

MINUTE ITEM

7/26/73
CRK

12. ADOPTION OF REGULATIONS RELATING TO PRESERVATION AND ENHANCEMENT OF THE ENVIRONMENT AND RELATING TO LEASING STATE LANDS UNDER PUBLIC RESOURCES CODE SECTIONS 6370 AND 6371 - W 20528.

After consideration of Calendar Item 10 attached, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION ADOPTS REGULATIONS, AS SET OUT IN EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF, RELATING TO PRESERVATION OF THE ENVIRONMENT AND TO LEASES UNDER PUBLIC RESOURCES CODE SECTIONS 6370 AND 6371.

FURTHER, THE COMMISSION DETERMINES THAT THE PROPOSED REGULATIONS WILL NOT CAUSE NEW COSTS TO LOCAL GOVERNMENT, PURSUANT TO REVENUE AND TAXATION CODE SECTION 2164.3.

Attachment:

Calendar Item 10 (11 pages)

CALENDAR ITEM

7/73
CRK
W 20528

10.

ADOPTION OF REGULATIONS RELATING TO PRESERVATION
AND ENHANCEMENT OF THE ENVIRONMENT AND TO LEASING
STATE LANDS UNDER PUBLIC RESOURCES CODE SECTIONS 6370 AND 6371

On July 5, 1973, a hearing was scheduled at 1600 L Street, Sacramento, California, pursuant to authorization of the Commission on April 26, 1973 (Minute Item 3, page 225) and duly published notice, to receive written statements or arguments regarding the proposed adoption of permanent regulations, substantially in the form attached hereto, relating to the environment and to leases under Public Resources Code Sections 6370 and 6371. No person appeared and no written comment was received.

All the procedures required by Article 4 of the Administrative Procedures Act have been completed.

EXHIBIT: A. Proposed Articles 10 and 11, California Administrative Code, Title 2.

IT IS RECOMMENDED THAT THE COMMISSION ADOPT REGULATIONS, AS SET OUT IN EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF, RELATING TO PRESERVATION OF THE ENVIRONMENT AND TO LEASES UNDER PUBLIC RESOURCES CODE SECTIONS 6370 AND 6371.

IT IS FURTHER RECOMMENDED THAT THE COMMISSION DETERMINE THAT THE PROPOSED REGULATIONS WILL NOT CAUSE NEW COSTS TO LOCAL GOVERNMENT, PURSUANT TO REVENUE AND TAXATION CODE SECTION 2164.3.

Attachment: Exhibit "A"

EXHIBIT "A"

"California Administrative Code
Title 2, Administration
Division 3, State Property Operations

ARTICLE 10

REGULATIONS FOR PRESERVING AND ENHANCING THE ENVIRONMENT

2901. Authority and Purpose. The authorities for regulations contained in this article are Division 13 of the Public Resources Code, California Environmental Quality Act, (CEQA); Chapter 3, Division 6, Title 14, of the California Administrative Code, hereafter referred to as State Guidelines; and the purpose is to prescribe implementing regulations and procedures.

2902. Applicability. This article is applicable to all actions of the Commission except where inconsistent with law and regulations of the Commission.

2903. Scope. These regulations do not necessarily repeat definitions, policies, and procedures contained in CEQA or in the State Guidelines; they should be read together.

2904. Intent. It is the intent of the Commission in any action it takes to comply fully with the legislative findings and declarations set forth in Public Resources Code Sections 21000 and 21001. To that end, this article and the procedures set forth herein shall be administered to effect that legislative policy.

2905. Definitions And Abbreviations. 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:

Commission - The California State Lands Commission.

Division - The State Lands Division.

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

Application - A written proposal submitted by an Applicant for Commission action.

EDS - Environmental Data Statement.

DEIR - Draft Environmental Impact Report.

EIR - Environmental Impact Report.

Environmental Documents - Any document or documentation affecting Commission action, including EDSs, DEIRs, EIRs, Negative Declarations, proposed Categorical Exemptions, Notices of Completion and Notices of Determination.

Calendar Item - A statement of facts and staff recommendation for Commission action.

Ministerial Project - These projects are generally defined in the State Guidelines. Specifically, the following actions by the State Lands Commission are defined as ministerial:

- (a) Rights of Way issued pursuant to Public Utilities Code Section 7901.
- (b) Reservations of lands for highways or for the protection of or material for highways, pursuant to Streets and Highways Code Section 101.5.

