
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 2362
Author: Mullin
Version: 6/21/2022
Urgency: No
Consultant: Evan Goldberg
Hearing Date: 6/29/2022
Fiscal: Yes

SUBJECT: Publicly and environmentally beneficial projects: interagency coordination: permits

DIGEST: Requires the California Natural Resources Agency (CNRA) to establish an interagency working group to accelerate and streamline permitting for ecosystem restoration and climate adaptation projects. Also expands the purposes for which the State Water Resources Control Board (State Water Board) can accept donations.

ANALYSIS:

Existing law:

- 1) Requires CNRA, by July 1, 2017, and every 3 years thereafter, to update the state's climate adaptation strategy to identify vulnerabilities to climate change by sectors and priority actions needed to reduce the risks in those sectors. (Public Resources Code (PRC) 71153)
- 2) Requires CNRA to explore, and authorizes CNRA to implement, options within CNRA's jurisdiction to establish a more coordinated and efficient regulatory review and permitting process for coastal adaptation projects that use natural infrastructure. (PRC 71160)
- 3) Authorizes the State Water Board, on behalf of itself or a regional board, to accept donations of moneys from a permittee for the purpose of updating a water quality control plan. (Water Code 13249)

This bill:

- 1) Defines a "project" as an environmentally beneficial project that serves the primary purposes of aquatic, riparian ecosystem, or upland habitat restoration, enhancement, or establishment to improve water quality, restore native vegetation, recover species, or promote natural hydrologic processes that may have an incidental climate resiliency or other public benefit,

including, but not limited to, natural flood attenuation, groundwater recharge, public access, or recreation, but not a project that serves the primary purpose of nonrestoration-related development.

- 2) States a “project” does not include any construction activities except for those solely related to habitat restoration.
- 3) Requires CNRA to coordinate with CalEPA to convene the Interagency Working Group comprised of regulatory agencies responsible for permitting projects within the auspices of CNRA and CalEPA by July 1, 2023, to coordinate efficient regulatory review and permitting mechanisms. The Interagency Working Group shall include, but is not limited to, CNRA and the California Department of Fish and Wildlife (CDFW).
- 4) Allows the Interagency Working Group to establish and consult with a panel of stakeholders. The panel shall:
 - a) Be composed of no more than 15 members.
 - b) Represent a diversity of stakeholder interests and include, but not be limited to, those with experience permitting projects, those that have received permits for projects across the state, local governments with permitting authority for projects, and those who sponsor projects.
 - c) Be developed taking into consideration the principles of justice, equity, diversity and inclusion.
 - d) Be subject to robust, public, and transparent conflict of interest requirements.
- 5) Requires the Interagency Working Group to encourage the participation of federal agencies responsible for permitting projects.
- 6) Requires meetings of the Interagency Working Group and the stakeholder panel to be public and provide appropriate advance notice of meetings.
- 7) Requires members of the stakeholder panel to serve without compensation, except any necessary travel expenses shall be reimbursed by the agency.
- 8) Under the oversight of CNRA, the Interagency Working Group shall:
 - a) Identify existing programmatic and other efficient permitting mechanisms, such as those established pursuant to Chapter 6.5 (commencing with Section 1650) of Division 2 of the Fish and Game Code, for permitting projects.

- b) Coordinate actions to expedite permitting for eligible projects, including, but not limited to, coordinating programmatic permits, legislative actions, organizational structure efficiencies, or unified permit applications.
 - c) Investigate the feasibility of developing and administering an online permit portal to create an efficient and effective application submission and tracking system for qualifying projects.
 - d) Incorporate input from permit applicants and other stakeholders to inform potential agency actions to be proposed by the Interagency Working Group.
 - e) Develop and implement robust and ongoing public outreach, education, and engagement materials and efforts to ensure stakeholders and the broader public are aware of and have the opportunity to engage with the Interagency Working Group and relevant state entities on permit streamlining efforts pursuant to this section.
 - f) Develop and implement, or require state entities to develop and implement, robust internal training procedures, including manuals, guidelines and other materials, to help ensure each state entity involved in permitting uses the same standards to evaluate permit applications under the same program statewide. The training manuals, guidelines and other materials shall be readily and publicly available on all of the applicable state entities' internet websites.
- 9) Requires CNRA to provide a comprehensive report annual report to the Legislature beginning July 1, 2024, evaluating regulatory and permitting mechanisms that meaningfully accelerate projects. The report shall include, but not be limited to, identification of existing programmatic and other efficient permitting mechanisms for projects and a review of the progress made by the Interagency Working Group and applicable state entities under its auspices toward completing the requirements of this bill. In addition, the report shall include the following information:
- a) A list and description of the projects approved by each state entity;
 - b) Average permit processing times by each state entity for each project;
 - c) The number of permits granted by each state entity for each applicable project;
 - d) Specific strategies and changes implemented by each state entity instituted to streamline permitting;
 - e) Lessons learned to improve ongoing permitting processes and restoration work;

