The affected cities can comply with both the Coastal Act and Rule 444 by simply

BILL ANALYSIS AB 1102 (Allen)

Page 6

distributing their fire rings over a larger geographic area. Spacing the rings so that they are located at least 700 feet from homes or 100 feet from each other would allow the continued burning of fire wood consistent with Rule 444 while also meeting the public access requirements of the Coastal Act. There is an exception which allows wood burning fire rings to be less than 700 feet from residences Newport and 50 feet apart if there are no more than 15 fire rings on a non-contiguous stretch of beach. Both and Huntington Beach are of adequate size to accommodate such spacing.

Absent this bill it appears that on March 1, 2014, the date Rule 444's beach burning rule becomes effective, the City will either be in violation of Rule 444 if it hasn't relocated, removed, or closed access to the fire rings, or be in violation of the Coastal Act if it has. Because it is retroactive to March 1, 2014, AB 1102 will resolve this regulatory conflict.

This type of solution is preferred by the Legislature, and also consistent with Coastal Act policies. Section 30212.5 emphasizes the importance of distributing public facilities, like fire rings, throughout an area "so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area..."

AB 1102 will increase the likelihood that future beach burning will occur in a manner that is less problematic for beachfront residents, without disadvantaging the beach-going public.

RECOMMENDED POSITION

Staff recommends the Commission **Support** AB 1102.

AMENDED IN ASSEMBLY JANUARY 17, 2014
 AMENDED IN ASSEMBLY JANUARY 6, 2014
 AMENDED IN ASSEMBLY AUGUST 14, 2013
 AMENDED IN ASSEMBLY MARCH 21, 2013
 CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1102

**Introduced by Assembly Members Allen and Quirk-Silva
 (Principal coauthors: Assembly Members Donnelly and Mansoor)
 (Coauthors: Assembly Members Beth Gaines and Hagman)
 (Coauthors: Senators Correa, Nielsen, Walters, and Wyland)**

February 22, 2013

An act to add Section ~~40440.15~~ 40440.9 to the Health and Safety Code, and to add Section 30607.8 to the Public Resources Code, relating to ~~nonvehicular air pollution~~ coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 1102, as amended, Allen. ~~South Coast Air Quality Management District: beach burning: coastal development permit.~~ *Beach burning: coastal development permit: South Coast Air Quality Management District.*

(1) Existing law establishes the South Coast Air Quality Management District, vested with the authority to regulate air emissions from statutory sources located in the South Coast Air Basin, and establishes a district board to govern the district.

This bill, retroactive to March 1, 2014, would make inoperative an open burning rule that restricts the use or location of a beach fire ring adopted by the south coast district until a public agency with jurisdiction over the area obtains and implements an approved coastal development permit, as specified. The bill would require the public agency to take all necessary steps to ensure that a coastal development permit is obtained and require the coastal development permit be obtained and implemented no more than 2 years after the enactment of the open burning rule.

(2) Existing law, the California Coastal Act of 1976, provides for the planning and regulation of a development and requires any person undertaking development in the coastal zone to obtain a coastal development permit issued by the California Coastal Commission in accordance with prescribed procedures.

This bill, retroactive to March 1, 2014, would subject the removing or restricting the use of a beach fire ring, as defined, to the requirements of the California Coastal Act and would require the application for a coastal development permit to remove or restrict the use of a beach fire ring to include specified information. By increasing the duties of local officials with respect to the California Coastal Act, the bill would impose a state-mandated local program.

(3) This bill would find and declare that these provisions relate to an issue of statewide concern and not a municipal affair, as specified.

(4) This bill would make legislative findings and declarations as to the necessity of a special statute for the South Coast Air Quality Management District.

