

Staff Report 55

PARTY:

California State Lands Commission

PROPOSED ACTION:

Consider Amendment of the Current Delegation of Authority to the California State Lands Commission Staff to authorize the Executive Officer to approve or deny applications presented at a properly noticed public Commission Meeting when at least two Commissioners publicly recuse themselves from voting on the matter due to a conflict of interest.

BACKGROUND:

The California State Lands Commission (Commission), in accordance with law, provides for the delegation of certain responsibilities and authority to the Executive Officer and staff of the Commission. The Comprehensive Delegation of Authority (Delegation) was most recently amended at the December 6, 2019, Commission Meeting ([Item 49, December 6, 2019](#)).

The Political Reform Act of 1974 (Government Code Section 87100 and following) sets up a mechanism whereby public officials are required to identify potential or perceived conflicts and recuse themselves from being involved with decisions that could be impacted by these conflicts. "Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Government Code section 81001(b)). The Political Reform Act identifies many potential ways a conflict could be created, including direct or indirect investments, interests in affected real property, sources of income, or personal financial effects.

Routine lease applications for existing recreational structures generally do not create a new or substantial burden to Public Trust resources. Where these applications are not the subject of controversy, are exempt from the California Environmental Quality Act (CEQA), and are subject to the same lease terms as

numerous other similarly situated leases in the same area, the applications are typically approved on the Commission's Consent Calendar without individual discussion, deliberation, or debate.

In rare cases, members of the Commission may have a personal or financial relationship with an applicant. Although California law provides that a public official with a real or perceived conflict of interest may still participate in a decision if the vote of the public official is legally required for the agency to function (Government Code section 87101), it is preferable to avoid having this official vote on such applications to avoid the appearance of impropriety. Because the Commission only has three members, if more than one Commissioner has a potential conflict, the Commission would be unable to reach a quorum and would be unable to act on the application. This does not serve the public's best interests.

This delegation would apply only in the narrowest of circumstances where the application is routine, and two or more Commissioners have a conflict. Ultimately, the members of the Commission bear responsibility for the decision made by the Executive Officer for these items. But removing Commissioners from the actual decision, while also publicly disclosing a potential conflict will avoid a potential conflict while also ensuring transparency.

PROPOSED AMENDMENT:

Authorize the Executive Officer to review, authorize, authorize with revisions, or deny a lease or lease amendment application for an existing recreational structure(s) when at least two officers on the Commission recuse themselves from participating in a decision at a properly noticed public Commission meeting due to a conflict of interest, unless a member of the public requests a public hearing on the item. In making such determination, the Executive Officer must act in accordance with the best interests of the State, establish rent according to the applicable benchmark, ensure that the action is consistent with the common law Public Trust Doctrine, and ensure that the action complies with the California Environmental Quality Act. This delegation will be limited to routine, non-controversial lease or lease amendment applications for existing structures which would otherwise be on the Commission's Consent Agenda.

OTHER PERTINENT INFORMATION:

1. This action is consistent with addressing the challenges and opportunities described in the Commission's 2021-2025 Strategic Plan to maintain fiscal

integrity through transparency, accountability, and efficient and effective management of the revenue-generation portfolio.

2. The amendment to the Delegation is not a project as defined by CEQA 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).

EXHIBIT:

- A. Proposed Revised Comprehensive Delegation of Authority (Amended April 26, 2022)

RECOMMENDED ACTION:

It is recommended that the Commission:

AUTHORIZATION:

1. Amend the Comprehensive Delegation of Authority as set forth in Exhibit A, effective April 26, 2022.

EXHIBIT A

COMPREHENSIVE DELEGATION OF AUTHORITY (AMENDED APRIL 26, 2022 ~~DECEMBER 6, 2019~~)

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). The Executive Officer shall make the determination whether a lease is necessary for dredging on granted tide and submerged lands wherein the right to minerals is reserved to the state, pursuant to Public Resources Code section 6707, subdivision (d), as added by Statutes 2013, chapter 104, section 3.
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 or minor, nonexclusive, short-term 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, or other research 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~~ biological, 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,
 - Removal of derelict or hazardous structures on State waterways, school lands, and other lands under the jurisdiction of the Commission,
 - 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,
 - Research projects, or
 - Educational activities.
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.
 5. The Executive Officer is authorized to correct scrivener’s errors in contracts, leases, and other entitlements issued by the Commission. A scrivener’s error is a mistake made by the scrivener or person drafting a document that does not reflect the intention and understanding of both parties to the contract, lease, or other entitlement, where the error is clearly unintentional and the true intent can be clearly obtained through other documentation. The Executive Officer is also authorized to correct scrivener’s errors in staff reports, exhibits to staff reports, and in the Commission’s meeting minutes.

