CALENDAR ITEM
119

A	Statewide	12/02/13
		W 26535
S	Statewide	C. Connor

CONSIDER PROPOSED AMENDMENTS TO SECTIONS 1900, 2002, AND 2003 OF ARTICLES 1 AND 2, TITLE 2, DIVISION 3, CHAPTER 1 OF THE CALIFORNIA CODE OF REGULATIONS, RELATING TO DEFINITIONS, CATEGORIES OF LEASES OR PERMITS, AND RENTAL

PROPOSAL:
Commission staff proposes to update and amend Sections 1900, 2002, and 2003 under Articles 1 and 2 of Title 2, Division 3, Chapter 1 of the California Code of Regulations. These sections pertain to Definitions, Categories of Leases or Permits, and Rental. Section 1900, entitled "Definitions," is under Article 1, General Provisions, and provides definitions for terms used in that Chapter 1. Section 2002, under Article 2, entitled "Leasing or Other Use of Public Lands," describes the categories of leases or permits. Lastly, Section 2003, entitled "Rental," also under Article 2, sets forth the rent for the various categories of leases and permits, including minimum annual rents, rent-setting methods, and other factors relevant to the setting of rent.

More specifically, the amendment to Section 1900 adds definitions for "sovereign lands," "adjustment formula," "CPI" and "impact area" to the list of definitions because the terms are used in the proposed amendments to Sections 2002 and 2003. The amendment to Section 2002 is to add to the categories of leases, permits, or agreements available to Commission staff. The amendment to Section 2003 is to update the minimum rents for the lease categories, modify and make more transparent the Commission's rent-setting methods, and clarify other factors the Commission may consider when determining its leasing and rent-setting practices. Sections 2002 and 2003 have also been reformatted to make the regulations easier for the public to understand. It is important to note that, other than updating the minimum rents and the pipeline rent methodology and making changes consistent with SB 152 (Chapter 585, Statutes of 2011), the proposed regulations do not change or alter current surface leasing practices of the Commission; rather, these proposed regulations provide additional clarity and transparency to the Commission's leasing practices.

The regulatory process for these proposed amendments commenced on February 1, 2013 with the Notice of Proposed Rulemaking. The process must be completed by February 1, 2014. The Office of Administrative Law (OAL) then has 30 days to determine if the proposed amendments satisfy the Administrative Procedures Act

(APA). If the proposed amendments satisfy the APA, then the amendments will take effect within 30 days, or by April 1, 2014.

BACKGROUND:

The current regulations pertaining to Definitions, Categories of Leases or Permits, and Rental were last revised in 1992, while the minimum rents contained in those regulations have not been updated since 1982. Between that time and now, Commission leasing practices have evolved to include more categories of leases than shown in the current regulations. Additional methods of setting rent have also been developed, including the use of benchmark rates in certain geographic areas where there are large concentrations of leases with similar uses and improvements.

In 2010-2011, the Commission's leasing practices were audited by the Bureau of State Audits (BSA). Among the recommendations in the BSA's August 2011 report was that the Commission should "amend its regulations for establishing pipeline rents on state land …" Based on that recommendation combined with the length of time since the regulations were last updated, Commission staff determined it was appropriate to update and amend not just that paragraph in the regulations, but all those sections relating to lease categories and rent setting methods to better reflect current practices and provide additional clarity and transparency. Staff also concluded that the definitions (Section 1900) needed to be updated because they are cited in the lease categories and rent setting sections of the regulations. Following is a more detailed explanation for the proposed amendments to the three sections of the Regulations.

The amendment to Section 1900 is needed because the term "sovereign lands" is a term of art that is used in Section 2002 of the current regulations without being defined and is also used in the proposed regulations (in Section 2003 as well as 2002). The addition of the terms "adjustment formula", "CPI" and "impact area" are necessary because they are used in the rent calculation methodology proposed in the amendments to Section 2003.

