

CALIFORNIA COASTAL COMMISSION

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January 14, 2010

TO: Coastal Commissioners and Interested Persons
FROM: Legal Division and Legislative Unit
SUBJECT: **2009 Chaptered Legislation**

The 2009 California Legislative session produced one piece of chaptered legislation that directly amended the Coastal Act. SB 833 (Chapter 208, Statutes of 2009) took effect January 1, 2010. The edition of the Coastal Act that the Commission publishes will be revised and reprinted to reflect this recent amendment, which is detailed below.

The Governor also signed two bills that may affect the coastal program indirectly. SB 428 (Chapter 19, Statutes of 2009) broadens the potential allowable uses at "Children's Beach" in La Jolla. SB 310 authorizes local governments with approved NPDES permits to prepare "Watershed Improvement Plans." Both new laws may be of interest to coastal managers.

A. COASTAL ACT AMENDMENTS

1) SB 833 (Committee on Natural Resources and Water) Public Resources, Chapter 208

The relevant portion of this bill amends Section 30716(c)(3)(B) relating to de minimis amendments to Port Master Plans (PMP). This bill clarifies that, if three or more members disagree with the Executive Director's determination that an amendment is de minimis, the amendment is to be processed as a regular amendment. A similar procedure applies to de minimis amendments of LCPs. Specifically, the bill deleted an inadvertent cross-reference to 30716(c), and a mistaken reference to 30716(b), which governs minor amendments. The bill replaced that cross reference with a referral to 30716(a) which governs regular PMP amendments. .

Section 30716

SEC. 7. Section 30716 of the Public Resources Code is amended to read:

30716. (a) A certified port master plan may be amended by the port governing body, but an amendment shall not take effect until it has been certified by the commission. Any proposed amendment shall be submitted to, and processed by, the commission in the same manner as provided for submission and certification of a port master plan.

(b) The commission shall, by regulation, establish a procedure whereby proposed amendments to a certified port master plan may be reviewed and designated by the executive director of the commission as being minor in nature and need not comply with Section 30714. These amendments shall take effect on the 10th working day after the executive director designates the amendments as minor.

(c) (1) The executive director may determine that a proposed certified port master plan amendment is de minimis if the executive director determines that the proposed amendment would have no

impact, either individually or cumulatively, on coastal resources, is consistent with the policies of Chapter 3 (commencing with Section 30200), and meets the following criteria:

(A) The port governing body, at least 21 days prior to the date of submitting the proposed amendment to the executive director, has provided public notice, and provided a copy to the commission, which specifies the dates and places where comments will be accepted on the proposed amendment, contains a brief description of the proposed amendment, and states the address where copies of the proposed amendment are available for public review, by one of the following procedures:

(i) Publication, not fewer times than required by Section 6061 of the Government Code, in a newspaper of general circulation in the area affected by the proposed amendment. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(ii) Posting of the notice by the port governing body both onsite and offsite in the area affected by the proposed amendment.

(iii) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(B) The proposed amendment does not propose any change in land use or water uses or any change in the allowable use of property.

(2) At the time that the port governing body submits the proposed amendment to the executive director, the port governing body shall also submit to the executive director any public comments that were received during the comment period provided pursuant to subparagraph (A) of paragraph (1).

(3) (A) The executive director shall make a determination as to whether the proposed amendment is de minimis within 10 working days from the date of submittal by the local government. If the proposed amendment is determined to be de minimis, the proposed amendment shall be noticed in the agenda of the next regularly scheduled meeting of the commission, in accordance with Section 11125 of the Government Code, and any public comments forwarded by the port governing body shall be made available to the members of the commission.

(B) If three members of the commission object to the executive director's determination that the proposed amendment is de minimis, the proposed amendment shall be set for public hearing in accordance with the procedures specified in subdivision ~~(b)~~, or as specified in subdivision ~~(c)~~ if applicable, as determined by the executive director, ~~(a)~~ or, at the request of the port governing body, returned to the ~~local government~~ *port governing body*. If set for public hearing under subdivision ~~(b)~~ *(a)*, the time requirements set by this section and Section 30714 shall commence from the date on which the objection to the de minimis designation was made.

(C) If three or more members of the commission do not object to the de minimis determination, the de minimis amendment shall become a part of the certified port master plan 10 days from the date of the commission meeting.

(4) The commission may, after a noticed public hearing, adopt guidelines to implement this subdivision, which shall be exempt from review by the Office of Administrative Law and from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government

Code. The commission shall file any guidelines adopted pursuant to this paragraph with the Office of Administrative Law.

Implementation: This corrects mistaken cross-references in the statute. Our current practice conforms to the statute as amended, so there will be no need to change the Commission's regulations or otherwise follow new procedures.

