

MINUTE ITEM

4/26/73
CRK & EWC

3. ADOPTION OF INTERIM RULES AND REGULATIONS TO IMPLEMENT THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970 AS AMENDED BY CHAPTER 1154, STATUTES OF 1972 - W 20528.

After consideration of Calendar Item 1 attached, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION:

1. FINDS THAT AN EMERGENCY EXISTS WITHIN THE MEANING OF SECTION 11421(b) OF THE ADMINISTRATIVE PROCEDURE ACT RELATIVE TO ADOPTION OF RULES AND REGULATIONS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970 AND THE STATE GUIDELINES;
2. ADOPTS, UNDER SUCH EMERGENCY FINDING, THE PROPOSED INTERIM REGULATIONS SET FORTH IN EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF; HAVING TO DO WITH OBJECTIVES, CRITERIA AND PROCEDURES FOR EVALUATION OF PROJECTS AND THE PREPARATION OF ENVIRONMENTAL IMPACT REPORTS;
3. DETERMINES THAT THERE ARE NO NEW COSTS TO LOCAL GOVERNMENT, PURSUANT TO SECTION 2164.3 OF THE REVENUE AND TAXATION CODE;
4. AUTHORIZES THE DIVISION TO TAKE SUCH STEPS AS IT DEEMS NECESSARY AND APPROPRIATE, INCLUDING PUBLICATION AND MAILING, TO ADOPT PERMANENT RULES AND REGULATIONS, PURSUANT TO SAID ADMINISTRATIVE PROCEDURE ACT, COVERING THE EVALUATION OF PROJECTS AND PREPARATION OF ENVIRONMENTAL IMPACT REPORTS.

Attachment:

Calendar Item 1 (12 pages)

CALENDAR ITEM

4/73
CRK & EWC
W 20528

1.

ADOPTION OF INTERIM RULES AND REGULATIONS TO IMPLEMENT
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970 AS
AMENDED BY CHAPTER 1154, STATUTES OF 1972

The California Environmental Quality Act (CEQA) of 1970 (codified as Div. 13, Public Resources Code) is an act covering State and local agencies generally. That act, Chapter 1433, Statutes of 1970, was modeled after Public Law 91-190, the National Environmental Policy Act of 1969 (NEPA). Patterned after both was Chapter 1555, Statutes of 1970 (codified as Sections 6370-77, Public Resources Code), which, being directed specifically at the State Lands Commission's leasing and sales activities, takes precedence over CEQA with regard to these specific activities (i.e., where the two acts overlap, Chapter 1555 controls). The Division's policies, procedures and formats for Environmental Impact Reports (EIR's) were therefore based upon Chapter 1555, upon State Lands Commission operation and public meeting procedures, upon advice from the Attorney General's office, and upon the practice of impact reporting as developed by federal agencies the year before and by the courts and the academic community shortly thereafter.

On December 5, 1972, AB 889 (Chapter 1154, Statutes of 1972) became effective which declared, defined and amplified the 1970 CEQA. Among other things, it clearly applies across the board to all State agencies and local government. The Secretary for Resources adopted guidelines to implement Chapter 1154 on February 3, 1973, and 60 days thereafter all State agencies, including the State Lands Commission, are required to follow suit in a manner consistent with the Secretary's Guidelines. The Commission must adopt some means of preparing and handling EIR's that will satisfy the requirements of both CEQA and Section 6371.

To do this, the Division recommends:

1. Finding that an emergency, within the meaning of Section 11421(b) of the Administrative Procedure Act (A.P.A.) exists;
2. Adoption, on an emergency basis, of the Interim Rules and Regulations attached as Exhibit "A" and filing them as required by A.P.A.; and
3. Authorization for the Division to undertake, pursuant to the regular procedures in the Administrative Procedure Act, the steps necessary, including publication and mailing, to adopt within 120 days the permanent regulations required by CEQA.

Section 11421(b) of the A.P.A. allows emergency procedures when necessary for the immediate preservation of the general welfare. The facts

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constituting an emergency within this meaning of the Administrative Procedure Act, are as follows:

1. The Commission's leasing functions cover mineral extraction operations, utility lines, sewer outfalls, structures and rights-of-way for oil and gas pipelines and other matters bearing upon the welfare of the people of the State. If this leasing function is hindered, delayed or interfered with for any period of time, then an emergency exists.
2. There exists uncertainty as to the respective obligations of the Commission under CEQA and under Section 6371. Because of this uncertainty and to ensure that the Division operates on legal grounds, the Commission needs the procedural guidelines immediately without waiting for the additional time necessary to use regular A.P.A. procedure.

