

ASSEMBLY BILL

No. 2310

**Introduced by Assembly Member Ducheny
(Coauthors: Assembly Members Bates and Calderon)**

February 24, 2000

An act to amend Sections 30233, 30240, and 30411 of the Public Resources Code, relating to resource planning and management.

LEGISLATIVE COUNSEL'S DIGEST

AB 2310, as introduced, Ducheny. Resource planning and management.

(1) Existing law permits the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes if there is no feasible less environmentally damaging alternative and if feasible mitigation measures have been provided to minimize adverse environmental effects. Existing law limits diking, filling, or dredging to certain situations, including entrance channels for new or expanded boating facilities in wetlands areas, and in a degraded wetland for boating facilities.

This bill would expand the activities permissible in a degraded wetland, as defined, to include recreation, residential, and commercial projects.

(2) Existing law requires that environmentally sensitive habitat areas be protected against any significant disruption of habitat values and requires that only uses dependent on those resources be allowed within those areas.

This bill would allow uses not dependent on the habitat values under certain conditions.

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. Section 30233 of the Public Resources
2 Code is amended to read:
3 30233. (a) The diking, filling, or dredging of open
4 coastal waters, wetlands, estuaries, and lakes shall be
5 permitted in accordance with other applicable provisions
6 of this division, ~~where~~ *if* there is no feasible less
7 environmentally damaging alternative, ~~and where and if~~
8 feasible mitigation measures have been provided to
9 minimize adverse environmental effects, and shall be
10 limited to the following:
11 (1) New or expanded port, energy, and
12 coastal-dependent industrial facilities, including
13 commercial fishing facilities.
14 (2) Maintaining existing, or restoring previously
15 dredged, depths in existing navigational channels,
16 turning basins, vessel berthing and mooring areas, and
17 boat launching ramps.
18 (3) In wetland areas only, entrance channels for new
19 or expanded boating facilities; and in a degraded wetland,
20 identified by the Department of Fish and Game pursuant
21 to subdivision (b) of Section 30411, for *recreation,*
22 *residential, or commercial projects, or* boating facilities if,
23 in conjunction with ~~such boating~~ *those projects or*
24 facilities, a substantial portion of the degraded wetland is
25 restored and maintained as a biologically productive
26 wetland. The size of the wetland area used for ~~boating~~
27 *those projects and* facilities, including berthing space,
28 turning basins, necessary navigation channels, and any
29 necessary support service facilities shall not exceed 25
30 percent of the degraded wetland. *However, if the*
31 *degraded wetland is less than one acre in size, mitigation*
32 *may be provided through restoration and maintenance of*
33 *a biologically productive wetland at an offsite location.*
34 (4) In open coastal waters, other than wetlands,
35 including streams, estuaries, and lakes, new or expanded



1 boating facilities and the placement of structural pilings
2 for public recreational piers that provide public access
3 and recreational opportunities.

4 (5) Incidental public service purposes, including, but
5 not limited to, burying cables and pipes or inspection of
6 piers and maintenance of existing intake and outfall lines.

7 (6) Mineral extraction, including sand for restoring
8 beaches, except in environmentally sensitive areas.

9 (7) Restoration purposes.

10 (8) Nature study, aquaculture, or similar
11 resource-dependent activities.

12 (9) *The expansion of existing transportation facilities*
13 *or construction of new transportation facilities that*
14 *further public access to, or along, the coast based on*
15 *current or future needs. Projects that reduce, or*
16 *otherwise address present or future demands on, coastal*
17 *zone transportation facilities are consistent with this*
18 *paragraph.*

19 (b) Dredging and spoils disposal shall be planned and
20 carried out to avoid significant disruption to marine and
21 wildlife habitats and water circulation. Dredge spoils
22 suitable for beach replenishment should be transported
23 for ~~such~~ those purposes to appropriate beaches or into
24 suitable longshore current systems.

25 (c) In addition to the other provisions of this section,
26 diking, filling, or dredging in existing estuaries and
27 wetlands shall maintain or enhance the functional
28 capacity of the wetland or estuary. Any alteration of
29 coastal wetlands identified by the Department of Fish
30 and Game, including, but not limited to, the 19 coastal
31 wetlands identified in its report entitled, "Acquisition
32 Priorities for the Coastal Wetlands of ~~California~~",
33 *California*," shall be limited to very minor incidental
34 public facilities, restorative measures, nature study,
35 commercial fishing facilities in Bodega Bay, and
36 development in already developed parts of south San
37 Diego Bay, if otherwise in accordance with this division.

38 For the purposes of this section, "commercial fishing
39 facilities in Bodega Bay" means that not less than 80
40 percent of all boating facilities proposed to be developed



1 or improved, where ~~such~~ *that* improvement would create
2 additional berths in Bodega Bay, shall be designed and
3 used for commercial fishing activities.