The amendments to Section 2002 are necessary because the categories of leases and permits shown in the current regulation do not adequately reflect the various types of leases, permits, and agreements that Commission staff is currently being asked to authorize. Pursuant to Public Resources Code section 6500 *et seq.* the Commission is authorized to lease lands under its jurisdiction. Effective January 1, 2012, Public Resources Code section 6503.5 was modified by Chapter 585, Statutes of 2011 to require the Commission to charge rent for Private Recreational Piers. As a result of this statutory change, the rent-free Private Recreational Pier Permit, identified in Section 2002, subdivision (f), will no longer be used. Revising the current categories of leases,

permits and agreements will allow the Commission to better define and structure leases based on the actual or proposed use, while eliminating certain categories, such as the Private Recreational Pier Permit, that are now obsolete.

Section 6503 of the Public Resources Code requires the Commission to "… fix the annual rent or other consideration thereof." The proposed amendments to Section 2003 are necessary in order to update the minimum annual rents, the methodology used in setting rental rates, and the identification of other factors pertaining to the Commission's rent setting practices. The current regulations regarding the Commission's leasing and rent setting practices were last revised in 1992, while the minimum rents contained in the regulations have not been updated since 1982. These minimum rents, including the pipeline rental rate mentioned previously, are out of date and need be adjusted for inflation.

Based on the findings of the BSA audit, the Commission staff is proposing additional rent-setting methods to address the creation of the new lease categories. For example, adjustments may be made to leases through the application of the California Consumer Price Index. Within this same context, Commission staff proposes eliminating the rent-setting method based on "the volume of commodities passing over the lease premises" (aka "throughput charges") because it has been held by a court of law to violate, in some circumstances, the Commerce Clause of the United States Constitution.[1] Finally, the proposed amendment identifies other factors that the Commission staff may take into account when setting the annual rent or adjusting the annual rent, including the addition of a reasonable "impact area" to the lease premises, the addition of an administrative fee for reimbursement of staff costs for managing certain types of leases, and the ability to discount or waive rent if the lease results in a significant regional or statewide public benefit.

As part of the regulatory rulemaking process, Commission staff was required to evaluate proposed benefits, reasonable alternatives to the proposed regulations, and impacts to small businesses. Staff analysis indicates that the proposed amendments would benefit the State by bringing current the existing out-of-date lease categories, minimum annual rents, rent-setting methods, and other factors pertaining to the Commission's leasing and rent-setting practices. The proposed updates to the minimum rents contained in Section 2002 are anticipated to result in an increase of approximately $200,000 in revenue to the State. The increase will occur as leases come due for renewal. The modifications to and reorganization of Sections 2002 and 2003 would make the regulations easier for the public to understand and follow.

---

[1] *Western Oil and Gas Assn. v. Cory*, 726 F.2d 1340 (1984).

Additionally, these modifications also provide greater transparency in the Commission's leasing practices.

In accordance with Government Code section 11346.5, subdivision (a)(13), Commission staff must determine that no reasonable alternative, considered or otherwise identified and brought to the attention of Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law. The purpose of the proposed regulation is to update and amend sections of the existing regulations that pertain to definitions, categories of leases or permits, and rental. Staff has determined that there are no alternatives to updating the regulations other than continuing to use the existing regulations, which were last updated in 1992. Further, staff has investigated alternatives to amending the existing regulations and has determined that there are no alternatives that would be more effective in carrying out the purpose of the proposed regulation while lessening any adverse impacts to affected private persons or businesses.

In evaluating impacts to small businesses, staff finds that the proposed amendments will have a minor adverse impact on "small business" as defined in Government Code section 11342.610. The impact would be from increasing the minimum rent levels. Relative to the Commission's lease categories, small businesses fall into the "Commercial," "Industrial," or "Agricultural" categories. There are a total of 253 leases in these categories. Only 30 (12%) of these 253 leases are at or below the minimum rent levels as shown in the current regulations. Each of these lease categories has a minimum annual rent of $250. The rent levels for the vast majority of the other leases in these categories are generally much higher because they have been set using one of the other rent-setting methods that have existed in the Commission's regulations since 1982 and are not being substantively modified, such as the 9% of appraised value of the leased lands. The 30 leases at or below the minimum rent level would only be subject to the minimum annual rent upon rent review or expiration and issuance of new leases. Unless one of the other rent-setting methods is used at that time, the minimum annual rent for each lease would increase from its current level of $250 to $600 annually. According to the most recent data available, in 2009 there were 3.4 million small businesses (defined by the US Small Business Administration as a company with less than 500 employees) in California, with more than 691,000 of these businesses having employees. These regulations could potentially have a minor impact on 30 of those 3.4 million businesses. Considering the information above, the overall impact to California small businesses is minor.

