CALENDAR ITEM
C100

A	Statewide	04/26/13 W 9301
S	Statewide	C. Connor P. Griggs

CONSIDER AMENDMENT TO THE CURRENT DELEGATION OF AUTHORITY TO THE CALIFORNIA STATE LANDS COMMISSION STAFF

PARTY:
California State Lands Commission

BACKGROUND:
The California State Lands Commission, in accordance with law, provides for the delegation of certain responsibilities and authority to the Executive Officer and staff of the Commission. A new Comprehensive Delegation of Authority (Delegation) was approved at the December 10, 2010, Commission meeting (Calendar Item 39). This Delegation was revised at the September 1, 2011, Commission meeting (Calendar Item 74).

Under the December 10, 2010 Delegation, the Executive Officer was given the authority to make emergency approvals in certain specified situations where action cannot be delayed until the Commission holds a regularly noticed meeting. Following the December 2010 approval of the Delegation, Commission staff realized the need for an additional delegation of authority to address instances where there is an immediate, but temporary need for access to or use of State-owned land under the jurisdiction of the Commission for certain types of activities. Examples include activities to abate or prevent a nuisance or threat to public health or safety, or to public navigation; activities to protect property under the jurisdiction of the Commission; activities that involve minor alterations to land; activities involving minor temporary use of land having negligible or no permanent effects on the environment; and activities necessary for the processing of a lease application or the preparation of a California Environmental Quality Act (CEQA) analysis related to the property that do not result in a significant or major disturbance to an environmental resource.

At its September 1, 2011 meeting, the Commission authorized the Executive Officer to issue letters of non-objection for these types of activities, provided that the Executive Officer has previously determined an exemption from CEQA applies pursuant to previously granted authority (see Exhibit A, section IV, Administration of the California

Environmental Quality Act, unchanged from the existing Delegation) and the project proponent agrees in writing to terms and conditions imposed by Commission staff.

Three small, but substantive, changes to the Delegation were also approved at the September 1, 2011 meeting. First, the existing delegation to approve immediate action to avoid substantial harm to private property was extended to include *public* property. Second, recognizing that some actions would be one-time events, an applicant would not necessarily be required to apply for a lease. Third, the paragraph authorizing the Executive Officer to make a finding that the project is "categorically exempt" from the CEQA was amended to allow consideration of both categorical and statutory exemptions.

Now, in an effort to further streamline the Commission's internal processes and increase efficiency, staff is recommending that the Commission delegate to the Executive Officer the authority to approve all Continuation of Rent actions if annual rent or other consideration is not being modified and no other Commission action on the lease is being considered. At present, these actions are authorized by the Commission at regularly-scheduled public meetings. The majority of the Commission's revenue-generating leases contain a General Provision reserving to the Commission the right to modify the method, amount, or rate of consideration effective on each fifth anniversary of the lease. In advance of the five-year anniversary, staff performs a rent review in which the annual rent is estimated based on an appraisal, an established "benchmark" rental rate, percentage of gross income, or other method available to staff based on the California Code of Regulations. Based on that analysis, staff then recommends either a Rent Revision (for an increase or decrease in rent) or a Continuation of Rent (if the rent is unchanged). Following the rent review, the lessee is notified of either the rent revision or the continuation of rent. Staff then prepares a report (calendar item) with the recommendation for either action. After the Commission action, staff then notifies the lessee of the action taken, completes certain internal forms for database tracking, and closes out the file. By delegating the approval of the Continuation of Rent actions to the Executive Officer, the Commission can eliminate certain steps in the process (preparation of a staff report and exhibits, and interdivisional review of these documents), thereby increasing staff time that can be spent on other matters. Staff will continue to notify lessees of Continuations of Rent actions in accordance with current practices. In the past five years, there have been 74 Continuation of Rent authorizations made by the Commission. All of these Continuation of Rents were approved by the Commission on consent with no modifications. There have been no instances of these actions being contested by the lessees or third parties at Commission meetings. If a situation arises where the lessee or a third party would like

to have the action considered by the Commission, then the item will be agendized and heard at a regularly-scheduled public meeting.