(5) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~(1) Existing law establishes the South Coast Air Quality Management District vested with the authority to regulate air emissions from stationary sources located in the South Coast Air Basin and establishes a district board to govern the district. Existing regulations of the district prohibit a person from engaging in a recreational, ceremonial, or open burning conducted in a public coastal area marked by an accumulation of sand, as specified.~~

~~This bill would prohibit the district from enacting a rule that regulates, prohibits, or restricts a person from engaging in a beach burning for a recreational, ceremonial, or open burning conducted in a public coastal area marked by an accumulation of sand.~~

~~(2) Existing law requires any person undertaking development in the coastal zone to obtain a coastal development permit issued by the California Coastal Commission in accordance with prescribed procedures.~~

~~This bill would require a local or regional authority located in the district to obtain a coastal development permit in order to regulate, prohibit, or restrict the use of fire rings, as defined. By imposing new duties on local governments, this bill would impose a state-mandated local program.~~

~~This bill would find and declare that these provisions are an issue of statewide concern and not a municipal affair, as specified.~~

~~(3) This bill would make legislative findings and declarations as to the necessity of a special statute for the south coast district.~~

~~(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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

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

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

P3 1 *SECTION 1.*
 Section 40440.9 is added to the Health and Safety
 2 *Code, to read:*
 3 *40440.9. (a) If the south coast district adopts an open burning*
 4 *rule that restricts the use or location of a beach fire ring, as defined*
 5 *by Section 30607.8 of the Public Resources Code, the rule shall*
 6 *not be operative in a particular area until the public agency with*
 7 *jurisdiction over that area obtains and implements an approved*
 8 *coastal development permit consistent with the California Coastal*
 9 *Act (Division 20 (commencing with Section 30000) of the Public*
 10 *Resources Code), including Section 30607.8 of the Public*
 11 *Resources Code.*
 12 *(b) The public agency with jurisdiction over the area shall take*
 13 *all necessary steps to ensure that an approved coastal development*
 P4 1 *permit is obtained and implemented in accordance with the*
 2 *California Coastal Act, including Section 30607.8 of the Public*
 3 *Resources Code. The coastal development permit shall be obtained*
 4 *and implemented no more than two years after the enactment of*
 5 *the open burning rule adopted by the south coast district.*
 6 *(c) The provisions of this section shall be applied retroactively*
 7 *to March 1, 2014.*
 8 *SEC. 2.*
 Section 30607.8 is added to the Public Resources Code,

9 to read:

10 30607.8. (a) Notwithstanding any other regulation or law,
 11 including Sections 30005 and 30414, removing or restricting the
 12 use of a beach fire ring shall be subject to the requirements of this
 13 division.

14 (b) An application for a coastal development permit to remove
 15 or restrict the use of a beach fire ring shall include an analysis of
 16 alternatives and mitigation measures that would avoid or minimize
 17 the need to remove or restrict the use of a beach fire ring. The
 18 Legislature hereby declares that it is the state's preference to avoid
 19 the net loss of beach fire rings within a city's jurisdiction.

20 (c) "Beach fire ring" means a device in which recreational or
 21 ceremonial burning occurs that is located on a beach in the coastal
 22 zone.

23 (d) The provisions of this section shall be applied retroactively
 24 to March 1, 2014.

25 SEC. 3.

The Legislature finds and declares that the use of fire
 26 rings at public coastal areas is a matter of statewide concern and
 27 not a municipal affair, as that term is used in Section 5 of Article
 28 XI of the California Constitution. Therefore, Sections 2 and 3 of
 29 this act apply to a charter city or county.

30 SEC. 4.

The Legislature finds and declares that a special law
 31 is necessary and that a general law cannot be made applicable
 32 within the meaning of Section 16 of Article IV of the California
 33 Constitution because of the need to ensure that public agencies
 34 within the jurisdiction of the South Coast Air Quality Management
 35 District are in compliance with applicable laws and regulations
 36 and to maximize and protect public access and public recreational
 37 opportunities available in areas within the jurisdiction of the South
 38 Coast Air Quality Management District.

39 SEC. 5.

If the Commission on State Mandates determines that
 40 this act contains costs mandated by the state, reimbursement to
 P5 1 local agencies and school districts for those costs shall be made
 2 pursuant to Part 7 (commencing with Section 17500) of Division
 3 4 of Title 2 of the Government Code.