B. COASTAL RELATED LEGISLATION

1) SB 428 (Kehoe) Public Resources, Chapter 19, Statutes of 1931 relating to tidal and submerged lands

This bill resolves a dispute between the City of San Diego, the Coastal Commission and the State and Federal courts regarding conflicts between public recreational use of a popular swimming beach in San Diego and its value as harbor seal habitat. This bill specifies that a "marine mammal park for the education and enjoyment of children" is an allowable use for the City of San Diego to authorize at the property known as "Children's Pool." The intent of the legislation is to allow the City some relief in deciding how/whether to comply with a 2001 appeals court decision ordering the city to dredge the pool to eliminate harbor seal habitat, in light of a subsequent restraining order to prevent the dredging based on environmental concerns. Anything the City does to address water quality at Children's Pool will still require a CDP, and this legislation has improved the range of alternatives the Commission may consider.

Section 30716

SEC. 1. Section 1 of Chapter 937 of the Statutes of 1931 is amended to read:

Section 1. There is hereby granted to the City of San Diego, County of San Diego, all the right, title, and interest of the State of California, held by said state by virtue of its sovereignty, in and to all that portion of the tide and submerged lands bordering upon and situated below the ordinary high water mark of the Pacific Ocean described as follows:

Beginning at the intersection of the ordinary high water mark of the Pacific Ocean with a line bearing S. 87° 40' W. from the monument marking the intersection of Coast Boulevard South with Jenner Street as said monument, said Coast Boulevard South, and said Jenner Street are designated and shown on that certain map entitled "Seaside subdivision number 1712" and filed June 23, 1920, in the office of the county recorder of San Diego County, State of California; thence N. 350', thence E. 300', thence S. 185' more or less to the ordinary high water mark of the Pacific Ocean, thence in a general southwesterly direction along the ordinary high water mark of the Pacific Ocean to the point of beginning, all in the Pacific Ocean, State of California, to be forever held by said City of San Diego and its successors in trust for the uses and purposes and upon the express conditions following, to wit:

(a) That said lands shall be devoted exclusively to public park, marine mammal park for the enjoyment and educational benefit of children, bathing pool for children, parkway, highway, playground and recreational purposes, and to such other uses as may be incident to, or convenient for the full enjoyment of such purposes.

(b) The absolute right to fish in the waters of the Pacific Ocean over said tidelands or submerged lands, with the right of convenient access to said waters over said lands for said purpose is hereby reserved to the people of the State of California.

(c) That there is excepted and reserved to the State of California all deposits of minerals, including oil and gas, in said land, and to the State of California, or persons authorized by the State of California, the right to prospect for, mine, and remove such deposits from said land.

Implementation: The City currently has an incomplete application pending with the Commission for a dredging project. It is not clear whether the City intends to withdraw or proceed with the application. The Commission will be able to consider the additional allowable use of a marine mammal park at Children's Pool in any CDP considered by the Commission in the future.

2) SB 310 (Duchenev) Water Code Chapter 19

This bill authorizes any local government with an approved NPDES permit to prepare a "Watershed Improvement Plan" to address major sources of polluted runoff, and authorizes the collection of fees for certain activities to fund activities covered in the plan. Regional Water Quality Boards are authorized to participate in the process. Although the Commission is not specifically authorized, the bill does require any local government that prepares such a plan to "solicit input from entities representing resource agencies" which would, by definition, include the Coastal Commission.

Section 30716

SEC. 1. Chapter 27 (commencing with Section 16100) to Division 7 is added to the Water Code to read:

CHAPTER 27. CALIFORNIA WATERSHED IMPROVEMENT ACT OF 2009

16100. This chapter shall be known and may be cited as the California Watershed Improvement Act of 2009.

16101. (a) Each county, city, or special district that is a permittee or copermitttee under a national pollutant discharge elimination system (NPDES) permit for municipal separate storm sewer systems may develop, either individually or jointly with one or more permittees or copermitttees, a watershed improvement plan that addresses major sources of pollutants in receiving water, stormwater, urban runoff, or other surface runoff pollution within the watershed or subwatershed to which the plan applies. The principal purpose of a watershed improvement plan is to implement existing and future water quality requirements and regulations by, among other things, where appropriate, identifying opportunities for stormwater detention, infiltration, use of natural treatment systems, water recycling, reuse, and supply augmentation; and providing programs and measures designed to promote, maintain, or achieve compliance with water quality laws and regulations, including water quality standards and other requirements of statewide plans, regional water quality control plans, total maximum daily loads, and NPDES permits.

(b) The process of developing a watershed improvement plan shall be open and transparent, and shall be conducted consistent with all applicable open meeting laws. A county, city, special district, or combination thereof, shall solicit input from entities representing resource agencies, water agencies, sanitation districts, the environmental community, landowners, home builders, agricultural interests, and business and industry representatives.

(c) Each county, city, special district, or combination thereof shall notify the appropriate regional board of its intention to develop a watershed improvement plan. The regional board may, in its discretion, participate in the preparation of the plan. A watershed improvement plan shall be consistent with the regional board's water quality control plan.

