

**CALENDAR ITEM
C04**

A Statewide

05/23/13

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**CONSIDER CO-SPONSORING LEGISLATION FOR THE FIRST HALF OF THE
2013-14 STATE LEGISLATIVE SESSION THAT WOULD REQUIRE LOCAL
TRUSTEES OF GRANTED PUBLIC TRUST LANDS TO ASSESS THE IMPACTS OF
SEA LEVEL RISE ON THEIR GRANTED LANDS**

Granted Public Trust Lands: Sea Level Rise

INTRODUCTION:

State Lands Commission (Commission) staff has been reviewing various legislative proposals introduced in the 2013-14 legislative session that involve lands under the Commission's jurisdiction. This report describes proposed legislation (AB 691 – Muratsuchi) that would require local trustees of granted public trust lands to assess the impacts of sea level rise on their granted lands.

SUMMARY:

AB 691 would require a local trustee of granted public trust lands to prepare an assessment of the impacts of sea level rise on its granted lands by July 1, 2019, and provide that information to the Commission.

REASON FOR THE BILL:

California's most unique and valuable asset is its coastal areas, including many of the submerged and tidelands granted in trust by the Legislature to local jurisdictions for management purposes. There are approximately 85 grants to local jurisdictions, governed by more than 300 granting statutes. All public trust land legislatively granted to a local jurisdiction must be managed so as to promote the public interest and to not interfere with the public's rights under the common law Public Trust Doctrine. While these trust lands are managed locally, the Commission is vested with all residual jurisdiction and authority over sovereign public trust lands that have been granted to local jurisdictions.

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The Legislature has conferred upon local trustees the fiduciary responsibility to hold and protect these lands. Therefore, in the context of a grant, the trustee has a fiduciary duty to the beneficiaries of the trust – the people of the State. Where granted public trust lands and resources are threatened by environmental degradation, pollution, or misuse, the trustee may have a duty to take action to protect and preserve those lands and resources.

According to the National Academy of Sciences, the sea level off most of California is expected to rise about one meter over the next century, an amount slightly higher than projected for global sea levels, and will likely increase damage to the State's coast from storm surges and high waves. This is an issue that has serious implications for public trust lands held by local trustees and for ports and marinas in particular. According to the San Francisco Bay Conservation and Development Commission, rising sea levels could put land around the bay at serious flooding risk by 2050. By 2100, sea levels could surge nearly 6 feet, putting more than \$60 billion in shoreline development in jeopardy. Statewide, approximately 5 feet of sea level rise coinciding with a 100-year flood would put \$100 billion of property at risk.

On August 10, 2009, as part of its oversight responsibilities, the Commission sent 104 surveys regarding sea level rise to all of its trustees and lessees of major facilities along the coast and in San Francisco Bay. The survey included questions related to identifying existing facilities and the life expectancy of these facilities; whether the trustee has considered the effect of sea level rise on its facilities; how its facilities would be impacted by a sea level rise of 16" and 55"; what actions the trustees were considering to address sea level rise, including an estimate of cost; and whether the trustees were considering adaptation strategies to mitigate for sea level rise. Of the 104 surveys sent, only 40 responses were received. A majority of these responses provided information indicating that trustees have not yet begun to consider the impacts of sea level rise to their granted lands.

A local trustee's lack of planning for sea level rise may be considered a breach of its trust responsibilities. The courts frequently cite by analogy private trust law in connection with certain problems arising under such circumstances as in the public trust. Under California private trust law, "the trustee has a duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property." By analogy, a local trustee of granted public trust lands has the same duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property.

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The purpose of AB 691 is to ensure that a local trustee takes reasonable steps to protect granted public trust lands from sea level rise. The local trustee is in the best position to conduct this planning because it has the administrative control over its granted trust lands and, in most cases, generates revenues off of the land, which must be used for purposes such as managing and preserving the trust lands and assets.

SB 551 (DESAULNIER), CHAPTER 422, STATUTES of 2011:

Legislation signed into law in 2011, SB 551 (DeSaulnier), repealed a 2006 public trust grant made to the City of Pittsburg and made a new grant that included the lands from the 2006 grant as well as lands annexed to the City in 2009.

SB 551 included a provision requiring the City to provide the Commission with a description of how it would, as a trustee of legislatively granted public trust lands, propose to protect and preserve natural and manmade resources and facilities located on trust lands and operated in connection with the use of the trust lands, including, but not limited to addressing impacts from sea level rise. The granting statute gave the City five years to comply with the sea level rise assessment provision.

Any future grant by the Legislature will likely include a similar requirement to address the importance of sea level rise planning.