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

6 ~~(a) As the Legislature confirmed with Assembly Concurrent~~
 7 ~~Resolution 52 (Chapter 52 of the Statutes of 2013), beach bonfires~~
 8 ~~contained in fire rings should be allowed on all beaches in~~
 9 ~~California:~~

10 ~~(b) Beach bonfires are an inexpensive recreational activity and~~
 11 ~~are enjoyed by all the members of our community regardless of~~
 12 ~~socioeconomic class.~~

13 ~~(c) Fire rings are usually large cement rings in the sand used to~~
 14 ~~build your very own bonfire on the beach.~~

15 ~~(d) The California Coastal Commission staff report of October~~
 16 ~~22, 2012, stated, "Beach fire rings are a unique recreational facility~~
 17 ~~for which there is no substitution."~~

18 ~~(e) Amendments to Rule 444 by the South Coast Air Quality~~
 19 ~~Management District were voted on at a hearing on July 12, 2013,~~
 20 ~~and any actions by that vote on regulatory language and any~~
 21 ~~subsequent action resulting from it need to be nullified.~~

22 SEC. 2. ~~Section 40440.15 is added to the *Health and Safety*~~

23 ~~Code, to read:~~

24 ~~40440.15. (a) The south coast district shall not regulate,~~
25 ~~prohibit, or restrict a person from engaging in a beach burning for~~
26 ~~a recreational, ceremonial, or open burning conducted in a public~~
27 ~~coastal area marked by an accumulation of sand.~~

28 ~~(b) (1) For purposes of this subdivision, the following terms~~
29 ~~have the following meanings:~~

30 ~~(A) "Development" includes fire rings.~~

31 ~~(B) "Fire ring" means a structure used for a recreational,~~
32 ~~ceremonial, or open burning conducted in a public coastal area.~~

33 ~~(2) Notwithstanding subdivision (b) of Section 30005 of the~~
34 ~~Public Resources Code, a local or regional authority located in the~~
35 ~~south coast district shall obtain a coastal development permit, as~~
36 ~~specified in Article 1 (commencing with Section 30600) of Chapter~~
37 ~~7 of Division 20 of the Public Resources Code, in order to regulate,~~
38 ~~prohibit, or restrict the use of fire rings located in the south coast~~
39 ~~district as of January 1, 2015.~~

P6—1 ~~(3) A permit issued pursuant to paragraph (2) shall be appealable~~
2 ~~to the California Coastal Commission.~~

3 ~~SEC. 3. The Legislature finds and declares that the use of fire~~
4 ~~rings at public coastal areas is a matter of statewide concern and~~
5 ~~not a municipal affair, as that term is used in Section 5 of Article~~
6 ~~XI of the California Constitution. Therefore, subdivision (b) of~~
7 ~~Section 2 of this act applies to a charter city or county.~~

8 ~~SEC. 4. The Legislature finds and declares that a special law~~
9 ~~is necessary and that a general law cannot be made applicable~~
10 ~~within the meaning of Section 16 of Article IV of the California~~
11 ~~Constitution because of the need to protect visitor-generated~~
12 ~~revenues that are used to fund essential programs, such as those~~
13 ~~for the protection of public safety and parks, within the jurisdiction~~
14 ~~of the South Coast Air Quality Management District.~~

15 ~~SEC. 5. If the Commission on State Mandates determines that~~
16 ~~this act contains costs mandated by the state, reimbursement to~~
17 ~~local agencies and school districts for those costs shall be made~~
18 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
19 ~~4 of Title 2 of the Government Code.~~

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**BILL ANALYSIS****SB 968 (Hill)**

As Amended, January Introduces February 4, 2014

SUMMARY

SB 968 would direct the State Lands Commission to enter into negotiations with the property owner of a parcel of land in San Mateo County known as Martin's Beach, for the purpose of acquiring all or part of the property for public access. If a voluntary agreement cannot be reached, the Commission is directed to exercise its existing eminent domain authority to purchase the property.

PURPOSE OF THE BILL

The purpose of the bill is to secure permanent public access to Martin's Beach in San Mateo County.

EXISTING LAW

Under existing law, the State Lands Commission (SLC) has jurisdiction over various state lands, including public trust lands and state tidelands. Under provisions of the Public Resources Code Section 6210.9, the SLC may exercise the power of eminent domain to acquire property for a compelling public purpose, consistent with applicable provisions of the Government Code and the Code of Civil Procedures,

Section 4 of Article X of the California Constitution mandates that no individual shall be permitted to exclude the right of way to coastal waters of the state whenever it is required for any public purpose. Section 4 of Article X of the Constitution further mandates that "the Legislature shall enact such laws as will give the most liberal construction to this [beach access] provision, so that access to the navigable waters of this State shall be always attainable for the people thereof."