Staff therefore recommends that the Commission amend section VI. Land Management of the Comprehensive Delegation of Authority, as shown on Exhibit A. All other sections of the Delegation, as amended September 1, 2011, would remain unchanged.

STATUTORY REFERENCES:

Public Resources Code Section 6110

EXHIBIT:

A: Amended Comprehensive Delegation of Authority

OTHER PERTINENT INFORMATION:

1. The staff recommends that the Commission find that the subject amendment does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the CEQA.

   Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the subject amendment is not subject to the requirements of CEQA pursuant 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, section 15378.

AUTHORIZATION:

Authorize the amendment of Section VI of the September 1, 2011 Comprehensive Delegation of Authority to allow the Executive Officer to approve all Continuation of Rent actions if annual rent or other consideration is not being modified and no other Commission action on the lease is being considered, as set forth in Exhibit A, effective April 26, 2013.

EXHIBIT A

COMPREHENSIVE DELEGATION OF AUTHORITY
(AMENDED APRIL 26, 2013)

I. GENERAL

A. EXECUTIVE OFFICER

1. The Executive Officer shall represent the California State Lands Commission ("the Commission"), when it is not in session, in all matters under its jurisdiction, subject, however, to the limitations hereinafter expressed. The Executive Officer shall be the chief administrative officer of the staff of the Commission and shall supervise all personnel, property, equipment, bank accounts, funds, and records assigned to the Commission. The Executive Officer shall direct all operations and management of lands and interests in land under the Commission's jurisdiction, including but not limited to, administering the sale and leasing of lands in compliance with the provisions of law, the rules and regulations of the Commission and the Commission's expressed policies and approvals. The Executive Officer shall also direct all operations and administer the regulatory programs assigned to the Commission as set forth in the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act of 1990 (Public Resources Code, Division 7.8) and the Marine Invasive Species Control Act (Public Resources Code, Division 36).

2. In the event of an emergency whereby immediate action is necessary to avoid substantial harm to public health and welfare, to the environment, or to private or public property, where the emergency exists through no fault of the owner of any private property threatened, and where approvals from the Commission are needed that cannot be delayed until the Commission holds a regularly noticed meeting, the Executive Officer may give the emergency approval needed, provided that:

    a) The Executive Officer may approve only such action as is minimally necessary to avoid or respond to the emergency; and

    b) The applicant agrees to the following:

        1) That the State of California, its officers, agents, and employees shall not be liable for any claims, damages, or injuries of any kind and from any cause, arising out of or connected in any way with the

proposed action, and that the applicant shall indemnify, hold harmless, and, at the option of the State, defend the State, its officers, agents, and employees, against and for any and all liability for any claims, damages, or injuries of any kind and from any cause, arising out of or connected in any way with the proposed action; and

2) That the applicant shall comply with all terms and conditions imposed by the Commission staff; and

3) That the applicant shall obtain and secure, prior to commencement of work, all approvals necessary or appropriate from all other agencies or governmental entities having jurisdiction; and

4) That disturbance of the property under the Commission's jurisdiction shall be kept to a minimum area consistent with the nature and purpose of the event, and that the applicant shall take all necessary and appropriate precautions to prevent littering or pollution on State lands, waterways, and adjoining properties; and

5) That the applicant shall be responsible for any damage, destruction, or loss occurring to State lands, waterways, adjoining property, the State's lessees, or other members of the public; and

6) That the applicant shall provide the Commission staff notice prior to any actual work or activity taking place pursuant to the approvals given and shall provide to the Commission staff any information requested as to the work completed; and

7) That the applicant shall provide the Commission staff satisfactory evidence of insurance coverage as requested by the Commission staff with the Commission named as an additional insured; and

c) If the approval requires a finding that the project is exempt from the California Environmental Quality Act (CEQA) and that exemption would properly apply, the Executive Officer is authorized to make that finding.

3. Additionally, the Executive Officer may issue a letter of non-objection for an activity requiring immediate, temporary access to or use of State-owned land under the jurisdiction of the Commission, provided that the Executive Officer determined that an exemption from CEQA applies pursuant to authority

granted in section IV of this Comprehensive Delegation of Authority, and when the project proponent agrees in writing to all of the provisions in 2.b) above.