ISSUES OR CONCERNS:
The public comment period for the proposed amendments to the regulations ran for 45 days and closed on April 15, 2013. Commission staff received comments from more than 300 interested parties. In addition, Commission staff held a public hearing on April 16, 2013 at the Commission's office in Sacramento, California. Eleven people presented oral statements at the hearing. Following comments from the initial 45-day comment period, a few small modifications were made to the proposed regulations and the proposed regulations were recirculated for a second 15-day comment period. This second comment period ran for 15 days beginning on November 4, 2013 and ending on November 19, 2013.

The vast majority of the comments addressed four main issues. These are (1) the definition of sovereign lands and the reference to the Public Trust easement; (2) the inclusion of an annual administrative fee; (3) the use of an "impact area" around docks and piers; and (4) the wording and use of the "9% of the appraised value of the leased land" method.

Based on staff's evaluation, the comments were either accepted, with modifications being made to the proposed amendments, or were rejected. No responses were required for comments not directed at the proposed amendments or rulemaking procedures. Staff is now recommending the following:

1) *Replace "mean high tide line" with "ordinary high water mark" and delete the reference to the Public Trust easement.* While the "mean high tide line" and the "ordinary high water mark" represent the same boundary when in a state of nature, the term "ordinary high water mark" represents the legal definition of the State's boundary and is therefore the more appropriate term. Based on the comments received, the reference to the Public Trust easement within the sovereign lands definition was being misunderstood. Since the Public Trust easement reference is not essential for these regulations, staff is recommending that it be deleted from proposed amendments. These changes were included in the 15-day modification to the proposed regulations and are reflected in the proposed regulations.
2) *Retain the annual administrative fee, but limit its application to three lease categories (General Lease – Commercial Use, Industrial Use, and Right-of-Way Use).* The majority of the comments received on this topic were from lessees of recreational docks and piers, which make up a large percentage of the Commission's total number of leases. They expressed concern that the advent of the annual administrative fee would place an additional financial burden on them. While recreational dock and pier leases make up a large percentage of

the Commission's total number of leases, the relative cost to manage these leases is not as great as the more complex leases. Accordingly, staff recommends that the proposed amendment for the annual administrative fee be limited to the three most complex lease types, the General Lease – Commercial Use, General Lease – Industrial Use, and General Lease – Right-of-Way Use. This change was included in the 15-day modification to the proposed regulations and is reflected in the proposed regulations.

3) *Reject the comments on the "impact area" and retain the ability to apply it to areas surrounding docks and piers*. The impact area is defined as a reasonable area beyond the footprint of the actual facilities or improvements occupying State land and is intended to reflect the additional and temporary use, as well as impacts to public access, of State land for the docking of vessels, maintenance of the facility, or other such uses. Impact areas, also known as use areas, have been used by Commission staff, and included in leases authorized by the Commission, for many years. Prior to the passage of Chapter 585 of Statutes of 2011, rent was only charged for impact areas to lessees that did not qualify for rent-free leases. The inclusion of the impact area in the proposed amendments is simply codification of an existing practice in order to provide transparency to the Commission's leasing practices.

4) *Replace "9% of appraised land value" with "9% of the appraised value of the leased land" as contained in the current regulations.* In identifying the methods of setting rent the proposed amendments, staff unintentionally rephrased the term used in the current regulations, "9% of the appraised value of the leased land", with "9% of appraised land value." Staff was in fact referring to the appraised land value of the leased premises, but many of the comments received expressed concern that the rent for a lessee's dock or pier would be based on the appraised land value of the adjoining upland property. In order to clarify the intent, staff is recommending that the language in this paragraph be revised back to that contained in the current regulation. This change was included in the 15-day modification to the proposed regulations and is reflected in the proposed regulations.

All comments and responses to comments will be summarized in the Final Statement of Reasons per the Administrative Procedures Act.

