

**STAFF REPORT
81**

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11/29/17

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**CONSIDER SPONSORING STATE LEGISLATION IN THE SECOND HALF OF THE
2017-18 LEGISLATIVE SESSION TO AMEND PUBLIC RESOURCES CODE
SECTION 6307 TO ALLOW THE COMMISSION TO PROVIDE, AS PART OF AN
EXCHANGE AGREEMENT INVOLVING GRANTED LANDS, THAT THE LANDS OR
INTERESTS IN LANDS THAT ARE ACQUIRED AND IMPRESSED WITH THE
PROTECTIONS OF THE COMMON LAW PUBLIC TRUST DOCTRINE BE
CONVEYED IN TRUST TO THE GRANTEE AND DEEMED PART OF THE
STATUTORY TRUST GRANT**

SUMMARY:

This legislative proposal would amend Public Resources Code section 6307, a statute that authorizes the Commission to enter into land exchange agreements. The amendment would authorize the Commission to provide, as part of an exchange agreement involving granted lands, that the lands or interests in lands that are acquired and impressed with the protections of the common law Public Trust Doctrine be conveyed in trust to the grantee, rather than legislatively granted, and deemed part of the existing statutory trust grant.

BACKGROUND AND DISCUSSION:

The Commission has exclusive jurisdiction over all ungranted tidelands and submerged lands owned by the State and held in trust for the benefit of the people of California. Public Resources Code section 6307 (Section 6307) authorizes the Commission under certain circumstances described below to:

...enter into an exchange, with any person or any private or public entity, of filled or reclaimed tide and submerged lands or beds of navigable waterways, or interests in these lands, that are subject to the public trust for commerce, navigation, and fisheries, for other lands or interests in lands...

Land exchanges are an important tool for the Commission and the state's grantees to effectively manage Public Trust land and maximize the public value of the land that it holds as Public Trust needs and values evolve over time. Pursuant to the Commission's authority to enter into exchange agreements, the Commission may free the lands or interest in lands given in exchange from the Public Trust and must impose the Public Trust on the lands or interests in lands received in exchange.

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The Commission sometimes enters into land exchange agreements with a local jurisdiction that holds sovereign land in trust under a legislative grant. Many times, the grantee will want the new Public Trust lands, held in the character of sovereign land, to be added to their legislative grant. Typically, the Commission will issue a long-term lease to the grantee until the legislative grant can be amended to include the new Public Trust land.

The proposed legislation would allow the Commission, in these instances, to provide as part of the exchange agreement that the lands or interests in lands that are acquired and impressed with the protections of the common law Public Trust Doctrine be conveyed in trust to the local jurisdiction as sovereign land, subject to the Public Trust and terms of the grant. This change will provide authorization to the Commission to convey the new Public Trust land in the exchange agreement, rather than from individual grants from the Legislature.

Traditionally, this step in the land exchange process happens through legislation. This process takes nearly a year and requires an author and an investment in legislation. These bills are typically on consent throughout the legislative process. Legislative staff, when the last such bill was introduced, AB 1847 (Lowenthal, Chapter 118, Statutes of 2012), inquired if the Commission could implement the conveyance without legislation, since these bills are uncontroversial and the legislative step can be viewed as ministerial. Commission staff believes this idea is meritorious.

The existing requirements for approving a land exchange agreement pursuant to Section 6307 would remain the same. The Commission would have to make all of the following findings for an exchange to be valid:

1. The exchange is for one or more of the following purposes:
 - a. To improve navigation or waterways
 - b. To aid in reclamation or flood control
 - c. To enhance the physical configuration of the shoreline or trust land ownership
 - d. To enhance public access to or along the water
 - e. To enhance waterfront and nearshore development or redevelopment for Public Trust purposes
 - f. To preserve, enhance, or create wetlands, riparian or littoral habitat, or open space
 - g. To resolve boundary or title disputes.
2. The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the Public Trust.

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3. The exchange does not substantially interfere will public rights of navigation and fishing.
4. The monetary value of the lands or interests in lands received by the trust in exchange is equal to or greater than that of the lands or interests in land given by the trust in exchange.
5. The lands or interests in land given in exchange have been cut off from water access and no longer are in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, and are relatively useless for Public Trust purposes.
6. The exchange is in the best interests of the State.

One issue staff considered in the context of this proposed legislation is how to ensure transparency if the Commission, rather than the Legislature, conveys land into the grant. Staff is confident that ample transparency can be assured. Last year, staff redesigned its website and created individual website pages for each grantee, which gives staff more versatility and avenues for transparency. Every granting statute is on the Commission's website and is included on the applicable grantee website page. This is the primary way the public can find information about granted lands, such as use conditions, boundaries, and other terms and conditions in the grants. If the Commission conveyed land to a grantee absent legislation, there would not be a new granting statute to publish on the Commission's website, but the title settlement and exchange agreement would be published on the grantee webpage. Staff believes additional transparency is possible because the new individual grantee pages provide other avenues for offering detailed information so that the public can more easily identify which lands were part of the original trust grant and which lands have been added and removed from the trust grant pursuant to a land exchange. This can be accomplished using land descriptions and GIS mapping tools.

Commission staff believes that the benefits of the proposed amendment to Section 6307, including significantly diminishing the time to complete a conveyance and eliminating unnecessary legislation, justify the proposed legislation. Staff is also confident that ample transparency can be ensured.

STAFF RECOMMENDATION:

Staff recommends that the Commission sponsor legislation in the second half of the 2017-2018 legislative session to amend Section 6307 to allow the Commission to provide, as part of an exchange agreement involving granted lands, that the lands or interests in lands that are acquired and impressed with

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the protections of the common law Public Trust Doctrine be conveyed in trust to the grantee and deemed part of the statutory trust grant.

RECOMMENDED ACTION:

It is recommended that the Commission:

Sponsor legislation in the second half of the 2017-2018 legislative session to amend Public Resources Code section 6307 to allow the Commission to provide, as part of an exchange agreement involving granted lands, that the lands or interests in lands that are acquired and impressed with the protections of the common law Public Trust Doctrine be conveyed in trust to the grantee and deemed part of the statutory trust grant.