Types of activities for which a letter of non-objection may be issued include those shown below, followed by examples:

- Activities necessary for the processing of a lease application or the preparation of a CEQA analysis related to the property that do not result in a serious or major disturbance to an environmental resource, such as:

  - Information collection,
  - Scientific and/or cultural resource surveys,
  - Research, or
  - Resource evaluation activities;

- Activities to abate or prevent a nuisance or threat to public health or safety, or to public navigation, such as:

  - Fuel management activities including creation of fire breaks and vegetation removal,
  - Removal of nonindigenous or invasive species,
  - Removal of abandoned vessels, mooring tackle, and mooring structures,
  - Trash clean-up involving private volunteers and/or government agencies, or
  - U.S. Army Corps of Engineers surveys on Formerly Used Defense Sites (FUDS) for unexploded ordnance;

- Activities to protect property under the jurisdiction of the Commission, such as:

  - Preservation or stabilization of previously unknown cultural or other resources accidentally discovered through human or natural processes;

- Activities that involve minor alterations to land, such as:

  - Well-capping projects involving abandoned water wells,
  - Non-commercial seed or plant collecting as part of a mitigation monitoring program,

- Collection of small amounts of “live rock” for public aquarium exhibits, or
- Off-highway vehicle events where the participants stay on existing trails and the events are subject to permitting and monitoring by a government agency;

- Activities involving minor temporary use of land having negligible or no permanent effects on the environment, such as:

  - Regattas or other short-term water-related events involving the temporary placement of marker buoys,
  - Temporary use of existing access roads,
  - Tree surveys to monitor the health and growth rates of timber, or
  - Research projects.

4. If the Commission staff deems a lease is ultimately required for those activities authorized under the provisions of I.A.2. or 3. above, then the applicant shall apply at the earliest opportunity to the Commission for authorization for the action taken, and the action is subsequently approved and ratified by the Commission at its next noticed public meeting.

B. DELEGATION IN ABSENCE OF EXECUTIVE OFFICER

During any period when the Executive Officer is absent from the State or is unable to carry out his or her duties as delegated or when there is no Executive Officer, all authority delegated to the Executive Officer is hereby delegated to the officer highest on the following list who is not absent from the State and is able to carry out the duties of the Executive Officer:

1. The Assistant Executive Officer
2. The Chief Counsel
3. The Chief, Land Management Division
4. The Chief, Administrative Services Division
5. The Chief, Division of Environmental Planning and Management
6. The Chief, Mineral Resources Management Division
7. The Chief, Marine Facilities Division
8. The Assistant Chief Counsel
9. The Assistant Chief, Land Management Division
10. The Assistant Chief, Administrative Services Division
11. The Assistant Chief, Division of Environmental Planning and Management
12. The Assistant Chief, Mineral Resources Management Division

13. The Assistant Chief, Marine Facilities Division

C. RE-DELEGATION BY EXECUTIVE OFFICER

The Executive Officer may re-delegate authority delegated to him or her only as provided below in subsection D and in sections II, III, IV, V, VI, and VII. Such re-delegations and revocations thereof may be made at the discretion of the Executive Officer and shall be in writing. Any such re-delegation is subject to all limitations and conditions provided by law.

D. DELEGATE, SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION, DELTA PROTECTION COMMISSION, SAN JOAQUIN RIVER CONSERVANCY, SEAGRANT, CALIFORNIA COASTAL COMMISSION, AND OTHER BOARDS, COMMISSIONS, AND PANELS

The Executive Officer shall serve as the delegate or representative on behalf of the Commission to the San Francisco Bay Conservation and Development Commission; to the Ocean Resources Task Force; and to any other boards, commissions, and councils upon which a representative of the Commission is to serve, and, on behalf of the Chair of the Commission, shall serve as the delegate to the California Coastal Commission. The Executive Officer may re-delegate the authority to serve as his or her alternate on or as the delegate on behalf of the Commission or Chair to any of the boards, commissions, and councils listed herein to any one or more other members of the Commission's staff.