STATUTORY AND OTHER REGULATIONS:

A. Public Resources Code section 6500 et seq.

OTHER PERTINENT INFORMATION:

1. The staff recommends that the Commission find that the subject amendments to regulations do not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and are, therefore, not projects in accordance with the California Environmental Quality Act (CEQA).

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

EXHIBIT:

A. MODIFIED TEXT OF THE PROPOSED REGULATIONS

IT IS RECOMMENDED THAT THE COMMISSION:

1. Find that the subject amendments to regulations are not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activities are not a project as defined by the Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

2. Find that the proposed amendments will not affect small businesses as defined in Government Code section 11342.610.

3. Find that the proposed amendments will not have a significant impact on the creation or elimination of jobs or new or existing businesses within California, nor will they have an adverse economic impact on business, including the ability of California businesses to compete with businesses in other states.

4. Find that no alternatives would be more effective in carrying out the purposes for which the amendments are proposed or would be as effective as and less burdensome to affected private persons than the proposed regulations.

5. Adopt the proposed amendments to Sections 1900, 2002, and 2003 under Articles 1 and 2 of Title 2, Division 3, Chapter 1 of the California Code of Regulations, substantially in the form of that set forth in Exhibit "A" to become effective April 1, 2014.

6. Authorize the Commission staff to make modifications to the proposed amendments in response to recommendations by the Office of Administrative Law.

7. Direct the Commission staff to take whatever action is necessary and appropriate to comply with provisions of the Government Code regarding adoption of regulations and amendments and to ensure that the regulation becomes effective.

8. Direct Commission staff to take whatever action is necessary and appropriate to implement the amendments to the regulation at such time as they become effective.

EXHIBIT A Part 1

2 CCR § 1900

Cal. Admin. Code tit. 2, § 1900

Barclays Official California Code of Regulations Currentness
Title 2. Administration
Division 3. State Property Operations
Chapter 1. State Lands Commission
Article 1. General Provisions (Refs & Annos)

§ 1900. Definitions.

The following definitions shall apply to this Chapter unless otherwise provided.

(a) The term "applicant" includes any person who files an application under these regulations.

(b) The term "person" includes any individual, firm, partnership, business entity, business trust, association, corporation, or governmental entity or agency.

(c) The term "lease" includes a permit, right-of-way, easement, license, compensatory agreement, or other entitlement of use.

(d) The term "structure" means any manmade construction.

(e) The term "sovereign lands" means the beds of all the State's natural, navigable waterways, and tide and submerged lands, including those adjacent to the coast and offshore islands of the State from the ~~mean high tide line~~ ordinary high water mark to three geographic miles offshore. On tidal waterways, the State's sovereign fee ownership extends landward to the ~~mean high tide line~~ ordinary high water mark, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court order. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low water mark ~~and a Public Trust easement landward to the ordinary high water mark, except where the boundary has been fixed by agreement or a court order~~.

(f~~e~~) The term "submerged lands" means the area lying below the elevation of ordinary low water in the beds of all tidal and nontidal navigable waters.

(g~~f~~) The term "tidelands" means the area lying between the elevations of ordinary low water and ordinary high water on lands subject to tidal action.

(h~~g~~) The term "uplands" shall mean lands bordering on navigable waterways.

(i~~h~~) The term "school lands" refers to all Sections 16 and 36 granted to the State for the benefit of common schools by Chapter 145 of the Federal Statutes of 1853.

(j~~i~~) The term "lieu or indemnity lands" refers to those lands acquired by the State in place of school lands it previously acquired or school lands to which it did not receive title because they were either mineral in character, had not been sectionalized, or were subject to prior established rights.

(k~~j~~) The terms "merchandise," "product" and "commodity" are interchangeable and shall include, goods, wares, chattels, personal property of every description, cargo, freight, mail, vessel's stores and supplies, articles, matter and material.

(l) The term "impact area" means a reasonable area beyond the footprint of the actual facilities or improvements occupying State land. The "impact area" is intended to reflect the additional and temporary use, as well as impacts to public access, of State land for the docking of vessels, maintenance of the facility, or other such uses.

