

**CALENDAR ITEM
C05**

A Statewide

05/23/13

S Statewide

S. Pemberton

**CONSIDER SPONSORING LEGISLATION FOR THE FIRST HALF OF THE 2013-14
STATE LEGISLATIVE SESSION THAT WOULD ELIMINATE THE REQUIREMENT
THAT DREDGING ON GRANTED PUBLIC TRUST LANDS WHEREIN MINERALS
ARE RESERVED TO THE STATE REQUIRES A LEASE FROM THE STATE LANDS
COMMISSION UNDER CERTAIN CIRCUMSTANCES**

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 727 - Stone) that would eliminate the requirement of a lease from the Commission for dredging on granted public trust lands wherein minerals are reserved to the State if the dredged material is disposed at an approved on or offshore disposal site, is not sold, and is consistent with the proper management of the granted lands.

AB 727 (Stone): Public trust lands: dredging: notice and leases

SUMMARY:

Approximately fifty of the State's 85 statutory grants have reserved mineral rights to the State, and which would require a lease for dredging activities. When minerals are reserved, dredging activity on granted public trust lands requires a lease from the Commission. Typically the Commission does not charge an annual rent for a dredging lease because the dredging will result in a public benefit. Applicants are required to pay the Commission's staff costs of processing the application, which is approximately \$1,500. Once an application and fee is received, Commission staff begin processing the application and preparing a staff report for the Commission's consideration. This process can take several months, depending upon the completeness of the application, the Commission meeting schedule, and staff resources.

Dredging activity on granted public trust lands typically requires approval from various local, state, and federal regulators. For example, a recent application from the County of Orange to amend a dredging lease to increase dredging amounts required permits or

CALENDAR ITEM NO. **C05** (CONT'D)

approvals from the California Coastal Commission, the U.S. Army Corps of Engineers, the Regional Water Quality Control Board, and the City of Newport Beach. In this instance, the Commission's authorization of the lease was in addition to four other regulatory approvals that had to be obtained.

In an effort to streamline this process, eliminate duplicity, preserve tideland trust revenue, and to more efficiently allocate Commission staff resources, this bill would eliminate the requirement that dredging on granted public trust lands wherein minerals are reserved requires a lease from the Commission, if certain conditions are met. The bill requires grantees or applicants for dredging on granted lands where minerals are reserved to notify the Commission in writing 120 days prior to dredging of their intent to dredge. The notice must include the following information: 1) a description of the dredging including a map and land description; 2) the time and manner in which dredging will occur; 3) the relevant permits, authorizations, and approvals that exist or must be obtained to dredge; 4) a declaration that the dredging is needed for the proper management of the grant consistent with the public trust, or a statement of why the dredging is necessary for other purposes and a declaration that the dredging is consistent with the grant; and 5) a statement with documentation explaining whether the grantee anticipates receiving any revenue from the dredged materials and if so, how much.

The bill expressly preserves the authority of the Commission to require a lease for any dredging on granted lands wherein minerals are reserved if the proposed dredging is inconsistent with the conditions specified in the bill, and requires written notification to the applicant within 30 days after receiving notification of the proposed dredging if a lease will be necessary. The authority to determine whether a lease is necessary may be delegated to the Commission's Executive Officer. If a grantee earns any revenue from the dredging not otherwise disclosed in the notice, the grantee must immediately notify the Commission and the Commission may require the grantee to pay a reasonable royalty, enter into a lease, and possibly remit all revenues to the State.

A grantee of public trust lands has the primary responsibility to administer the trust within the parameters of its granting statute and the common law Public Trust Doctrine. Except for certain statutory authorizations, the Commission is not involved in day-to-day management operations for granted public trust lands. Eliminating the lease requirement for dredging and replacing it with a notification requirement is consistent with this structure and will result in more efficiency for the Commission.

Additionally, the Bureau of State Audits released an audit report in August 2011 concerning the Commission's management of leases on state property and oversight of

CALENDAR ITEM NO. **C05** (CONT'D)

granted lands. The audit concluded that the Commission has not always managed its more than 4,000 leases in the State's best interest and has missed opportunities to generate millions of dollars in revenues for the State's General Fund. The Commission has addressed most of the leasing issues with successful legislation, budget augmentation and staff reorganization. Requiring an applicant to notify the Commission of proposed dredging on granted lands rather than obtaining a lease under certain circumstances will further assist with focusing staff attention on addressing the few remaining deficiencies identified in the audit.

Other Pertinent Information:

AB 727 was approved by the Assembly Natural Resources Committee on April 1, 2013, and by the Assembly Appropriations Committee on May 8, 2013. It is currently on the Assembly Floor.

AB 727 is supported by the Moss Landing Harbor District, the California Association of Harbor Masters and Port Captains, California Marine Parks and Harbors Association, California Special Districts Association, California Yacht Brokers Association, Marina Recreation Association, National Marine Manufacturers Association, the Western Boaters Safety Group, and the Pacific Merchant Shipping Association. It has received no opposition.

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

1. Sponsor AB 727 (Stone) that would eliminate the requirement that dredging on granted public trust lands wherein minerals are reserved to the State requires a lease from the Commission under certain circumstances.