II. ADMINISTRATION

A. BUDGET AND FISCAL

The Executive Officer shall prepare, or cause to be prepared, all budgets, budget revisions, contracts and other fiscal documents necessary for the Commission to carry out its activities subject to the following express provisions:

1. All contracts requiring approval of the Department of General Services shall be first approved by a resolution of the Commission.

2. All actions taken shall comply with statutory authority and the State Administrative Manual.

3. Budget revisions involving program changes or augmentation of funds from those budgets which are reportable to the Joint Legislative Budget Committee must be reviewed by the Executive Officer before being signed.

The Executive Officer may re-delegate the above authority, or such of it as he or she may deem appropriate, to one or more of the following officers:

- The Assistant Executive Officer,
- The Chief, Administrative Services Division.

The Executive Officer may also re-delegate to the Chief, Administrative Services Division, and to the Fiscal Officer or Accounting Officers, authority to sign purchase estimates, sub-purchase orders, supply orders, position changes (607s), claim schedules and contracts; counter-sign checks drawn against any bank accounts maintained in the name of the Commission; or counter-sign for release or deposit of securities held by the State Treasurer's Office.

B. PERSONNEL

The Executive Officer shall supervise all personnel and payroll matters for the Commission and its staff, subject to the limits of the approved budget and all statutes, rules, and regulations governing State civil service employees. He or she may act as appointing power and take adverse actions against any employee of the Commission as provided for in statute and applicable State Personnel Board laws and regulations.

The Executive Officer may re-delegate any of the above functions to one or more of the following officers:

- The Assistant Executive Officer
- The Chief, Administrative Services Division
- The Personnel Officer.

III. LEGAL

The Executive Officer, in collaboration with the Chief Counsel for the Commission and the Office of the Attorney General, shall supervise all litigation brought by or against the Commission and shall, as deemed advisable, request the Chief Counsel

and/or the Office of the Attorney General to consider instituting actions to protect the interests of the State that are under the jurisdiction of the Commission. Such authority includes, but is not limited to, accepting legal process served upon the Commission, requesting opinions from the Attorney General, administering oaths, issuing subpoenas, and conducting hearings as authorized by various statutes.

The Executive Officer may re-delegate the above authority, or such of it as he or she may deem appropriate, to one or more of the following officers:

- The Assistant Executive Officer
- The Chief Counsel
- The Assistant Chief Counsel
- Any Staff Counsel

In addition to those officers listed above, the Executive Officer may re-delegate the authority to certify copies of minutes and other documents in the custody of the Commission (including, but not limited to, certifications as required under Section 14756 of the Government Code in connection with the microfilming of records of the Commission) to any one or more of the following:

- Any Staff Counsel
- The Chief, Administrative Services Division
- Public Land Manager – Title Unit
- Public Land Management Specialist IV – Title Unit
- The Records Manager

IV. ADMINISTRATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Executive Officer shall be responsible for ensuring the Commission's compliance with the provisions of CEQA and shall be authorized to carry out all responsibilities that may be delegated under the provisions of CEQA and Section 15025(a) of the State CEQA Guidelines, including, but not limited to: determining whether a project is exempt and filing notices for such projects; conducting an initial

study and, if a project is not exempt, determining what environmental document would be required for the project; holding public hearings to receive comments on environmental documents prepared under the authority of the Commission; and requesting shortened public review periods for such documents if deemed necessary. He or she shall also be authorized to take all actions necessary and appropriate to cause the preparation of such documents. Such authority includes, but is not limited to, the ability to: solicit proposals, negotiate a fair and reasonable price, award and execute contracts for environmental documentation and mitigation monitoring in accordance with State policies and procedures; and accept fees from project proponents/applicants to recover all costs incurred in the preparation of environmental documents and the monitoring of resultant mitigation measures directly or by contract. He or she shall also be authorized to take all actions necessary and appropriate to review and comment on other public agencies' environmental documents when the Commission is acting as a Responsible Agency (Guidelines Section 15096) and/or Trustee Agency (Guidelines Section 15386) under CEQA.