4 (d) Erosion control and flood control facilities
5 constructed on watercourses can impede the movement
6 of sediment and nutrients ~~which~~ *that* would otherwise be
7 carried by storm runoff into coastal waters. To facilitate
8 the continued delivery of these sediments to the littoral
9 zone, whenever feasible, the material removed from
10 these facilities may be placed at appropriate points on the
11 shoreline in accordance with other applicable provisions
12 of this division, where feasible mitigation measures have
13 been provided to minimize adverse environmental
14 effects. Aspects that shall be considered before issuing a
15 coastal development permit for ~~such~~ *those* purposes are
16 the method of placement, time of year of placement, and
17 sensitivity of the placement area.

18 (e) *The commission may apply Section 30007.5 when*
19 *addressing any conflict between this section and any*
20 *other section of this division.*

21 SEC. 2. Section 30240 of the Public Resources Code is
22 amended to read:

23 30240. (a) Environmentally sensitive habitat areas
24 shall be protected against any significant disruption of
25 habitat values; and only uses dependent on those
26 resources shall be allowed within those areas. *Uses not*
27 *dependent on the habitat values of these areas are*
28 *allowed if either of the following applies:*

29 (1) *The commission determines that the habitat*
30 *values of the area are degraded and that higher habitat*
31 *values of the same type can be achieved at another*
32 *location through protection, maintenance,*
33 *enhancement, creation, or restoration of those value.*

34 (2) *The commission applies Section 30007.5 to any*
35 *conflict between this section and other sections, such as*
36 *Section 30250, and determines that, on balance, the*
37 *habitat values to be impacted can be provided for at*
38 *another location with greater potential for maintaining*
39 *long-term habitat values through any combination of*
40 *protection, maintenance, enhancement, creation, or*



1 *restoration to achieve a net increase in long-term habitat*
2 *value.*

3 (b) Development in areas adjacent to
4 environmentally sensitive habitat areas and parks and
5 recreation areas shall be sited and designed to prevent
6 impacts ~~which~~ *that* would significantly degrade those
7 areas, and shall be compatible with the continuance of
8 those habitat and recreation areas.

9 SEC. 3. Section 30411 of the Public Resources Code is
10 amended to read:

11 30411. (a) The Department of Fish and Game and
12 the Fish and Game Commission are the principal state
13 agencies responsible for the establishment and control of
14 wildlife and fishery management programs and the
15 commission shall not establish or impose any controls with
16 respect thereto that duplicate or exceed regulatory
17 controls established by these agencies pursuant to specific
18 statutory requirements or authorization, *including*
19 *conservation plans adopted consistent with Sections 2080,*
20 *2080.1, 2081, 2081.5, 2830, and 2835 of the Fish and Game*
21 *Code.*

22 (b) The Department of Fish and Game, in
23 consultation with the commission and the Department of
24 Boating and Waterways, may study degraded wetlands
25 and identify those ~~which~~ *that* can most feasibly be
26 restored in conjunction with development of a
27 *recreational, residential, or commercial project, or*
28 boating facility as provided in subdivision (a) of Section
29 30233. Any such study shall include consideration of all of
30 the following:

31 (1) Whether the wetland is so severely degraded and
32 its natural processes so substantially impaired that it is not
33 capable of recovering and maintaining a high level of
34 biological productivity without major restoration
35 activities.

36 (2) Whether a substantial portion of the degraded
37 wetland, but in no event less than 75 percent, can be
38 restored and maintained as a highly productive wetland
39 in conjunction with a *recreational, residential, or*
40 *commercial project or boating facilities project facility.*



1 (3) Whether restoration of the wetland's natural
2 values, including its biological productivity and wildlife
3 habitat features, can most feasibly be achieved and
4 maintained in conjunction with a *recreational,*
5 *residential, or commercial project or* boating facility or
6 whether there are other feasible ways to achieve ~~such~~
7 *those* values.

8 (c) The Legislature finds and declares that salt water
9 or brackish water aquaculture is a coastal-dependent use
10 ~~which that~~ should be encouraged to augment food
11 supplies and to further the policies set forth in Chapter 4
12 (commencing with Section 825) of Division 1. The
13 Department of Fish and Game may identify coastal sites
14 it determines to be appropriate for aquaculture facilities.
15 If the department identifies these sites, it shall transmit
16 information identifying the sites to the commission and
17 the relevant local government agency. The commission,
18 and where appropriate, local governments, ~~shall,~~
19 consistent with the coastal planning requirements of this
20 division, *shall* provide for as many coastal sites identified
21 by the Department of Fish and Game for any uses that are
22 consistent with the policies of Chapter 3 (commencing
23 with Section 30200) ~~of this division.~~

24 (d) Any agency of the state owning or managing land
25 in the coastal zone for public purposes shall be an active
26 participant in the selection of suitable sites for
27 aquaculture facilities and shall make the land available for
28 use in aquaculture when feasible and consistent with
29 other policies of this division and other provisions of law.

30 (e) The Department of Fish and Game ~~shall,~~ in
31 consultation with the Aquaculture Development
32 Committee, *shall* prepare programmatic environmental
33 impact reports for existing and potential commercial
34 aquaculture operations in both coastal and inland areas of
35 the state if both of the following conditions are met:

36 (1) Funds are appropriated to the department for this
37 purpose.



1 (2) Matching funds are provided by the aquaculture
2 industry.

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