(m) The following formula, hereafter called the "Adjustment Formula," shall be used to determine the adjusted minimum annual rent for each year subsequent to 2013:

$$\left(\frac{Current\ CPI - Prior\ CPI}{Prior\ CPI} + 1\right) x\ Previous\ Year's\ Rent = Adjusted\ Annual\ Rent$$

~~1. The June CPI value for All Urban Consumers in California will be used in the rent adjustment formula.~~

(n) The term "CPI" means the index published periodically by the California Department of Industrial Relations' and titled "California Consumer Price Index (1955) All Items 1982-1984 = 100," a successor index to the aforementioned, or a reasonably equivalent index acceptable to the Lessor and Lessee.

Note: Authority cited: Sections 6002, 6105, 6108, 6301, and 6501, Public Resources Code; and 3 Cal. 3d 462, 478 (tide and submerged lands). Reference: Sections 6301 and 6501, Public Resources Code.

HISTORY

1. Repealer of Article 1 (Sections 1900-1914) and new Article 1 (Sections 1900-1911) filed 6-2-78; effective thirtieth day thereafter (Register 78, No. 22). For prior history, see Registers 77, No. 6; 75, No. 22; 73, No. 9; 69, No. 15; 64, No. 23; 58, No. 5; 55, Nos. 12 and 25, No. 5.

2. Repealer of Article 1 (Sections 1900-1911) and new Article 1 (Sections 1900-1910 not consecutive) filed 12-2-81; effective thirtieth day thereafter (Register 81, No. 49).

2 CCR § 1900, 2 CA ADC § 1900

This database is current through 8/3/12 Register 2012, No. 31

END OF DOCUMENT

EXHIBIT A Part 2

2 CCR § 2003

Cal. Admin. Code tit. 2, § 2003

Barclays Official California Code of Regulations Currentness
Title 2. Administration
Division 3. State Property Operations
Chapter 1. State Lands Commission
Article 2. Leasing or Other Use of Public Lands (Refs & Annos)

§ 2002. Categories of Leases, ~~or~~ Permits, or Agreements.

(a) General Lease: Uses may include the following:

(1) Commercial: Income producing uses such as marinas, restaurants, hotels, clubhouses, ~~recreation~~ piers, ~~,~~ recreational~~or~~ facilities, docks, moorings, buoys, helicopter pads, decks, ~~mineral extraction,~~ or gas service facilities.
(2) Industrial: Uses such as oil terminals, piers, wharves, warehouses, stowage sites, moorings, dolphins and islands~~; together with necessary appurtenances~~.
(3) Right of Way: Uses such as roadways, power lines, pipelines or outfall lines~~, except when used only as necessary appurtenances~~.
(4) Grazing: Uses such as the feeding of livestock on forage.
(5) Agricultural: Uses such as farming, silviculture and horticulture.
(6) Recreational: Uses such as a fixed facility for the docking or mooring of boats, buoys, swimming floats, platforms, and swim areas~~-~~. Other uses may include campsites, cabins, dwellings, arks, houseboats, decks or boathouses provided that when such uses are located on sovereign lands ~~if such~~those uses are not found to be inconsistent with public trust needs. ~~constructed for the use of the littoral landowner, as specified in Public Resources Code Section 6503.5, and does not include swimming floats or platforms, sun decks, swim areas, fishing platforms, residential, recreational dressing, storage or eating facilities or areas attached or adjacent to recreational piers, or any other facilities not constructed for the docking or mooring of boats.~~
(7) Public Agency: Uses such as public roads, bridges, recreation areas or wildlife refuges having a regional or statewide public benefit.
(8) Protective Structure: Uses such as groins, jetties, sea walls, revetments, breakwaters and bulkheads.

(9) Dredging: Uses such as the removal of sediment to improve navigation and ensure public health and safety, and excavation.

~~(9) Non Income Producing: Uses such as piers, buoys, floats, boathouses, docks, waterski facilities, and campsites not qualifying for a private recreational pier permit under 2002(f). Other uses may include campsites, cabins, dwellings, arks, houseboats, or boathouses provided that when such uses are located on sovereign lands that such uses are not found to be inconsistent with public trust needs.~~

(10) Other uses that are not specifically identified above, such as environmental preservation, mitigation, or restoration; or protection against invasive species.