The Executive Officer may re-delegate the above authority to one or more of the following officers:

- The Assistant Executive Officer
- The Chief, Division of Environmental Planning and Management
- The Chief, Administrative Services Division
- The Assistant Chief, Division of Environmental Planning and Management

V. MINERAL RESOURCES, INCLUDING GEOTHERMAL RESOURCES, OIL AND GAS, AND LONG BEACH OPERATIONS

The Executive Officer shall have jurisdiction over all matters pertaining to operations of all kinds in all areas now subject to or available for State mineral resources leases, and to hold public hearings in connection with the consideration of oil and gas lease offers by the Commission as provided in Section 6873.2 of the Public Resources Code or successor provisions. He or she shall not have power, except as herein provided, to modify, amend, or abrogate any lease or agreement without specific authorization in each case.

The Executive Officer is authorized to execute all documents required for Commission-approved actions in connection with mineral resources, including, but

not limited to, geothermal resources and oil and gas, and may make technical or clerical corrections thereto.

The Executive Officer may re-delegate the above authority, or such as he or she may deem appropriate, to one or more of the following officers:

- The Assistant Executive Officer
- The Chief, Mineral Resources Management Division
- The Assistant Chief, Mineral Resources Management Division

The Executive Officer may also designate any of those officers listed above to serve as the "Acting Executive Officer" for purposes of acting pursuant to the provisions of Section 5(g) of Chapter 138, Statutes of 1964, First Extraordinary Session, when and if this section is operative under Section 3(h) of Chapter 941, Statutes of 1991. The Executive Officer may also prescribe conditions under which each shall act if and when so designated.

VI. LAND MANAGEMENT

The Executive Officer shall supervise all matters pertaining to the management, sale, exchange, and leasing of lands and interests in lands under the jurisdiction of the Commission. This delegation shall include authority to execute indemnity selections and exchange applications for School and Lieu Lands, filed by the State in accordance with federal laws, rules and regulations.

The Executive Officer is authorized to execute all documents required to give effect to Commission-approved actions in connection with land transactions and may make technical or clerical corrections thereto. <u>The Executive Officer is also authorized to approve all Continuation of Rent actions if annual rent or other consideration is not being modified and no other Commission action on the lease is being considered</u>. The Executive Officer shall not have power, except as herein provided, to modify, amend or abrogate any lease or agreement without specific authorization from the Commission in each case.

The Executive Officer may re-delegate the above authority, or such of it as he or she may deem appropriate, to one or more of the following officers:

- The Assistant Executive Officer

- The Chief, Land Management Division

- The Assistant Chief, Land Management Division

VII. OIL SPILL PREVENTION AND RESPONSE AND MARINE INVASIVE SPECIES

The Executive Officer shall have authority over all matters pertaining to prevention of and response to pollution of lands under the jurisdiction of the Commission as provided under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (the LKS Act), amendments thereto and similar successor provisions of law or statute. The Executive Officer shall represent the Commission and its Chair on all panels and committees convened for the purposes of pollution prevention and response and invasive species control, including, but not limited to, the State Interagency Oil Spill Committee (SIOSC) and the Review Subcommittee of SIOSC.

The Executive Officer shall have authority over all matters pertaining to management and control of marine invasive species as provided under the Marine Invasive Species Act (the MIS Act), amendments thereto, and similar successor provisions of law or statute, including, but not limited to, the authority to issue any approval, authorization, or permit that would otherwise require action by the Commission pursuant to the MIS Act. At any time, the Chair of the Commission may direct that, this delegation notwithstanding, one or more specific requests for approval, authorization or permit, as described under this paragraph, be submitted directly to the Commission for consideration and that no action upon that request be taken by the Executive Officer or Chief, Marine Facilities Division, pursuant to this delegation. Any approval, authorization, permit, order, or any other action taken pursuant to this paragraph shall be reported to the Commission at the earliest Commission meeting for which legal notice can be provided. Notice of any action taken pursuant to this delegation shall be forwarded to any person or entity that has requested it.

At his or her discretion, the Executive Officer may re-delegate the above authority, or such of it as he or she may deem appropriate, or any authority given directly to the Executive Officer under the LKS and MIS Acts, except for those pertaining to the Mineral Resources Management Program, to one or more of the following:

- The Assistant Executive Officer

- The Chief, Marine Facilities Division

- The Assistant Chief, Marine Facilities Division