

CALENDAR ITEM

43

A Statewide

12/17/09

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PROPOSED LEGISLATION

INTRODUCTION:

State Lands Commission staff has been working on various legislative proposals for 2010. The legislative proposals that are explained below have been developed to the point where it would be appropriate for the Commission to consider taking official positions on them. For each legislative proposal, staff has provided a recommendation on what position it thinks the Commission should take.

LEGISLATIVE PROPOSALS:

1. Land Exchanges

SUMMARY:

This legislative proposal would amend the Public Resources Code (PRC) to allow the Commission, when approving and entering into land exchanges involving public trust lands held by a local government grantee/trustee pursuant to the Commission's authority found in PRC Section 6307, to convey the lands to be impressed with the public trust to the grantee/trustee directly. This proposal would avoid the need for the Commission to issue an interim lease and for the local grantee/trustee to pursue grant legislation.

IDENTIFICATION OF PROBLEM:

PRC Section 6307 allows the Commission to enter into a land exchange under certain limited circumstances. Typically an exchange includes transfers of former tide and/or submerged lands that are, among other things, "relatively useless for public trust purposes" for lands that "will provide a significant benefit to the public trust." The Commission may free the lands it gives in the exchange from the public trust. The Commission must impose the public trust on the lands it receives in the exchange.

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In many cases, the former filled tide and/or submerged lands involved in an exchange are lands that were part of a legislative grant that granted administrative control of sovereign lands to a local grantee/trustee. In the land exchange process, the local grantee/trustee transfers its land that it wishes to exchange to the Commission. The Commission then conducts the exchange and accepts and impresses the trust on the new lands coming into the trust.

For the local grantee/trustee to gain administrative control over the newly acquired public trust lands, it must pursue new legislation. In the interim, the Commission may lease the newly acquired public trust lands to the local grantee/trustee. This legislative and leasing process can take several years and require significant staff and legislative time and resources.

PROPOSED SOLUTION:

Amend the PRC to allow the Commission, in the context of an exchange pursuant to PRC Section 6307, to convey the lands to be impressed with the public trust directly to the local grantee/trustee. This would eliminate the need for an interim Commission lease and grant legislation.

RECOMMENDED ACTION:

It is recommended that the Commission sponsor this legislative proposal.

2. Ballast Water

SUMMARY:

This legislative proposal would amend the PRC by including the specific ballast water discharge standards that are currently incorporated by reference in PRC 71205.3. This proposal would also fix typos that are in the ballast water discharge standards. Lastly, this proposal would require the Commission to “inspect,” rather than sample ballast water from, 25 percent of arriving vessels. An inspection requirement would still allow staff to collect ballast water samples; however, it would also cover a wider range of activities.

IDENTIFICATION OF PROBLEM:

(1) Pursuant to PRC 71205.3, the implementation schedule for the state’s ballast water discharge standards begins its first stage on January 1, 2010. Currently, PRC 71205.3 references these discharge standards as “Table x-1 of the

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California State Lands Commission Report on Performance Standards for Ballast Water Discharges in California Waters, as approved by the commission on January 26, 2006” (Table x-1). The PRC does not contain the actual performance standards. If the public or regulated community wanted to obtain information regarding these standards, they would have to contact the Commission or research the California Code of Regulations, which can be found on the Commission’s website.

(2) The ballast water discharge standards that are referenced by PRC 71205.3 contain typos related to “public health protective limits.” Specifically, footnote 1 and 2 of Table X-1 include a parenthetical that states “serotypes 01 and 0139.” This should instead state “serotypes O1 and O139.”

(3) PRC 71206 currently requires the Commission to “take samples of ballast water and sediment from at least 25 percent of the arriving vessels subject to [the Marine Invasive Species Act]...” Sampling may not always be necessary, especially when a vessel does not discharge its ballast water. An inspection requirement would still allow staff to collect ballast water samples; however, it would also cover a wider range of activities.

PROPOSED SOLUTION:

Amend PRC 71205.3 to enumerate the standards in Table x-1, which is currently only referenced in the code.

Amend footnote 1 and 2 of Table X-1 by replacing each zero in “serotypes 01 and 0139” with the letter “O.”

Amend PRC 71206 by deleting the “sampling” language and replace it with “inspecting,” which could mean sampling, but also other types of inspections.

RECOMMENDED ACTION:

It is recommended that the Commission sponsor this legislative proposal.

3. City of Pittsburg Grant

SUMMARY:

This legislative proposal would make various amendments to the section of the PRC that governs the 2006 legislative land grant, which transferred administrative control of the city of Pittsburg’s tide and submerged lands to the city of Pittsburg.

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IDENTIFICATION OF PROBLEM:

Article 4, Chapter 4, Division 6 of the PRC governs the 2006 legislative grant of tide and submerged lands made to the city of Pittsburg. There are several technical problems associated with this grant that staff worked with the city of Pittsburg to resolve in 2008 through AB 2324 (DeSaulnier). Unfortunately, this bill died in committee because of timing issues. Among the amendments proposed in AB 2324, the most important to staff would have (1) allowed staff to conduct the boundary surveys, (2) removed Browns Island from the grant because it is under the jurisdiction of the Port of Stockton and East Bay Regional Parks, and (3) decodified the grant, which is the general practice for legislative grants.

PROPOSED SOLUTION:

Amend the city of Pittsburg's legislative grant to address staff's concerns, which were reflected in AB 2324.

RECOMMENDED ACTION:

It is recommended that the Commission sponsor this legislative proposal.

4. Administrative Penalties

SUMMARY:

This proposal would allow the Commission to impose administrative penalties for violation of, or failure to obtain, the legally required authorization for activities on lands under the Commission's jurisdiction.

IDENTIFICATION OF PROBLEM:

The Commission approved a legislative proposal at its October 22, 2009 meeting that would allow it to administratively impose penalties against persons who construct, maintain, own, use, or possess unauthorized structures on state lands.

After the October 22nd Commission meeting, staff learned that a blue whale was killed on October 19, 2009 by a vessel conducting geophysical surveying off the state's coast in a manner that violated the surveyor's Commission-issued permit. Additionally, staff discovered that unauthorized garbage dumping was taking place on school lands located in Northern California. These types of

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unauthorized activities on state lands occur regularly and the Commission has very limited administrative authority to address these problems. The legislative proposal approved by the Commission at the October 22, 2009 only applies to unauthorized structures on state lands.

PROPOSED SOLUTION:

Allow the Commission to impose administrative penalties for violation of, or failure to obtain, the legally required authorization for activities on lands under the Commission's jurisdiction.

RECOMMENDED ACTION:

It is recommended that the Commission sponsor this legislative proposal.