EXHIBIT: A. Interim Rules and Regulations -
 Evaluation of Projects and Preparation of
 Environmental Impact Reports

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT AN EMERGENCY EXISTS WITHIN THE MEANING OF SECTION 11421(b) OF THE ADMINISTRATIVE PROCEDURE ACT RELATIVE TO ADOPTION OF RULES AND REGULATIONS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970 AND THE STATE GUIDELINES;
2. ADOPT, UNDER SUCH EMERGENCY FINDING, THE PROPOSED INTERIM REGULATIONS SET FORTH IN EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF; HAVING TO DO WITH OBJECTIVES, CRITERIA AND PROCEDURES FOR EVALUATION OF PROJECTS AND THE PREPARATION OF ENVIRONMENTAL IMPACT REPORTS;
3. DETERMINE THAT THERE ARE NO NEW COSTS TO LOCAL GOVERNMENT, PURSUANT TO SECTION 2164.3 OF THE REVENUE AND TAXATION CODE;
4. AUTHORIZE THE DIVISION TO TAKE SUCH STEPS AS IT DEEMS NECESSARY AND APPROPRIATE, INCLUDING PUBLICATION AND MAILING, TO ADOPT PERMANENT RULES AND REGULATIONS, PURSUANT TO SAID ADMINISTRATIVE PROCEDURE ACT, COVERING THE EVALUATION OF PROJECTS AND PREPARATION OF ENVIRONMENTAL IMPACT REPORTS.

Attachment: Exhibit "A"

EXHIBIT "A"

ORDER ADOPTING INTERIM REGULATIONS OF THE CALIFORNIA STATE LANDS COMMISSION
PERTAINING TO THE EVALUATION OF PROJECTS AND PREPARATION OF ENVIRONMENTAL
IMPACT REPORTS

After proceedings had in accordance with provisions of the Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1, Chapter 4.5), and pursuant to authority granted in Sections 6371 and 21082 of the Public Resources Code, and to implement, interpret, or make specific Sections 6370 through 6377, and 21000 through 21174 of the Public Resources Code as consistent with the Guidelines for Implementation of the California Environmental Quality Act of 1970 (Div. 6, Title 14, California Administrative Code) adopted by the California Resources Agency pursuant to said Section 21083 of the Public Resources Code, the California State Lands Commission hereby adopts its interim regulations in Title 2, Division 3, Article 10, California Administrative Code as follows:

"California Administrative Code
Title 2
Division 3. State Property Operations

ARTICLE 10

DETERMINATION OF ENVIRONMENTAL IMPACT OF LEASES, SALES AND OTHER ACTIONS
OF THE COMMISSION, INCLUDING PREPARATION OF ENVIRONMENTAL IMPACT REPORTS

2901. AUTHORITY

The authorities for this Article are Public Resources Code Sections 6370-78 and 21082.

2902. PURPOSE

To prescribe the objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports (EIRs) by the State Lands Commission.

2903. OBJECTIVES

(a) To adopt, to the fullest extent possible, the legislative intent and declarations of policy in CEQA and in Public Resources Code Section 6371;

(b) To implement, to the fullest extent possible, the requirements of these two Acts; and

(c) To provide guidance for the orderly evaluation of the environmental effects of projects undertaken or considered for approval by the Commission.

2904. DEFINITIONS

Unless otherwise defined herein, words used in this Article shall have the meaning ascribed to them in the State Guidelines. In addition, the following definitions not contained in the State Guidelines are:

(a) Applicant - A person or other entity desiring action by the Commission.

(b) Application - A proposal submitted by an applicant for Commission action, including but not limited to the approval of a lease, permit, or other entitlement.

(c) Calendar item - A statement of facts and staff recommendation for Commission action.

(d) Commission - The California State Lands Commission.

(e) Division - The State Lands Division.

(f) EIR - Environmental Impact Report

(g) Environmental documents - Any document or documentation affecting Commission action, including EIRs, negative declarations, proposed categorical exemptions, and any bases for determination that an EIR is not necessary.

(h) Recreational pier permits - Permits for construction and use of non-commercial, recreational piers, floats and buoys for one family, such as Private Recreational Pier Permits and Use Permits as defined in Article 2 of Title 2, Division 3 of this Code.