6. The Executive Officer is authorized to review, authorize, authorize with revisions, or deny a lease or lease amendment application for an existing recreational structure(s) when at least two officers on the Commission recuse themselves from participating in a decision at a properly noticed public Commission meeting due to a conflict of interest, unless a member of the public requests a public hearing on the item. In making such determination, the Executive Officer must act in accordance with the best interests of the State, establish rent according to the applicable benchmark, ensure that the action is consistent with the common law Public Trust Doctrine, and ensure that the action complies with the California Environmental Quality Act. This delegation will be limited to routine, non-controversial lease or lease amendment applications for existing structures which would otherwise be on the Commission's Consent Agenda.

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, External Affairs Division
6. The Chief, Division of Environmental Planning and Management
7. The Chief, Mineral Resources Management Division
8. The Chief, Marine Environmental Protection Division
9. The Assistant Chief Counsel
10. The Assistant Chief, Land Management Division
11. The Assistant Chief, Administrative Services Division
12. The Assistant Chief, Division of Environmental Planning and Management
13. The Assistant Chief, Mineral Resources Management Division
14. The Assistant Chief, Marine Environmental Protection 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, VII, and VIII. 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, 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. 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, except for contracts for environmental consultants that will be paid for entirely by the Applicant or with other non-public monies, and except for reimbursement agreements. The Executive Officer may solicit proposals for, negotiate price, and award and enter into contracts for environmental consultants that will be funded entirely by the Applicant or with other non-public monies. This authority may not be re-delegated.
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 Assistant Chief, Administrative Services Division

The Executive Officer may also re-delegate to the Chief, Administrative Services Division, Assistant Chief, Administrative Services Division, and to the Fiscal Officer, Accounting Administrator, or Accounting Officers, authority to sign purchase estimates, sub-purchase orders, supply orders, position changes (607s), claim schedules, vouchers, 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 Lands Commission.

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 Assistant Chief, Administrative Services Division
- The Personnel Officer.

C. LABOR RELATIONS

The Executive Officer shall oversee the handling of grievances arising out of labor agreement administration and activities associated with all phases of the collective bargaining process on behalf of the Commission. These activities may include making recommendations to Commission management on the interpretation and application of labor agreement provisions; ensuring State compliance with laws, regulations, policies, and labor agreements; investigating, recommending, and making decisions regarding disposition of grievances arising out of labor agreement administration, or grievances and complaints filed outside of the labor agreements; and participating in the development and presentation of State positions on matters within the scope of bargaining. The Executive Officer may re-delegate these functions to the Assistant Executive Officer; the Chief, Administrative Services Division; the Assistant Chief, Administrative Services Division; or the Labor Relations 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 is also authorized to respond to questions and inquiries about federal legislative jurisdiction, to appear on behalf of the Commission and testify about federal legislative jurisdiction matters in any appropriate judicial or administrative proceedings, and to maintain an index or record of documents with descriptions of the lands over which the United States has jurisdiction and the degree of jurisdiction, pursuant to Government Code section 127.

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 Commission Attorney

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 12276 of the Government Code in connection with the reproduction of records of the Commission) to any one or more of the following:

- Any Commission Attorney
- The Chief, Administrative Services Division
- The Assistant Chief, Administrative Services Division
- Supervising Boundary Determination Officer
- 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; requesting shortened public review periods for such documents if deemed necessary; and filing notices of determination after the Commission approves or determines to carry out a project subject to CEQA. 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. 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. 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 is authorized to approve any assignment of a mooring buoy within Tomales Bay which has been issued by the Commission under permit from the Greater Farallones National Marine Sanctuary.

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, associated regulations, 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.

The Executive Officer shall have authority over all matters pertaining to the prevention of marine invasive species introductions as provided under the Marine Invasive Species Act (MISA), amendments thereto, associated regulations, and similar successor provisions of law or statute, including, but not limited to, the authority to issue any approval or authorization that would otherwise require action by the Commission pursuant to the MISA. The Executive Officer shall represent the Commission and its Chair on all panels and committees convened for the purposes of invasive species prevention and control. At any time, the Chair of the Commission may direct that, this delegation notwithstanding, one or more specific requests for approval or authorization, 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 Environmental Protection Division, pursuant to this delegation. Any approval, authorization, 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 Act and the MISA, except for those pertaining to the Mineral Resources Management Program, to one or more of the following:

- The Assistant Executive Officer
- The Chief, Marine Environmental Protection Division
- The Assistant Chief, Marine Environmental Protection Division

VIII. REMOVAL OF VESSELS FROM STATE WATERWAYS

The Executive Officer shall have authority to undertake any activity necessary to remove or dispose of abandoned, derelict or trespassing vessels as permitted under

the provisions of Public Resources Code sections 6302.1, 6302.3, and 6302.4, provided that the Executive Officer has determined that an exemption from CEQA applies pursuant to authority granted in section IV of this Comprehensive Delegation of Authority.

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:

- The Assistant Executive Officer
- The Chief Counsel
- The Assistant Chief Counsel
- Any Commission Attorney
- The Chief, Land Management Division
- The Assistant Chief, Land Management Division
- Any Public Land Manager
- Any Public Land Management Specialist III or IV