

# Staff Report 47

## **PARTY:**

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California State Lands Commission

## **PROPOSED ACTION:**

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Extend sunset date for limited delegation of authority

## **BACKGROUND:**

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At its April 2020 Commission meeting, the Commission approved a limited delegation of authority to the Executive Officer to enter into negotiated settlements with lessees and applicants adversely impacted by COVID-19 and related orders and directives ([Item 75, April 29, 2020](#)). This program is referred to as the COVID-19 Rent and Application Expense Deferral Program. The goal of this program is to address the economic realities of the COVID-19 pandemic and provide relief to the Commission's lessees and applicants most in need. The deferral program is intended to provide certainty to the Commission's lessees and applicants who were worried about their financial ability to meet lease obligations or application requirements, and yet who desired to remain in compliance with lease terms and applicable laws and regulations.

To qualify for the rent and application expense deferral program, the lessee or applicant needs to meet three primary criteria. The lease must have annual rent under \$10,000, the lessee must be in good standing (current on rent with no outstanding penalty and interest owed), and the lessee or applicant must certify a direct adverse impact and provide evidence of financial hardship directly resulting from COVID-19 and related executive orders and directives, satisfactory to the Executive Officer. If the lessee or applicant qualifies for the program, then staff enters into negotiations with the lessee or applicant with the goal of reaching a settlement agreement that is submitted to the Executive Officer for approval and execution.

For rent deferral requests, settlements may include rent deferral and waiver of penalties and interest for the period beginning March 19, 2020 and ending 90 days

after the date upon which Executive Order N-33-20 is lifted. The program also allowed for the same terms and timeframes for any later statewide shelter-in-place orders associated with COVID-19. The settlement agreements are limited to deferral of rent and waiver of penalty and interest, with all other lease terms remaining in effect and enforceable. As of April 15, 2021, Governor Newsom has not lifted or rescinded Executive Order N-33-20. The order was modified in August 2020 by the Blueprint for a Safer Economy, which established color-coded tiers for the gradual reopening of certain businesses and activities.

For lease application expense deferral requests, settlements may include deferral of the processing expenses, and may require a lump sum payment for staff costs, incurred in processing the lease application, to be paid within 30 days following the Commission meeting at which the application is to be considered, or payment according to a negotiated payment plan. The \$25 filing fee is not waived.

The limited delegation was effective immediately upon Commission approval on April 29, 2020 and is set to expire on April 30, 2021. The terms of settlements may continue past April 30, 2021. The proposed action is to extend the sunset date of the program to December 31, 2021.

Overall, since the program started in April 2020, staff has received 65 applications. Under the delegation, the Executive Officer has approved 10 applications, declined 5 applications, and 50 applications are incomplete. One previously approved applicant declined the deferral and decided to pay the lease application processing expenses. The 10 approved (and accepted) rent deferral applications over the life of the program total \$25,078 in annual rent. The incomplete applications were almost exclusively, if not entirely, individuals who did not have a lease or application with the Commission but rather applied mistakenly believing it was a program for general housing rent deferral. In addition to relief provided under the program, the Commission approved two lease amendments at the June 2020 meeting providing for COVID-19-related rent deferral to applicants who did not qualify for the program ([Item 56, June 23, 2020](#)). The combined annual rent for the two approved lease amendments is \$182,602.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 1911, 2000, 2003, and 2004.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

The extension of the sunset date for the delegation of authority provides certainty and reassurance to the Commission's most vulnerable lessees and applicants and allows the Commission's lease program to retain its stability. The program is not intended to allow for any waiver of rent or reimbursable application processing costs; it is a rent and application processing cost deferral program intended to be implemented in a timely manner without having to wait for a regularly scheduled Commission meeting that typically occurs every 2 months. Importantly, those lessees who do not qualify for the program because their annual rent exceeds \$10,000 or because their type of lease is expressly excluded from the program, may still apply for COVID-19-related relief under the Commission's traditional lease amendment process or as otherwise provided by statute.

The deferral program achieves statewide public benefits, including maintenance of economic stability, promotion of employment, forestalling blight, and reducing state liability by assisting lessees so that they are able to maintain the lease premises, comply with environmental protection regulations, and remain in compliance with all other terms of the lease. The goal is to ensure that the Commission's lessees and applicants survive and recover, and in turn ensure that the Commission's robust lease program for state lands under its jurisdiction continues through and after the COVID-19 pandemic. The deferral program also reduces inefficient use of limited resources on compliance and enforcement for issues that are outside the scope of lessees' and applicants' control by enabling staff to instead work with lessees and applicants to find reasonable solutions to unusual and unforeseen circumstances.

At the time the April 2020 delegation was approved, the pandemic was still in its early stage and there was very little knowledge of how it would evolve or how long it would last. While the future is still uncertain, staff has more information and, with the development and rollout of vaccines and conditions continuing to improve, staff anticipates the need for the program will continue to dissipate. Staff believes, however, that ending the program on April 30, 2021 would be premature. Extending the program through the end of 2021 will allow sufficient time to ensure that all those who may benefit from the program are covered.

**CONCLUSION:**

For these reasons, staff believes approval of the proposed action will not substantially interfere with Public Trust needs and values and is in the State's best interests.

## **OTHER PERTINENT INFORMATION:**

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1. Approval or denial of the delegation to the Executive Officer to enter into negotiated settlements is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign or school land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust or school lands as authorized by law.
2. This action is consistent with paragraph 1c of the "Committing to Collaborative Leadership" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Authorization to extend the sunset date for the limited delegation of authority to the Executive Officer is not a project as defined by the California Environmental Quality Act because it is an organizational action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378 subdivision (b)(5).

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that extending the sunset date for the limited delegation of authority to the Executive Officer will not substantially interfere with Public Trust needs and values and is consistent with the common law Public Trust Doctrine; and find that the extension is in the best interests of the State.

### **AUTHORIZATION:**

Extend the sunset date for the limited delegation of authority to the Executive Officer to enter into negotiated settlements with lessees and applicants adversely impacted by COVID-19 and related orders and directives from April 30, 2021 to December 31, 2021.