- f) Incentives provided for applicable state entities to accelerate permit streamlining;
 - g) The development of new or revisions of existing programmatic permitting approaches and their implementation;
 - h) Resources dedicated to the effort required by this section by each state entity;
 - i) An overview of public education and outreach, public engagement, and training efforts required by this section by each applicable state entity; and
 - j) Counties and watersheds in which applicable state entities have approved permits.
- 10) Requires CNRA to provide funding for the participation of state entities within its jurisdiction to fulfill the requirements of this section.
- 11) Authorizes the State Water Board to, on behalf of itself or a regional board, accept moneys from donations, grants, or contributions, or through contractual agreements. All funds must be deposited, and separately accounted for, in the State Water Pollution Cleanup and Abatement Account and continuously appropriates the money to the State Water Board, regardless of fiscal years.

Background

- 1) *Disappearing Ecosystems.* Many of California's natural systems have been damaged or destroyed. The Central California Coast alone has lost 92% of its tidal wetlands, including ecologically priceless estuaries. An estimated 7 million acres of vernal pools existed at the time of Spanish contact; less than 13% remain today. Climate change and habitat loss are also threatening California's biological diversity and driving catastrophic wildfires, historic drought, flooding, extreme heat, coastal erosion, and sea level rise. Not surprisingly, the same forces that threaten plant and animal species also threaten human lives and livelihoods.
- 2) *Green Tape & Ham.* The state has identified "Cutting Green Tape" as a signature initiative to increase the pace and scale of environmental restoration. Complex and overlapping permitting processes can result in fewer and smaller actions being taken at a slower pace and a greater expense. In the November 2020 stakeholder-coordinated report issued by "California Landscape Stewardship Network, Cutting Green Tape: Regulatory Efficiencies for a Resilient Environment," sometimes, as much

as 33% of public funding for a restoration project goes to planning and permitting, and a project that only takes weeks to implement can take years to permit. Much like the familiar term, "red tape," "green tape" represents the extra time, money, and effort required to get environmentally beneficial work done because of inefficiencies in the state's current systems.

- 3) *Acting On Recommendations.* CNRA is currently implementing six of the Cutting Green Tape report's recommendations based on the agency's staff resources, financial resources and workload. Other state agencies involved in permitting and implementing ecosystem restoration and habitat enhancement projects are also pursuing efforts to making permitting more efficient.

Comments

- 1) *Purpose of Bill.* According to the author, "California is one of the most climate-challenged regions of North America and must actively implement strategies to prepare for, and adapt to, climate events. Ecological restoration and nature-based climate adaptation are essential to the state's ability to withstand climate change impacts such as rising sea levels, drought, extreme heat, and wildfires. However, the permit process for such projects can be convoluted and time-consuming, often requiring approval from multiple agencies with potentially redundant or conflicting requirements. This process can be a substantial barrier to implementing much-needed measures in a rapidly evolving climate reality.

"AB 2362 would address this issue by streamlining the permitting process for nature-based climate adaptation projects. AB 2362 draws from recommendations from The California Landscape Stewardship Network's "Cutting Green Tape" Report and an existing framework for permit streamlining currently implemented at a regional level in the San Francisco Bay Area. AB 2362 would task the California Natural Resources Agency with leading an interagency working group to identify and use existing permit efficiency measures to their full potential lay the groundwork for an online application platform, with consultation from a panel of ecological restoration practitioners and experts. In doing so, AB 2362 would accelerate the state's ability to restore valuable ecosystems and increase our resilience to the impacts of climate change."