BACKGROUND

Martin's Beach has been a popular recreational destination for the public for several decades. The only terrestrial access to Martin's Beach is a private road that transects a 53-acre parcel of agricultural land between Highway 1 and the coast known as Martin's Beach Road. The previous property owners conducted a recreational concession that pre-dated the passage of the Coastal Act. For a small fee, visitors could drive down the road and park their cars at the beach. The former property owners operated a snack bar and built a bathroom for public use. They also leased out several dozen beachfront cottages to permanent and part-time residents who also depend on the road for access. Because the structures and uses pre-date the Coastal Act, they have not been reviewed permitted by the Commission. The Commission and the County have issued an emergency permit for temporary rock revetments in front of some of the homes.

In 2009, the family sold the property to another party for a reported sum of \$37.5 million. The new owners discontinued the parking concession, and closed and locked the gate at Highway 1 in 2012. The new owner did not apply for a coastal development permit to discontinue the public use at the site. Members of the public contacted the Commission and the County of San Mateo

BILL ANALYSIS SB 968 (Hill)

Page 2

requesting that an enforcement action be taken to re-open the gate and re-establish public use. The beach closure has been quite controversial, and generated extensive print, radio and television news coverage over the last year.

Martin's Beach is now the subject of two separate lawsuits filed in San Mateo County Superior Court. The first, based on Constitutional claims, is on appeal. The second, based on Coastal Act policies, has not yet been heard.

ANALYSIS

Eminent domain is the authority of the government to take private land for a public purpose, so long as the property owner is fairly compensated. Also known as a "taking" or "inverse condemnation" this action can be controversial or perfunctory depending on the specific situation. For instance, the Department of Transportation uses eminent domain for public transportation projects (freeways, road expansions, etc.) and local governments exercise these powers for local infrastructure or redevelopment projects. In all cases, the property owner is paid fair market value for the property.

The State Lands Commission (SLC) staff reports that the SLC has never used its power of eminent domain, so far as their records indicate. However, they have the statutory authority, and nothing precludes the agency from exercising it, other than a lack of funding and Board direction. Under their existing authority, the SLC would have to first attempt to negotiate a voluntary sale with the owner for all or part of the land. The SLC could only move to initiate inverse condemnation if both parties failed to reach agreement.

SB 968 does not contain a funding source for this acquisition. This would be necessary if the bill were to become law. The bill gives the SLC discretion to negotiate for all or part of the property, so a successful outcome could be as modest as a public access easement over Martin's Beach Road, to full purchase of the property as a state park, complete with visitor-serving accommodations. The costs involved would be dependent on the scope of the acquisition. Just as it is the Legislature's prerogative to set such priorities for state agencies, it is also their purview, along with the Administration, to determine appropriate funding sources. Therefore, the absence of a funding source should not be seen as a barrier to supporting the bill.

The Coastal Commission has been involved in numerous protracted conflicts concerning public access with private property owners who seek to exclude the public from coastal areas and beaches. While the Commission's record of prevailing in these cases is generally good, experience has demonstrated that litigation such as this can be extremely protracted, taking up to a decade or more before final resolution is reached. These cases are extremely time consuming for staff and the Attorney General's office, and expensive to the public. Finally, although the Commission's track record is strong, the outcome of litigation is never certain. An opportunity to secure permanent public access to such a significant stretch of beach adjacent to major urban areas without the cost, time delays and uncertainty of litigation is worthy of pursuing, and acquisition here under the terms of this bill would appear to be consistent with the Constitutional direction to maximize access.

RECOMMENDED POSITION

Staff recommends the Commission **Support** SB 968.

Introduced by Senator HillFebruary 10, 2014

An act to add Section 6213.5 to the Public Resources Code, relating to public lands.

LEGISLATIVE COUNSEL'S DIGEST

SB 968, as introduced, Hill. Public lands: Martin's Beach property: access road.

