

MINUTE

3/30/72
CRK

15. PROPOSED ADDITION TO RULES AND REGULATIONS OF THE STATE LANDS COMMISSION - W 5125.6.

After consideration of Calendar Item 14 attached, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION AUTHORIZES INITIATION OF PROCEDURES UNDER THE PROVISIONS OF SECTIONS 11420, ET SEQ., OF THE GOVERNMENT CODE, TO ADD ARTICLE 9, SECTIONS 9000 THROUGH 9600, TO THE CALIFORNIA ADMINISTRATIVE CODE, TITLE 2, DIVISION 3, RULES AND REGULATIONS OF THE STATE LANDS COMMISSION, IN SUBSTANTIALLY THE FORM SET FORTH IN EXHIBIT "A" ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN.

Attachment:

Calendar Item 14 (6 pages)

CALENDAR ITEM

3/72
W 5125.6
CRK

14.

PROPOSED ADDITION TO RULES AND REGULATIONS
OF THE STATE LANDS COMMISSION

Section 6701 et seq. of the Public Resources Code became law on September 19, 1970. It provides, in general, that leases, contracts, or other instruments conferring rights in granted tide and submerged lands shall not be impaired or affected, in the event a grant is changed or revoked, if the State Lands Commission has made all the following determinations:

1. That such lease, contract, or other instrument is in accordance with the terms of the grant or grants under which title to the tide or submerged lands in question is held.
2. That the proceeds of such lease, contract, or other instrument shall be deposited in an appropriate fund expendable only for state-wide purposes authorized by a legislative grant.
3. That such lease, contract, or other instrument is in the best interests of the state.

Under this law, if the State Lands Commission fails to issue to the legislative grantee a written report making, or declining to make with reasons for so declining, the determinations within 90 days of receipt from the legislative grantee of all material required by the rules and regulations of the commission, or within any other period of time mutually agreed upon by the commission and the legislative grantee, such failure shall be the equivalent of an affirmative finding with respect to each of such determinations and the lease, contract, or other instrument in question is protected as to the rights of third parties.

The proposed addition to the California Administrative Code, attached hereto and marked Exhibit "A", has been drafted to meet the requirements of Section 6703 of the Public Resources Code for rules and regulations necessary to implement this law.

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE INITIATION OF PROCEDURES UNDER THE PROVISIONS OF SECTIONS 11420, ET SEQ., OF THE GOVERNMENT CODE, TO ADD ARTICLE 9, SECTIONS 9000 THROUGH 9600, TO THE CALIFORNIA ADMINISTRATIVE CODE, TITLE 2, DIVISION 3, RULES AND REGULATIONS OF THE STATE LANDS COMMISSION, IN SUBSTANTIALLY THE FORM SET FORTH IN EXHIBIT "A" ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN.

Attachment: Exhibit "A"

EXHIBIT "A"

Proposed Addition to
California Administrative Code
Title 2, Administration
Division 3, State Property Operations

ARTICLE 9.

LEASE INVOLVING GRANTED TIDE AND SUBMERGED LANDS

9000. PROCEDURES

Whenever a lease, contract, or other instrument is submitted to the State Lands Commission pursuant to Section 6702 of the Public Resources Code, such document shall be accompanied by a formal application to the Commission that it make the required determinations and where the application has been made by the lessee or a third party, it shall be accompanied by a report from the legislative grantee (lessor) stating whether or not the grantee concurs in the application and specifying in detail the reasons for its concurrence or non-concurrence, plus other information required by the State Lands Division.

9100. APPLICATION

(a) The application in letter form shall be submitted to the State Lands Division at Sacramento and it shall include the following:

(1) Names and addresses of the legislative grantee (lessor) and the grantee's lessee(s).

(2) List all legislative acts (chapter number and year of enactment) affecting the subject tide and submerged lands.

(3) If the proposed lessee is a corporation, include or attach:

a. The name of the president and secretary.

b. A certificate of incorporation issued by the Secretary of State of the State of incorporation.

c. If not a California corporation, a certificate from the Secretary of the State of California showing qualification of the applicant to transact business in California.

d. A notarized copy, bearing the corporate seal, of the Resolution by the Board of Directors of the applicant, indicating the names of the officers authorized to execute documents.

(4) The minimum expense fee of \$500.00 (see Article 9300).