- 2) *Fleshing Out The Band.* Under the bill, the only two required members of the Interagency Working Group are CNRA and CDFW. Given the bill is intended to help streamline the permitting processes for environmentally beneficial projects that focus on habitat restoration, improve water quality, and more, ***the committee may wish to consider requiring CalEPA and the State Water Board to be members of the Interagency Working Group.***

- 3) *How Will This Streamlining Effort Be Different?* “California Landscape Stewardship Network, Cutting Green Tape: Regulatory Efficiencies for a Resilient Environment” is a report issued in December 2020 that made 14 key recommendations on how to make good restoration and stewardship projects to happen more efficiently and cost effectively. Over 150 regulatory agency staff, local governments, non-governmental organizations, public and private land owners, and a range of other stakeholders took part in the process of developing the report and its recommendations.

It’s not clear how the Interagency Working Group created by this bill and the report it is required to produce will interact with the work that has been previously been done. Will it be building on that work and moving toward implementing many of its recommendations, or will it be covering the same ground that has already been covered to come up with similar recommendations?

- 4) *Flexibility For The State Water Board.* Under current law, the State Water Board can accept donations of moneys from a permittee for the purpose of updating a water quality control plan on behalf of itself or a regional board.

This bill lets the State Water Board, on behalf of itself or a regional board, accept moneys from donations, grants, or contributions, or through contractual agreements, to fund planning, permitting, or providing technical support for public benefit projects.

- 5) *Continuous Appropriation.* The measure also continuously appropriates the money received under the above provision to the State Water Board, without regard for fiscal year. Arguably, providing any department or agency with a continuous appropriation reduces the Legislature’s ability to oversee the spending priorities of a particular department or agency. As such, ***the committee may wish to consider removing the continuous appropriation from the bill.***

- 6) *Committee amendments.* **Staff recommends the committee adopt the bolded amendments contained in comments 2 and 5 above.**

Double Referral

This bill was approved by the Senate Natural Resources & Water Committee on a 7-0 vote on June 20, 2022.

Related/Prior Legislation

AB 128 (Ting, Chapter 21, Statutes of 2021) is a FY 21/22 budget act and provided funding for the Cutting Green Tape initiative at CDFW, among other things.

AB 72 (Petrie-Norris, Chapter 369, Statutes of 2021) requires CNRA to explore and implement more coordinated and efficient permitting processes for coastal adaptation projects that use natural infrastructure.

SB 716 (McGuire, Chapter 735, Statutes of 2021) extends the sunset on the Habitat Restoration and Enhancement Act until January 1, 2027, among other things.

SB 155 (Committee on Budget and Fiscal Review, Chapter 258, Statutes of 2021) is the Public Resources budget trailer bill and provided for a limited term CEQA exemption for certain environmentally beneficial projects.

AB 2193 (Gordon, Chapter 604, Statutes of 2014) established the Habitat Restoration and Enhancement Act.

SOURCE: Author

SUPPORT:

Bay Area Council
Civicwell (formally the Local Government Commission)
County of San Mateo
Midpeninsula Regional Open Space District
Santa Clara Valley Water District
Save the Bay
Solano County Water Agency
Sustainable Conservation

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: A letter signed by The Bay Area Council, San Mateo County, Save The Bay, and the Santa Clara Valley Water District states:

“AB 2362 would require the Natural Resources Agency to evaluate current state interagency collaborations at the regional level, by July 1, 2023, with the intent to increase transparency in state environmental permit processing and provide mechanisms for expediting permits for environmental restoration projects. The streamlining of ecological restoration project permitting is of paramount importance because many of these projects are adaptations to climate change that will bolster the resilience of critical habitats.

“The bill’s intention is strengthened by the amendments which authorize the State Water Resources Control Board and the regional boards to accept funding from non-state sources for permitting integration teams for the purpose of planning, permitting, or providing technical support for projects of public benefit.

“Streamlining the permitting process for projects that provide public benefit will speed up the work of numerous federal, state, and local agencies to adapt to climate change through nature-based solutions.”

ARGUMENTS IN OPPOSITION: None received.

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