(1) Existing law establishes the State Lands Commission in the Natural Resources Agency and prescribes the functions and duties of the commission. Under existing law, the commission has jurisdiction over various state lands, including coastal lands. Existing law authorizes the commission to acquire a right-of-way or easement across private land in certain circumstances.

This bill would require the commission to consult, and enter into any necessary negotiations, with the owners of a specified property known as the Martin's Beach property, as described, in the unincorporated area of the County of San Mateo, to acquire all or a portion of that property for the creation of a specified public access road on the property, including the sandy beach. If the commission is unable to reach an agreement to acquire all or a portion of the Martin's Beach property by January 1, 2016, the bill would require the commission to acquire all or a portion of that property, as described, by eminent domain, as prescribed.

(2) The bill would declare that due to the unique circumstances and features of the Martin's Beach property, a general statute within the meaning of specified provisions of the California Constitution cannot be made applicable and a special statute is necessary.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Section 4 of Article X of the California Constitution
- 4 mandates that no individual shall be permitted to exclude the right
- 5 of way to coastal waters of the state whenever it is required for
- 6 any public purpose.
- 7 (b) Section 4 of Article X of the California Constitution further
- 8 mandates that “the Legislature shall enact such laws as will give
- 9 the most liberal construction to this [beach access] provision, so
- 10 that access to the navigable waters of this State shall be always
- 11 attainable for the people thereof.”
- 12 (c) The California Coastal Act of 1976 (Division 20
- 13 (commencing with Section 30000) of the Public Resources Code)
- 14 was enacted, in part, to maximize constitutionally protected public
- 15 access to and along the coast.
- 16 (d) Martins Beach Road transects a 53-acre property at 22325
- 17 Cabrillo Highway in San Mateo County.
- 18 (e) Martins Beach Road is the only terrestrial access to Martin’s
- 19 Beach, a 200-acre sandy beach that is a significant local coastal
- 20 resource that has been accessible to local residents and visitors for
- 21 more than 100 years.
- 22 (f) The unique geography and tidal regime at Martin’s Beach
- 23 make it exceptionally valuable for surfing, fishing, and swimming.
- 24 (g) From early in the 20th century until 2008, public access to
- 25 Martin’s Beach via Martins Beach Road off of Highway 1 south
- 26 of Half Moon Bay had been allowed for recreational use.
- 27 (h) Generations of families have enjoyed public access to
- 28 Martin’s Beach, which has contributed to the local economy.
- 29 (i) The recent sale and subsequent closure of Martin’s Beach
- 30 eliminated this historic access and has cut off a large sandy beach
- 31 that had for decades been open to visitors, including families,
- 32 surfers, fishermen, tourists, and beach goers.
- 33 (j) The closure of beach access at Martin’s Beach is now the
- 34 subject of two separate lawsuits filed in San Mateo County Superior
- 35 Court.

1 SEC. 2. Section 6213.5 is added to the Public Resources Code,
2 to read:

3 6213.5. (a) Notwithstanding any other law, the commission
4 shall consult, and enter into any necessary negotiations, with the
5 owners of the property known as Martin’s Beach, consisting of
6 two parcels of land, APN: 066-330-230 and APN: 066-330-240,
7 in the unincorporated area of the County of San Mateo, to acquire
8 all or a portion of that property for the creation of a public access
9 road to and along the shoreline, including the sandy beach, at
10 Martin’s Beach at the South Cabrillo Highway.

11 (b) If the commission is unable to reach an agreement to acquire
12 all or a portion of the Martin’s Beach property, pursuant to
13 subdivision (a), by January 1, 2016, it shall acquire all or a portion
14 of that property for the creation of a public access road to and
15 along the shoreline, including the sandy beach, at Martin’s Beach
16 at the South Cabrillo Highway by eminent domain in accordance
17 with the procedures set forth in Article 2 (commencing with Section
18 1245.210) of Chapter 4 of Title 7 of Part 3 of the Code of Civil
19 Procedure.

20 SEC. 3. Due to the unique circumstances and features of the
21 Martin’s Beach property, the Legislature finds and declares that a
22 general statute cannot be made applicable within the meaning of
23 Section 16 of Article IV of the California Constitution. Therefore,
24 the special legislation contained in Section 1 of this act is only
25 applicable to that property in the County of San Mateo.