(5) Legal description and actual and proposed use of the granted tide and submerged lands affected by the lease, contract or other instrument, to include the following:

a. Existing structures or land improvements on the land, their cost, date of construction, and current use, including any income from their use.

b. Proposed construction, to include new structures, land improvements and dredging, or alterations to existing improvements, cost breakdown, and use.

c. Beginning and completion dates for proposed construction, prospecting, mining, dredging, etc.

d. Copy of city or county building, variance, or use permit for all operations and structures, existing or proposed.

e. Plans and profiles of existing structures, proposed construction, dredging, deposit areas for spoil, etc.

f. Dated photographs showing all existing structures and appurtenances and the general area.

(6) State whether the granted land has or has not been filled in, as defined in Section 6702(d), Public Resources Code, and if so, attach a plat showing all details of the fill, including dates.

(7) Show the precise location and boundaries of the project on an 8½ x 11" portion of a USGS Topographic quadrangle map, or other map showing equivalent detail.

On this same map, show the names of the topographic sheet(s) or maps used, and the latitude and longitude and coordinates around the sides of the map. In addition a latitude and longitude coordinate number must be assigned to the project (the coordinate closest to the center of the project should be used).

The location of the project must also appear on a regional map, with significant existing or proposed environmental or recreational areas indicated in relation to the project area(s).

(b) In addition to the foregoing, the following reports, documents, and papers shall be appended to the application and form a part thereof:

- (1) The lease, contract, or other instrument, in triplicate.
- (2) An environmental impact report prepared according to current requirements of the State Lands Division. A copy of said requirements may be secured by contacting the office of the State Lands Division.
- (3) An original document, or other evidence, authorized by and executed on behalf of the legislative grantee, embodying a covenant that the proceeds of the lease, contract, or other instrument shall be deposited in a trust fund or funds and expended only for statewide purposes.
- (4) The complete report of an appraisal of the granted land to be leased, which appraisal shall be an estimate of the fair market value of the land for highest and best use, by a qualified professional appraiser.
- (5) One copy of any feasibility study, cost/benefit analysis, or other report that may have been a basis for determination of the consideration.
- (6) One copy of any permit required by a governmental agency, including but not limited to the U.S. Army Corps of Engineers, U.S. Coast Guard, and, where applicable, the Tahoe Regional Planning Agency, or San Francisco Bay Conservation and Development Commission.

(7) A Statement in support of the applicants' contention that such lease, contract, or other instrument is in the best interests of the State.

(8) An affidavit attesting to the authenticity and accuracy of the application and its appendages.

(9) Those portions of any plan adopted pursuant to Title 7 of the Government Code which affect or apply to the leased area.

(10) A statement by the legislative grantee describing how the lease will affect and fit in with over-all plans (including plans adopted pursuant to Title 7 of the Government Code) for development of

a. granted land, b. the project area and c. the general vicinity.

9200. SUBMISSION OF LEASE CONTRACT OR OTHER INSTRUMENT

The document shall be consummated and executed by all parties when submitted to the State Lands Commission for the determinations set forth in Section 6702(b) of the Public Resources Code.

9300. EXPENSES.

The expense fee of \$500.00 required by Section 9100(a) 4 is the minimum necessary to reimburse the State for the costs to study, investigate and process a typical uncomplicated application under this Article. If the amount proves to be insufficient due to unusual complexity of the transaction, or for other purposes necessary to meet the time limitation, additional funds will be requested. If the funds are not received within twenty-one (21) days, the commission will decline to issue a report and will cite such nonreceipt as adequate reason.

9400. TIME LIMITATION

When an application, complete in all respects, is received in the State Lands Division, it will be acknowledged and the ninety-day period prescribed by Section 6704 of the Public Resources Code shall commence to run. If the application is incomplete, the applicants will be informed of

the additional material required and the ninety-day period will not begin until all such material is received and acknowledged.

9500. CRITERIA FOR COMMISSION ACTION

In processing a lease, contract or other instrument pursuant to this Article, the criteria for making the determinations outlined in Section 6702(b) of the Public Resources Code will include but not be limited to a consideration of the Commission's current policies, practices and procedures in administering laws relating to lands under its jurisdiction.

Prospective parties to a lease or other transaction requiring action by the Commission are therefore urged to obtain this information from the State Lands Division prior to concluding their negotiations.

9600. MODIFICATION OR AMENDMENT TO A LEASE, CONTRACT OR OTHER INSTRUMENT

Approval by the State Lands Commission of any lease, contract or other instrument pursuant to Sections 6701, et seq. of the Public Resources Code does not constitute approval of any modification or amendment thereto, whether or not such modification or amendment is made pursuant to provisions of a lease, contract or instrument. Further approval by the State Lands Commission of any such modification or amendment will be necessary in order for the provisions of Sections 6701, et seq. of the Public Resources Code to be applicable to such modified or amended lease.