(b) ~~General~~ Permits or Other Agreements: Uses may include the following:

(1) Salvage Permit: Use includes all salvage operations on sovereign lands under the Commission's jurisdiction. Salvage operation means any activity, including search by electronic means, or exploration or excavation using tools or mechanical devices, with the objective of locating, and recovering, removing, or repositioning vessels, aircraft, or portions thereof, or any other cultural object from the surface or subsurface of sovereign lands.

(2) Archaeological Permit: Activities such as surveying and identification of cultural resource sites, testing and evaluation of sites to determine eligibility for inclusion in the California Register of Historical Resources or the National Register of Historic Places, and data recovery for sites at risk of loss or damage by natural forces, vandalism, or unauthorized collection. Data recovery required as mitigation under the California Environmental Quality Act for a project approved by the Commission shall not require a separate archaeological permit.

(3) Forest Management Agreement: Uses such as reforestation, improvement of timber growth and soil productivity, vegetation control, reduction of fire and erosion hazards, insect or disease control or any other use that enhances the value of lands subject to the agreement.

~~(1) Public agency uses such as public roads, bridges, recreation areas or wildlife refuges having a statewide public benefit;~~

~~(2) Public Resources Code Section 6321 protective structures such as groins, jetties, sea walls, breakwaters and bulkheads;~~

~~(3) Non income producing uses such as piers, buoys, floats, boathouses, docks, waterski facilities, and campsites not qualifying for a private recreational pier permit under 2002(f). Other uses may include campsites, cabins, dwellings, arks, houseboats, or boathouses provided that when such uses are located on sovereign lands that such uses are not found to be inconsistent with public trust needs.~~

~~(c) Grazing Lease: Use includes the feeding of livestock on forage.~~

~~(d) Agricultural Lease: Uses may include farming, silviculture and horticulture.~~

~~(e) Forest Management Agreement: Uses may include reforestation, improvement of timber growth and soil productivity, vegetation control, reduction of fire and erosion hazards, insect or disease control or any other use that enhances the value of lands subject to the agreement.~~

~~(f) Private Recreational Pier Permit: Use is limited to any fixed facility for the docking or mooring of boats constructed for the use of the littoral landowner, as specified in Public Resources Code Section 6503.5, and does not include swimming floats or platforms, sun decks, swim areas, fishing platforms, residential, recreational dressing, storage or eating facilities or areas attached or adjacent to recreational piers, or any other facilities not constructed for the docking or mooring of boats.~~

~~(g) Salvage Permit: Use includes the salvage of all abandoned property over and upon ungranted tide and submerged lands of the State which property belongs to the State and is under the Commission's jurisdiction pursuant to Public Resources Code Section 6309. The Commission may retain or sell any or all salvaged property or may allow the permit applicant to retain it.~~

Note: Authority cited: Sections 6105, 6108, 6201, 6210.3, 6221, 6309, 6321, 6322, 6501, 6501.1, and 6501.2, Public Resources Code. Reference: Sections 6201, 6309, 6321, 6501.1, and 6503.5, Public Resources Code.

2 CCR § 2002, 2 CA ADC § 2002

§ 2003. Rent~~al~~ or Other Consideration.

(a) Rent~~al~~ or other consideration for the various categories of uses shall be in the best interest of the State and may be based on one or more of the following methods~~generally as follows~~:

(1) 9% of the appraised value of the leased land ~~value~~;

(2) A percentage of annual gross income (the percentage being based on an analysis of the market for like uses and other relevant factors);
(3) Comparison to rents for other similar land or facilities;
(4) $0.05 per diameter inch per lineal foot of pipeline, conduit, or fiber optic cable;
(5) Benchmarks for regions where there are large concentrations of similar facilities (benchmark rental rate to be based on analysis of similar or substitute facilities in the local area);
(6) For salvage permit operations, the Commission shall agree to a division of the net value of State-owned objects recovered by the permittee, after a deduction of reasonable salvage cost. The percentage of the net value of State-owned objects retained by the Commission shall be based on the complexity of the project and may be negotiated. The State retains ownership of all items recovered until released and has a first right to select objects and may retain any or all of the objects recovered. If the State elects to retain objects with a value greater than its agreed percentage share, it shall reimburse the permittee to the extent of the agreed division of value.
(7) For archaeological permits, artifacts collected shall remain State property, except that the Commission may authorize the transfer of title to artifacts for the purposes of research or display to museums, educational institutions, or other appropriate locations available to the public; or to a culturally affiliated Native American tribe.
(8) For Forest Management Agreements: Rent may constitute enhancement of the land's value resulting from the use;
(9) Other such methods or information that are based on commonly-accepted appraisal practices and principles.
(10) For leases for a recreational pier or buoy, rent shall be based on local conditions and local fair annual rental values; ~~or~~