AB 691 (MURATSUCHI):

AB 691 would provide that the duties and obligations of a trustee include assessing the impacts of sea level rise. It would require a local trustee of granted public trust lands to assess the impacts of a range of sea level rise on granted public trust lands and provide this information to the Commission by July 1, 2019, if the local trustee receives more than \$250,000 in gross public trust revenues.

The assessment of the impact of sea level rise by the trustee would have to include: 1) maps showing the areas that may be affected by sea level rise in the years 2030, 2050 and 2100; 2) an assessment of the impact of a range of sea level rise on the public trust lands, as described in the Ocean Protection Council's resolution on sea level rise and the latest version of the State's Sea-Level Rise Interim Guidance Document; 3) an estimate of the financial cost of the impact of sea level rise on granted lands, including the potential cost of repair of damage to and the value of lost use of improvements and land; and, 4) a description of how the trustee proposes to protect and preserve natural and manmade resources and facilities located, or proposed to be located, on trust lands and operated in connection with the use of trust lands.

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AB 691 would encourage a trustee to collaborate with its lessees, local, state and federal agencies, and other users of the granted public trust lands, as part of their assessment.

The Commission would be required to exempt a trustee from the requirement to develop a sea level rise plan if: 1) none of the trustee's granted lands are subject to sea level rise by 2100; or, the cost of doing the assessment substantially outweighs the benefit the action would have in preventing the potential economic and environmental harms associated with sea level rise on the trustee's granted public trust lands.

This bill proposal would also make a number of findings regarding responsibilities of trustees of granted lands, the trustee's fiduciary duties to control and preserve granted lands, and the impacts of sea level rise and climate change to the State's economy and infrastructure.

OTHER PERTINENT INFORMATION:

The Commission has previously supported two similar legislative proposals, including AB 2598 (Brownley), of the 2009-10 legislative session and AB 752 (Brownley), of the 2011-12 legislative session. AB 2598 was held on the Senate Appropriations Suspense File. AB 752 was approved by the Assembly and referred to the Senate Natural Resources and Water Committee. It was not taken up for a vote due to opposition from local jurisdictions, including the Delta Counties Coalition, the League of California Cities and the California State Association of Counties. There are two notable differences between the previous versions and this bill proposal.

First, the compliance date has been extended out five years, to July 1, 2019. This is to address the concern from local jurisdictions about the short compliance time, which was previously July 1, 2013. This change is also intended to be productive to the objective of carefully assessing the impacts of sea level rise on granted public trust lands, and responsive to concerns expressed by the opponents to previous versions of this bill that this need not be done immediately. Additionally, this change makes the bill consistent with the provisions of SB 551 (DeSaulnier).

Second, the requirement that grantees prepare a sea level rise action plan has been omitted and replaced with language requiring a local trustee to address the impacts from sea level rise for its legislatively granted public trust lands. This change is intended to address concerns about the bill resulting in a patchwork of different plans throughout the State, and to facilitate a regional approach to assessing the impacts of sea level rise on the granted public trust lands. For example, any subsequent sea level

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rise planning a local trustee takes may be done in a regional context, and is in fact encouraged as the bill states that grantees are encouraged to collaborate with local, state and federal agencies. This language is also consistent with the sea level rise planning requirements in SB 551 (DeSaulnier).

In regard to ungranted land and sea level rise planning, the Commission's lease application for use of sovereign land requires applicants to assess the environmental impacts of the proposed use and explain if any feature of the project is subject to sea level rise or other effects associated with climate change over the life of the project. If the answer is yes, the applicant must explain in detail and address any planned adaptation strategies.

Additionally, if a proposed project on sovereign land involves development in an area subject to tidal action, the applicant must provide a risk analysis, implications of failure, and adaptation strategies for addressing projected sea level rise of 16 inches by year 2050 and 55 inches by year 2100, relative to the projected life expectancy of the project. Adaptation strategies may include alternate project designs to prevent impacts. Applicants must also explain what engineering standards are being relied on to address potential impacts from sea level rise on proposed or existing facilities throughout the life of the project.

AB 691 is co-sponsored by the State Controller's Office and supported by the California Coastkeeper Alliance, Heal the Bay, Sierra Club California, the Coastal Environmental Rights Foundation, and the Surfrider Foundation. It is opposed by the League of California Cities.

AB 691 was approved by the Assembly Natural Resources Committee on April 29, 2013, and by the Assembly Appropriations Committee on May 15, 2013. It is currently on the Assembly Floor.

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

1. Co-sponsor AB 691 to require a local trustee of granted public trust lands to assess the impacts of sea level rise on its granted lands.