(i) State Guidelines - The Guidelines for implementation of the California Environmental Quality Act of 1970 adopted February 3, 1973, by the Secretary for Resources (Div. 6, Title 14, California Administrative Code, Sections 15000-15166 with appendices A, B and C).

2905. SCOPE

The procedures set forth in this article shall be applicable to all EIRs required by Public Resources Code Section 6371, and to plans required by Section 6373; and by Sections 21000 through 21174 of the Public Resources Code, and by the Commission in connection with any proposed action.

2906. LEAD AGENCY

Whenever the Commission acts or is designated as the Lead Agency under Section 15065 of the State Guidelines, it will undertake the responsibilities listed in Section 15066 of the State Guidelines.

2907. CRITERIA FOR ENVIRONMENTAL IMPACT REPORTS

Where the Commission is the Lead Agency, and upon receipt of an application or proposal for a Commission action, the Division shall determine if an EIR is required. Such determination shall be based upon the following criteria, and the Division shall include in its files and in Calendar Items for each action the bases for such determination.

An EIR shall be prepared if the proposed action of the Commission requires an environmental impact report under CEQA and the State Guidelines or under Public Resources Code Section 6371. Such proposed actions include, but are not limited to:

(1) New leases, permits or other entitlements, except individual recreational pier permits;

(2) Replacement of existing leases or permits containing no provision for renewal;

(3) Amendment, assignment or renewal of existing leases or permits under new conditions or for a changed area, terms or conditions (except a change in rental), where the general or basic purpose of the lease is to be changed or enlarged;

(4) Permits issued pursuant to Section 7901 of the Public Utilities Code;

(5) Extension of geophysical survey permits;

(6) Any sale or disposition of land as required by Section 6373 of the Public Resources Code.

(7) Any other action which requires an EIR pursuant to CEQA and the State Guidelines, including EIRs as a part of development or disposition plans;

(8) Any other action where the Division determines that an EIR is necessary in the public interest, regardless of any purported exemption.

2908. EXEMPTIONS

Where the Commission is the Lead Agency and an EIR is not required under Section 6371 of the Public Resources Code, the Division shall determine if any of the following tests apply to the proposed Commission action:

(a) The action will have no possible significant effect upon the environment;

(b) The action is not a project;

(c) The action is ministerial as opposed to discretionary;

(d) The action is categorically exempt;

(e) The action is an on-going project exempt by Section 15070C of the State Guidelines; or

(f) The action is otherwise specifically exempted by State law.

If any of the foregoing tests apply, no EIR will be required. The Division shall include in its files and in its Calendar Items the bases for such determinations.

2909. NEGATIVE DECLARATION

Where the Commission is the Lead Agency, and in the event the proposed action is not exempt by Section 2908 above, and an EIR is not required by Section 2907 above, the Division shall, pursuant to Article 7 of the State Guidelines, undertake an initial study to determine if the action may have a significant effect on the environment. In evaluating the significance of the environmental effect of an action, the Division shall follow the requirements of Section 15081 and 15082 of the State Guidelines. A negative declaration may be prepared if the study results in a determination that the action will not have a significant effect on the environment.

The Division shall include in its files and its calendar items for each such action a copy of the negative declaration, whether or not the Commission is the Lead Agency, and whether prepared by the Division or by another Agency.

2910. EIRs FOR CALENDAR ITEMS

Where an EIR is required by Section 2907 and where the Division prepares or causes to be prepared the draft and final EIR, the final EIR will accompany the Calendar Item. Where the Commission is not the Lead Agency and where an EIR is prepared by another agency, the Commission may adopt any such EIR prepared by another agency. In such cases, the final

EIR prepared by the other agency, together with the list of persons and agencies to which the draft EIR was circulated and copies of all comments received must be obtained by the Division and may be edited or abstracted to prepare for the calendar item a complete or a brief version thereof.

2911. COMMISSION FINDINGS

The Commission, in considering an application subject to Public Resources Code Section 6371, may not approve a lease or authorize an action unless it shall have first made a finding that the lease or other action will not have a significant detrimental environmental effect.

2912. THE EIR

Where an EIR is determined to be necessary for a Commission action, the applicant must supply data and information in the form of an EIR as set forth in Article 9 of the State Guidelines. A previously prepared EIR may be submitted provided it is accompanied by updating data. The Division shall examine the EIR for completeness, accuracy and objectivity, and may edit or return it to the applicant for rewriting. Upon acceptance of the EIR as a draft document, and before it is circulated for comment, the Division shall send a Notice of Completion in the form provided in the State Guidelines to the Secretary for Resources.