Project - In addition to actions defined in State Guidelines, Renewals, Amendments and Assignments of existing leases which enlarge the lease area or authorize a change in the basic purpose of the lease or an expanded use of the land, are classed as projects. The approval of a sublease or Assignment and an Amendment changing only the rental, insurance or bond requirements are not projects.

2906. Lead Agency. (a) Public Agency Applicants for Commission action shall be Lead Agency for the project, if no other agency is so designated, and will perform the duties prescribed in Section 15066 of State Guidelines.

(b) The State Lands Division shall be Lead Agency for projects to be undertaken by a non-governmental person who is an applicant for Commission action, unless another agency has been so designated, and for projects to be directly undertaken by the Commission.

2907. Environmental Documents. Unless specifically exempt by law, State Guidelines or these Regulations, an applicant for Commission action under this article shall prepare an environmental document according to the following schedule:

(a) When Division Is Not Lead Agency - Applicants for Commission action that may have a significant effect on the environment, and not otherwise exempt, shall prepare, or cause to be prepared, a Draft Environmental Impact Report or Negative Declaration and forward the requisite numbers of copies to:

- (1) Office of Intergovernmental Management (State Clearinghouse), Office of the Governor.
- (2) Metropolitan Clearinghouse.
- (3) State Lands Division, as an exhibit to the Application for Commission action.

When circulation by the Clearinghouse is completed, the Applicant shall incorporate all comments received into an EIR and forward two copies to the Division.

(b) When Division Is Lead Agency - An Applicant for Commission action not otherwise exempt shall initially prepare an Environmental Data Statement and file two copies with the Application for Commission action. The EDS shall contain the information necessary to enable the Division to evaluate the project and to prepare, or cause to be prepared, a DEIR, a Negative Declaration or take other appropriate action. Content and criteria of the EDS shall be as follows:

- (1) Project And Its Location. Give the name of the project and its location. Generally, two maps or drawings should be submitted. One should show the general vicinity of the proposed project, i.e., nearby landmarks, roads, and other features that would make clear its relation to the general vicinity. The other, preferably topographic, should show the project in detail, i.e., the location of buildings, fills, dredge areas, dikes, public access areas, etc.
- (2) Statement Of Purpose Of The Project. Briefly describe what the project is intended to achieve (e.g., new piers for shipping, new park, shoreline development, etc.).
- (3) General Description Of The Project. Describe the principal features of the project (e.g., exact size of proposed fills, exact scope of proposed dredging, extent of proposed shoreline public access, etc.). Technical engineering detail is not required; the goal is to provide a clear, concise description of the work proposed.
- (4) Present Environment. Describe the physical environment as it exists now, before commencement of the project. Describe both the immediate area of the project and all nearby areas that the project might affect. Provide sufficient information (e.g., existing plants and wildlife, present uses of the property, etc.) to permit a clear evaluation of the environmental alterations that the proposed project would make. Present social and economic conditions should be discussed.

- (5) Environmental Impact Of The Proposed Project. Describe all the environmental impacts, beneficial and adverse, anticipated from the project. Both short-term and long-term effects should be described. For example, a proposed project might require construction of a sewage outfall line through a marsh. The primary environmental impact would be destruction of marsh plants and loss of wildlife habitat in the area through which a trench would be dug for the sewer line. This impact would be only short-term if the marsh could be restored after the sewer line had been installed. But a secondary, longer-range environmental effect of the project might be additional development in nearby open areas, development that could not take place without adequate sewer service.
- (6) Any Adverse Environmental Effects That Cannot Be Avoided If The Proposal Is Implemented. Describe (i) significant environmental impacts of the proposed project that are harmful but cannot be reduced in severity and (ii) those that are harmful and can be reduced but not eliminated. If the project involves significant and harmful environmental impacts that cannot be eliminated or substantially reduced, explain why the project should be allowed to proceed. Significant and adverse environmental impacts include reducing the surface area or water volume of a bay, increasing air or water pollution, producing hazards to health, damaging the habitats of fish and wildlife, etc.
- (7) Mitigation Measures Proposed To Minimize The Impact. Describe measures proposed to mitigate any harmful environmental effects of the proposed project. Explain whether the proposed mitigation significantly reduces the harmful environmental impacts. If several alternatives for mitigation have been considered, describe them separately and briefly, and explain why the recommended alternative was chosen.
- (8) Alternatives To The Proposed Action. Describe (i) alternatives to the proposed project, e.g., building it in a different location, deferring construction, not building it at all (this alternative must be specifically discussed); and (ii) alternative designs for the project (e.g., different size, different shape, different construction materials, etc.) and explain why the proposed alternative was chosen.
- (9) The Relation Between Local Short-Term Uses Of Man's Environment And The Maintenance And Enhancement Of Long-Term Productivity. Explain the cumulative and longer-range effects of the proposed project. Do they enhance or do they reduce the state of the physical environment, from the perspective that each generation is trustee of the earth's land, water, and air for future generations? Describe in detail any aspects of the project that narrow the range of options for future generations.