(d) A watershed improvement plan shall include all of the following elements relevant to the waters within the watershed or subwatershed to which the plan applies:

(1) A description of the watershed or subwatershed improvement plan area, the rivers, streams, or manmade drainage channels within the plan area, the agencies with regulatory jurisdiction over matters to be addressed in the plan, the relevant receiving waters within or downstream from the plan area, and the county, city, special district, or combination thereof, participating in the plan.

(2) A description of the proposed facilities and actions that will improve the protection and enhancement of water quality and the designated beneficial uses of waters of the state, consistent with water quality laws and regulations.

(3) Recommendations for appropriate action by any entity, public or private, to facilitate achievement of, or consistency with, water quality objectives, standards, total maximum daily loads, or other water quality laws, regulations, standards, or requirements, a time schedule for the actions to be taken, and a description of appropriate measurement and monitoring to be undertaken to determine improvement in water quality.

(4) A coordinated economic analysis and financing plan that identifies the costs, effectiveness, and benefits of water quality improvements specified in the watershed improvement plan, and, where feasible, incorporates user-based and cost recovery approaches to financing, which place the cost of managing and treating surface runoff pollution on the generators of the pollutants.

(5) To the extent applicable, a description of regional best management practices, watershed-based natural treatment systems, low-flow diversion systems, stormwater capture, urban runoff capture, other measures constituting structural treatment best management practices, pollution prevention measures, low-impact development strategies, and site design, source control, and treatment control best management practices to promote improved water quality.

(6) A description of the proposed structure, operations, powers, and duties of the implementing entity for the watershed improvement plan.

16102. (a) A regional board shall review, in accordance with the reimbursement requirement described in subdivision (c), a watershed improvement plan developed pursuant to Section 16101 and may approve the plan, including any appropriate conditions to the approval, if the regional board finds that the proposed watershed improvement plan will facilitate compliance with water quality requirements. A regional board's review and approval of the watershed improvement plan shall be limited to components described in paragraphs (1), (2), (3), and (5) of subdivision (d) of Section 16101.

(b) A regional board may not approve a proposed watershed improvement plan that includes a geographical area included in an existing approved watershed improvement plan unless the regional board determines that it is infeasible to amend either the proposed watershed improvement plan or the approved watershed improvement plan to achieve the purposes of this chapter.

(c) The entity or entities that develop a watershed improvement plan that is submitted to the regional board for approval shall reimburse the regional board for its costs, including the costs to review and oversee the implementation of the plan, if nonstate funds are not available to cover the costs of the review and oversight. For the purpose of this paragraph, the state board shall adopt a fee schedule by emergency regulation in the manner prescribed in paragraph (2) of subdivision (f)

of Section 13260. Fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund established by Section 13260.

(d) A regional board may, if it deems appropriate, utilize provisions of approved watershed improvement plans to promote compliance with one or more of the regional board's regulatory plans or programs.

(e) Unless a regional board incorporates the provisions of a watershed improvement plan into waste discharge requirements issued to a permittee, the implementation of a watershed improvement plan by a permittee shall not be deemed to be compliance with those waste discharge requirements.

16103. (a) In addition to making use of other financing mechanisms that are available to local agencies to fund watershed improvement plans and plan measures and facilities, a county, city, special district, or combination thereof may impose fees on activities that generate or contribute to runoff, stormwater, or surface runoff pollution, to pay the costs of the preparation of a watershed improvement plan, and the implementation of a watershed improvement plan if all of the following requirements are met:

(1) The regional board has approved the watershed improvement plan.

(2) The entity or entities that develop the watershed improvement plan make a finding, supported by substantial evidence, that the fee is reasonably related to the cost of mitigating the actual or anticipated past, present, or future adverse effects of the activities of the feepayer. "Activities," for the purposes of this paragraph, means the operations and existing structures and improvements subject to regulation under an NPDES permit for municipal separate storm sewer systems.

(3) The fee is not imposed solely as an incident of property ownership.

(b) A county, city, special district, or combination thereof may plan, design, implement, construct, operate, and maintain controls and facilities to improve water quality, including controls and facilities related to the infiltration, retention and reuse, diversion, interception, filtration, or collection of surface runoff, including urban runoff, stormwater, and other forms of runoff, the treatment of pollutants in runoff or other waters subject to water quality regulatory requirements, the return of diverted and treated waters to receiving water bodies, the enhancement of beneficial uses of waters of the state, or the beneficial use or reuse of diverted waters.

(c) The fees authorized under subdivision (a) may be imposed as user-based or regulatory fees consistent with this chapter.

16104. Nothing in this chapter alters requirements that govern the diversion of water.

Implementation: The Commission may wish to participate in the preparation of Watershed Improvement Plans in the coastal zone as resources allow.