(b) Notwithstanding section (a) above, minimum annual rents for the various lease/permit categories shall be as follows:

(1) Commercial Use: $600
(2) Industrial Use: $600
(3) Right of Way Use: $450
(4) Grazing: $600
(5) Agricultural: $600
(6) Recreational: $125
(7) Public Agency: $125;
(8) Protective Structure: $125;
(9) Dredging: $125;

(10) All other General Lease or Permits: $125.

~~(1) Commercial Use: An annual rental based on any one or combination of the following rental methods, with a minimum rental of $250:~~

~~(A) A percentage of annual gross income (the percentage being based on an analysis of the market for like uses and other relevant factors);~~

~~(B) 9% of the appraised value of the leased land;~~

~~(C) The volume of commodities passing over the lease premises.~~

~~(2) Industrial Use: An annual rental based on any one or combination of the following rental methods with a minimum rental of $250:~~

~~(A) 9% of the appraised value of the leased land and/or together with 2H per diameter inch per lineal foot of pipelines and conduits on the leased premises;~~

~~(B) The volume of commodities passing over the lease premises.~~

~~(3) Right-of-Way Use: An annual rental based on any one or combination of the following rental methods with a minimum rental of $100:~~

~~(A) 9% of the appraised value of the leased lands, and/or together with compensation for any damage caused to such lands;~~

~~(B) 2 cents per diameter inch per lineal foot;~~

~~(C) The volume of commodities passing over the lease premises.~~

~~(4) General Permits: Annual rental shall be based on 9% of the appraised value of the leased lands with a minimum rental of $50.~~

(c) Effective January 1, 2014, the minimum annual rents for the various lease/permit categories will be recalculated every five (5) years, at the end of June, using the adjustment formula identified in section 1900(m). Regardless of whether the application of the Adjustment Formula results in an adjusted minimum annual rent that is greater or lesser value than the previous year's rent, the adjusted minimum annual rent will never be lower than the minimum annual rents set in section 2003(b).

(d~~c~~) The following may be considered by the Commission in determining which rent method should apply:

(1) The amount of rent the State would receive under various rental methods;

(2) Whether relevant, reliable and comparable data is available concerning the value of the land proposed to be leased;

(3) Whether a particular method or amount of rent would effectively cause an applicant to use more competitive substitute land or to abandon its project altogether;

(4) Whether the land proposed to be leased has been classified as environmentally significant pursuant to Public Resources Code Section 6370.1.

(5) The monetary value of actual or potential environmental damage anticipated from an applicant's proposed use to the extent such damage is quantifiable;

(6) The appropriateness of the proposed rental method.

(e~~dc~~) Other ~~F~~factors in determining *Rent or Other Consideration*:

~~(1)~~ (1) Authority for rent adjustment during the lease term shall be provided and may include application of the California Consumer Price Index.

~~(2)~~ (2) Lease areas may include a reasonable impact area beyond the footprint of the actual facilities or improvements occupying State land, based on local conditions. The impact area is intended to reflect the additional use of State land by the lessee for the docking of vessels, maintenance of the facility, or other such uses, as well as the deterrent effect to public access and use caused by the facilities or improvements. Rent may be charged for the impact area.