- (10) Any Irreversible Environmental Changes That Would Be Involved If The Proposed Action Should Be Implemented
Describe any irretrievable commitment of resources involved in the project. Examples: Filling, or leveling a hill, may generally be considered permanent.
- (11) The Growth-Inducing Impact Of The Proposed Action. Discuss the ways in which the proposed action could affect, directly or indirectly, economic or population growth. Discuss also the probable impacts, both desirable and undesirable, on the total environment of such growth. If the proposed action will have no growth-inducing impact, this should be stated and the reason given for the conclusion.
- (12) Water Quality Aspects. With respect to water quality aspects of the proposed project which have been previously certified by the appropriate state or interstate organization as being in substantial compliance with applicable water quality standards, reference to the certification should be made.

In addition, the EDS shall discuss the extent of the conformity of the proposed project with all legally applicable environmental quality standards. The EDS shall deal fully with not only the alternative courses of action to the proposal, but also, to the maximum extent practicable, the environmental effects of each alternative. Further, the EDS shall specifically discuss plans for future development related to the application under consideration. The above-listed factors should be considered to be illustrative and not necessarily exclusive. The EDS shall include a list of persons and their qualifications responsible for compiling the information as to a given area of environmental concern, and a discussion of the methods and procedures used to produce the information.

2908. Determining Significant Effect. When acting as Lead Agency, the Division shall initially determine whether a project may have a significant effect on the environment and, if so, a DEIR shall be prepared. If the Division determines that the proposed action will have no possible significant effect, an EIR shall not be required.

2909. When Environmental Impact Report Or Negative Declaration Not Required. Applicants for Commission action claiming that a proposal will have no possible significant effect, is not a project, is categorically exempt, or is ministerial, emergency or discretionary, must provide documentary evidence to show such status as an exhibit to the Application. The Division will determine, on the basis of such evidence or specific State law, whether or not an Environmental Impact Report or Negative Declaration is required.

2910. Categorical Exemptions. Pursuant to Section 15116 of the State Guidelines, the following types of projects which may become the subject of a proposed Commission action are added to the Class of Exemption indicated:

- (a) Class 1: Existing Facilities. Leases or amendments of leases, of State land underlying one or more existing structure or facility that are shown to be in an acceptable state of repair, non-injurious to adjacent properties, approved by federal, State and local public agencies having legal jurisdiction, do not cause shoreline erosion, and there is no evidence to show factual or high risk of environmental degradation; provided, that such lease or amendment shall not authorize substantial change in the structure or facility, or in the use thereof.
- (b) Class 2: Replacement Or Reconstruction of a structure, building, pipeline, or facility already under lease that has been found by the Division to be in a state of disrepair, hazardous and unsafe.
- (c) Class 3: New Construction And Small Structures.
 - (1) A permit for five years or less for an uncovered pier, float or dock that will occupy no more than 1,000 square feet of tide or submerged land, including the area of use; provided that a surety bond is provided.
 - (2) A floating dock or boathouse that will occupy no more than 3,000 square feet of tide or submerged land, including the area of use; provided, that a lease of the land shall not exceed five years and a bond is provided to insure site clearance.
 - (3) A single small boat mooring buoy.
 - (4) Buoys for delineating safety areas or designating speed zones; provided that public navigational and fishing rights are not affected.

2911. General Plan For Use Of Land. An Applicant to purchase State land shall submit a general plan which shall be a comprehensive description of the current and proposed use thereof. 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.

An EDS may be required by the Division after the Plan has been reviewed.

2912. Time Element for the Review of EIRs. Sixty (60) calendar days shall be allowed for the review of DEIRs by public agencies and the general public, and twenty-one (21) calendar days shall be provided for public and private response to a final EIR before a decision on the project is made by the State Lands Commission.