2913. COMMENTS ON DRAFT EIRs

Except in an emergency, the Division shall circulate the draft EIR prepared pursuant to Section 2912 above for comment to agencies and persons with jurisdiction or expertise. For State agencies, the Division shall forward to the State Clearinghouse a number of copies sufficient for its purpose.

2914. THE FINAL EIR

The Division shall consider the comments received from the circulation pursuant to Section 2913 above in its preparation of the final

EIR. For applications or projects subject to Public Resources Code Section 6371 EIR requirements, in order to be considered for favorable action by the Commission, the final EIR must support a finding that the proposal will not have a significant detrimental environmental effect.

2951. NOTICE OF DETERMINATION

Within 10 days after each Commission action involving a Negative Declaration or an EIR, the Division shall file with the Secretary for Resources a Notice of Determination which shall include the decision, the determination of whether or not the action would result in a significant detrimental effect, and whether the EIR has been prepared pursuant to CEQA. A copy of the final EIR shall be filed with the Planning Agency of any city or county affected by the project.

2916. PUBLIC HEARINGS

Whenever, due to unique circumstances, a local public hearing pursuant to Section 15165 of the State Guidelines on the environmental aspect of a proposed Commission action is requested or indicated, the Division shall determine whether a regular meeting of the Commission or a special hearing, which may be conducted by the staff, at a time and location that will elicit the greatest response from the affected public will be held and shall provide adequate public notice and facilities for any such hearing. The draft EIR or a final EIR if one is available shall be used as the basis for such hearing.

2917. FEES

An applicant for a Commission action may be required to defray all costs and expenses in connection therewith, including expenses incurred in providing an EIR, as a condition for the action as requested. Such requirement is therefore not mandated within the purview of Revenue and Taxation Code Section 21643.

2918. ENVIRONMENTAL IMPACT CONSIDERATIONS FOR PURPOSE OF SCHOOL LAND SALES

1. Section 6373 of the Public Resources Code requires that before the Commission may make any disposition of State lands the recipient shall submit a general plan to the Commission and to the Legislature. Sections 2919 to 2922 cover the requirements relating to submittal of the general plan.

2919. GENERAL PLAN FOR USE OF THE LAND

The general plan shall be a comprehensive description of the current and proposed use of the school land which the applicant desires to purchase. This description will include but not necessarily be limited to the following:

- (a) Description of all structures or land improvements that may exist on the State land and their current use.
- (b) Dated photographs showing all existing structures and appurtenances and the general area.
- (c) Statement of the primary objective, purpose or reason for the proposed use.
- (d) Description of proposed construction, to include new structures, land improvements, or alterations to existing improvements, and use.
- (e) Plans and elevations of (1) existing structures, and (2) proposed construction.
- (f) A copy of the city or county building, variance, or use permit required for all operations and structures, existing or proposed, on the State land.
- (g) Beginning and completion dates for proposed construction, prospecting, mining, etc.

2920. INVENTORY OF ENVIRONMENTAL FACTORS

The applicant shall provide a description of the existing environment, natural and cultural, in the general vicinity and at the location of the land.

(a) A discussion of natural environmental factors such as geology and soils, topography, water and air quality, etc.

(b) A description of the cultural environment, to include, for example:

(1) land uses and significant improvements, proposed and existing;

(2) population density and distribution;

(3) present and projected zoning, economic trends and development patterns;

(4) landmarks; historical, archaeological or paleontological sites; public recreation facilities;

(5) scenic, natural or aesthetic values; noise or other problems.

(c) Identification and discussion of any of these environmental factors that could be affected by general plan for use of the land.

(d) An inventory or description of the present flora and fauna of the State parcel. This should cover the identity, abundance and distribution of the various plants and animals present and their seasonal population fluctuations.

(e) A prediction of the effects of environmental modification during and after proposed development upon the existing flora and fauna.

(f) An evaluation of the ability of adjacent lands to absorb plant and animal life which may be displaced from the State land by the proposed use of the land.

2921. HEALTH, WELFARE OR SAFETY OF THE PEOPLE

If the purchase application is based on this premise, the applicant must provide complete evidence which will support a finding that the sale is necessary for the health, welfare or safety of the people of the State.

2922. LIMITATIONS ON SALES

Prospective applicants should note that, except under certain conditions, there is a moratorium on the sale of State school land. The moratorium shall be effective pending the completion of an inventory, classification and management program. The foregoing requirements are necessarily strict and require the applicant to provide the data which would justify such a sale.