

**CALENDAR ITEM
C109**

A Statewide

12/02/13

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**CONSIDER DIRECTING STAFF TO DEVELOP AN EDUCATIONAL GUIDELINE
DOCUMENT DESCRIBING THE STATE'S LAWS AND POLICIES ON THE PUBLIC'S
RIGHTS TO ACCESS THE STATE'S NAVIGABLE WATERWAYS**

INTRODUCTION

The public policy of protecting and promoting access to the State's navigable waterways is embodied in California's constitution, statutes and common law. As progress marches on and California's population increases there is a need for a reiteration of public rights, clarification of State policy asserting such rights, and a multi-faceted approach involving education and assistance in establishing appropriate access facilities to the State's coastline and inland navigable waterways.

PUBLIC ACCESS TO CALIFORNIA'S WATERWAYS

The importance of making navigable waters accessible for the people has been recognized under virtually every legal system since ancient Rome. As a condition of statehood, California agreed that it would maintain its navigable waters as "common highways and forever free." The State Constitution protects the rights of the public to use California's navigable waters. It guarantees the right to fish from them (Cal. Const. Art. I, sec. 25), and prohibits the destruction of free navigation over them. It also directs the Legislature to enact "such laws as will give the most liberal construction to this provision, *so that access to the navigable waters of this State shall be always attainable to the people thereof.*" (Cal. Const. Art. X, sec. 4). Over a hundred years ago California's highest court stated: "The right of navigation in all navigable waters is the paramount right of every citizen." (*Wright v. Seymour* (1886) 69 Cal. 122, 127).

Although historically public rights in public waters had been described in terms of "commerce, navigation and fisheries," more recent decisions have recognized the importance of such water related uses as hunting, swimming, wading, picnicking, surfing and ecological study and preservation. (*Marks v. Whitney* (1971) 6 Cal.3d 251). Basic to enjoyment of these rights is the ability by the public to access these waters.

The State Lands Commission has long been the state agency responsible for protecting the public's rights to the State's navigable waterways. As the state agency entrusted to manage and protect ungranted tidelands, submerged lands, and the beds and banks of navigable lakes and waterways, the Commission is uniquely situated to protect the

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people's rights in and to these priceless resources. For example, the State Lands Commission sued to invalidate an El Dorado County ordinance banning public rafting on the South Fork of the American River. It successfully persuaded Caltrans to liberalize its policy for implementing statutes requiring a public access feasibility study when bridges are constructed over navigable rivers. The Commission has expended substantial resources defining and defending public rights on the shores of lakes such as Clear Lake and Lake Tahoe, on bays including Humboldt, Tomales, Richardson, San Pablo, San Francisco, Monterey, Carmel, Estero, Morro, San Luis Obispo, Santa Monica, San Pedro, Mission, and San Diego, and on many of California's rivers including, but not limited to, the Sacramento, American, Colorado, San Joaquin, Kern, Kings, Yuba, Van Duzen, Eel, Russian, Napa, San Lorenzo and Mokelumne and many areas along California's coast.

In addition to the State Lands Commission, a number of other State agencies play a role in protecting and promoting public access to the State's waters, including the Attorney General's Office, the California Coastal Commission, the San Francisco Bay Conservation and Development Commission, the Department of Fish and Wildlife, the Department of Parks and Recreation, and the Department of Water Resources.

The need for education, clarity and guidance with respect to the public's rights to access its waterways couldn't be greater, especially in light of increased development along California's waterways that have imposed severe pressures on the public's ability to access such waterways. Staff recommends that the Commission direct staff to create an educational guideline document that summarizes the state of law in California regarding public use of the State's waters and public rights of access to them. This document, when finalized and disseminated, will provide a useful educational tool for the general public and interested parties, as well as local and state agencies, in understanding the importance of the public's rights to access California's waters.

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDINGS:

Find that the subject direction to staff to develop an educational guideline document is not subject to the requirements of the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

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AUTHORIZATION:

1. Direct staff to develop an educational guideline document describing the State's laws and policies on the public's rights to access the State's tidelands, submerged lands, and navigable waterways.
2. Direct staff to bring the requested educational guideline document to the Commission for adoption.