~~Lease areas may include a reasonable 'public impact and use area' beyond the footprint of the actual facilities or improvements occupying State land based on local conditions. The 'public impact and use area' is intended to reflect the additional and temporary use, as well as impacts to public access, of State land for the docking of vessels, maintenance of the facility, or other such uses. Rent may be charged for the 'public impact and use area'.~~

~~(3)~~ (3) In addition to the annual rent or other consideration, for General Lease – Commercial Use, Industrial Use, and Right-of-Way

Use, the Commission may require the lessee/permittee to pay an annual administrative fee for the reimbursement of staff costs associated with, but not limited to, lease/permit compliance; enforcement; periodic rent reviews, insurance or surety review; or other such activities as may be reasonably required over the term of the lease/permit. The annual administrative fee may be charged as either a flat rate or as a percentage of the rent.

~~(1)(4)~~ (4) Rent may be discounted or waived ~~No rental shall be charged~~ for ~~public agency~~ use of ~~tide and submerged~~ sovereign lands if the Commission, at its sole discretion, determines that a significant regional or statewide public benefit is provided or accrues from such use.

~~(~~4) ~~Monetary rental for Public Resources Code Section 6321 protective structures may be waived if the Commission determines that a significant regional or statewide public benefit accrues from the installation of such structures.~~

~~(5) Private Recreational Pier Permits: Pursuant to Public Resources Code Section 6503.5 a rent free permit shall be issued to those applicants demonstrating their qualifications under that section as implemented by 2002(f).~~

~~(6) Grazing: An annual rental based on appraised value for the intended use.~~

~~(7) Agricultural: An annual rental based on any one or a combination of the following rental methods with a minimum rental of $250:~~

~~(A) A percentage of annual gross income (the percentage being based on analysis of the market for like uses and other relevant factors);~~

~~(B) 9% of appraised value of the leased lands.~~

~~(8) Forest Management Agreements: Rental shall constitute enhancement of the land's value resulting from the use.~~

~~(9) Salvage Permit: Rental shall be as follows:~~

~~(A) A rental of $25.00 per annum per acre, computed on a whole or fractional basis, for the total acreage of the permit area; and~~

~~(B) 25% of the net salvage value up to $25,000 and 50% of all such value over that amount for all salvaged property the salvor is permitted to retain; or~~

~~(C) The net salvage value of any property the State retains less any rental to which it is entitled; and~~

~~(D) Such other consideration as may be deemed by the Commission to be in the best interest of the State.~~

~~(db) The following factors shall be considered by the Commission in determining which rental method should apply:~~

~~(1) The amount of rental the State would receive under various rental methods;~~

~~(2) Whether relevant, reliable and comparable data is available concerning the value of the land proposed to be leased;~~

~~(3) Whether a particular method or amount of rental would effectively cause an applicant to use more competitive substitute land or to abandon its project altogether;~~

~~(4) Whether the land proposed to be leased has been classified as environmentally significant pursuant to Public Resources Code Section 6371.~~

~~(5) The monetary value of actual or potential environmental damage anticipated from an applicant's proposed use to the extent such damage is quantifiable;~~

~~(6) Other factors relating to the appropriateness of the proposed rental method.~~

~~(c) The following limitations shall apply to rental based on the volume of commodities passing over State lands:~~

~~(1) Rental shall not be imposed more than once for the identical commodity passing over the same State land if the ownership of that commodity has not changed.~~

~~(2) The rental rate for a right-of-way for passage of a commodity across State lands shall be made proportional to the percentage of the total length of the pipeline or conduit that such right-of-way comprises. For the purposes of this section, the total length of a pipeline or conduit shall be the length of the pipeline or conduit between two facilities, uninterrupted by another facility . "Facility" includes terminal, production, storage, refining, manufacturing, processing, mixing or intermixing facilities.~~

~~(d) Rent adjustment during the lease term shall be provided for as appropriate, and may include application of the California Consumer Price Index.~~

Note: Authority cited: Sections 6105, 6108, 6309, 6321.2, 6503, and 6503.5, ~~and 6504,~~ Public Resources Code. Reference: Sections 6321.2, 6370.1, 6503, and 6503.5, ~~and 6504,~~ Public Resources Code.

HISTORY

1. Editorial correction of printing error in subsection (a) (Register 92, No. 22).

2 CCR § 2003, **2 CA ADC § 2003**

This database is current through 8/26/11 Register 2011, No. 34

~~END OF DOCUMENT~~