2913. Public Hearings. Whenever, due to unusual circumstances, the Division determines that a public hearing on the environmental aspects of a proposed Commission action is indicated, it shall determine whether a regular meeting of the Commission will suffice or whether a special hearing at a time and location that will elicit the greatest response from the affected public is indicated. If a special hearing is found desirable, the Division shall hold it and comply with Section 15165 of the Guidelines.

2914. Fees. An Applicant for a Commission action will be required to defray all costs and expenses in connection therewith, including the cost of surveys to provide environmental data, and expenses incurred in preparing, processing or reviewing an environmental document. Such requirement is a condition for the action requested and therefore not mandated within the purview of Revenue and Taxation Code Section 2164.3. The following minimum fees are established and these fees do not include expenses that are unrelated to environmental considerations.

(a) Non-governmental Persons Applying For Commission Action.

<u>Type of Action</u>	<u>Minimum Fee</u>
Commercial or Industrial Lease	\$200
Non-Commercial Lease	160
Right of Way	160
Grazing or Agricultural Lease	100
Salvage Permit	160
Protective Structure Permit	200
Recreational Pier or Use Permit (unless exempted by Sec. 2909)	80
Extractive and Exploratory Lease and Permit	100
Action Not Listed Above	100

(b) The above fees apply even though the Applicant provides an EDS which must be evaluated and processed by the Division. If the Division is required to prepare or cause to be prepared an EIR without Applicant having submitted an EDS, a minimum initial deposit of \$1500.00 will be required with the Application for Commission action. The costs of preparing and processing a DEIR, EIR or Negative Declaration, as appropriate, shall be paid from such deposit. If the costs exceed the deposit, the Applicant shall remit such excess costs upon demand, and if the actual costs are less than such deposit, the unexpended portion shall be refunded.

(c) The above actions and fees therefor include applications for lease renewals, amendments, assignments or subletting approvals, where such action may cause significant effect to the environment.

(d) If the Division does not act as Lead Agency during processing of the application, or it determines that a DEIR, or Negative Declaration is not required, or the DEIR is prepared by others, three-fourths (3/4) of the fee shall be refunded provided that the applicant has shown good faith in providing all essential data and material to support the application.

— 2915. Availability of Environmental Documents. Environmental documents prepared by the Division shall be available for public inspection at the Office of the Division upon request during normal working hours. Copies shall be made available to the general public for the actual cost to the Commission in meeting requests for the copies.

ARTICLE 11.

REGULATIONS FOR LEASING STATE LANDS UNDER
PUBLIC RESOURCES CODE SECTIONS 6370 AND 6371

2920. Purpose. The above statute requires the State Lands Commission to inventory unconveyed State school and tide and submerged lands and to identify such lands which possess environmental values. Until the inventory is complete and a report has been submitted to the Legislature, the Commission may not lease those lands unless it finds that the lease will not have a significant detrimental environmental effect.

2921. Intent. As originally enacted, Public Resources Code Section 6371 takes precedence over CEQA where there is conflict. Accordingly, it is the intent of this Article to identify and reconcile areas of conflict.

2922. Applicability. All of the provisions of Article 10 apply to the leasing activity of the State Lands Commission except:

(a) Section 2907 - Environmental Documents. Reference to a Negative Declaration is inapplicable because it is not authorized under Section 6371.

(b) Section 2909. A contention that there will be no "significant effect on the environment," may not be presented alone. A DEIR or an EDS leading to an EIR must be developed for all lease applications, unless excepted by Section 2923.

(c) Sections 2909 And 2910 Are Inapplicable To This Article. A lease proposed under Public Resources Code Section 6371 may not qualify as categorically exempt, ministerial, emergency or discretionary.

2923. An EDS Or EIR Is Not Required Under Public Resources Code Section 6371 In Any Action Involving:

(a) A recreational pier permit as defined in Public Resources Code Sections 6503 and 6371.

(b) A Lease Renewal, Amendment or Assignment which does not enlarge the lease area, authorize a change in the basic purpose of the lease or expanded use of the land.

(c) A Compensatory Oil or Gas Agreement.

(d) Settlements of boundary problems by the Commission and exchanges in connection therewith.

(e) Lands transferred or granted to the City of Long Beach and to the City of Oakland, or to oil and dry gas revenues, as identified by statutes enumerated in Public Resources Code Section 6377.