

Staff Report 62

PARTY:

California State Lands Commission

PROPOSED ACTION:

Adoption of policy pertaining to homeless encampment response, pursuant to Executive Order N-1-24.

SUMMARY:

Commission staff recommends the Commission adopt the “California State Lands Commission – Encampment Policy”, in substantially the form of Exhibit A, to establish a guiding policy for assessing and vacating homeless encampments on State land under the Commission’s leasing jurisdiction. This policy follows the issuance of Executive Order N-1-24 in July 2024 by Governor Gavin Newsom.

BACKGROUND:

California continues to experience a humanitarian crisis of people experiencing homelessness. Per the California Senate Housing Committee’s 2023 estimate, over 181,000 people lack permanent housing in California, and, on any given night, it is estimated that “24% of all people experiencing homelessness in the United States did so in Los Angeles or New York City.” Additionally, “more than 70% of people experiencing homelessness [in California’s major cities, which include San Jose, Los Angeles, Oakland, Long Beach, and Sacramento,] were unsheltered.” ([Fact Sheet: Homelessness in California](#), last updated January 2024).

On January 31, 2020, Governor Gavin Newsom signed Executive Order N-23-20 directing departments to assess and facilitate use of state land and resources for short-term emergency homeless shelters; ([Executive Order N-1-24](#); [N-23-20](#)).

Since then, the State has provided funding to address the homelessness crisis through programs such as Homeless Housing, Assistance, and Prevention (HHAP), and Encampment Resolution Funding (ERF), and Homekey (Executive Order N-1-24). Even with these additional efforts, homelessness continued to present health, safety, environmental, and hygiene concerns to local communities. Local and State governments were reluctant to take eviction actions against people experiencing homelessness following the Ninth Circuit opinion, Martin v. Boise, 920 F.3d 584 (9th Cir. 2019).

Under Martin v. Boise, the Ninth Circuit Court of Appeals held that it was unconstitutional to criminally prosecute people experiencing homelessness when the amount of unsheltered people outnumbered the amount of “practically available” beds. The Court held that asserting criminal sanctions was a grossly disproportionate punishment based on an individual’s housing status.

On June 28, 2024, the U.S. Supreme Court held under the City of Grants Pass, Oregon v. Johnson (2024), 603 U.S. ___, 144 S. Ct. 2202 that criminalizing the act of sleeping in tents or establishing temporary shelter in public spaces does not exclusively target people experiencing homelessness and overturned Martin v. Boise. Rather, the Supreme Court held that an individual’s housing status is irrelevant to the act of sleeping in public and that any individual sleeping in public may be criminally charged and punished for such act.

Following the U.S. Supreme Court’s opinion, on July 25, 2024, Governor Gavin Newsom signed Executive Order N-1-24 ordering California agencies and departments to “adopt policies generally consistent with the [California Department of Transportation’s Maintenance Policy Directive 1001-R1](#).” In this order, the Governor also mandated certain actions, such as providing notice to encampment occupants; vacating an encampment under exigent circumstances; collecting, labelling, and storing personal occupants’ property; and requesting outreach services from providers.

STAFF ANALYSIS AND RECOMMENDATION:

Many people experiencing homelessness seek shelter on open, undeveloped land near areas that provide anonymity and opportunities to independently obtain work, food, or other essentials. Lands under the Commission’s leasing jurisdiction are not excluded from this crisis. Staff is aware of a few locations under the Commission’s leasing jurisdiction where unhoused individuals have taken shelter

and encampments have developed. There are times when these occupants affect the aquatic and marine environment and the local neighborhoods and communities, including impacts to water quality, native vegetation, animal species, and public access and recreation. These impacts include accumulation of trash and debris; destruction or removal of native vegetation and the associated impacts on animal species; reduced water quality and associated impacts on fish habitat through unregulated discharge of waste; fire hazards associated with unregulated cooking and heating devices; and visual, auditory, and olfaction (smell) effects on the surrounding neighborhood.

One such location is on state-owned land under the Commission's leasing jurisdiction in the northwestern part of the city of Stockton. The site is located along the west side of Trinity Parkway at Bear Creek, also referred to as White Slough. Over the past few years, people experiencing homelessness have created several encampments, on and around the state-owned land, which has led to the accumulation of considerable amounts of trash and debris around the encampments. Staff have been coordinating with city and county officials, as well as nearby residents and businesses, in efforts to address the issues posed by the encampments. To address immediate issues of public health and safety, water quality, and environmental degradation, staff initiated a clean-up of the trash and debris on the site pursuant to authorization from the Commission in August 2022 ([Staff Report 41](#)). Staff subsequently entered into a contract with the Greater Valley Conservation Corps, which then conducted a clean-up of the encampments.

Local governments – cities, counties, and their departments – are most familiar with the unhoused populations and encampments in their neighborhoods and communities. They often have the resources to address the issues or are working to increase the resources to meet the need. On becoming aware of an unhoused situation on sovereign or school land, staff reaches out to the local governments and their relevant departments, as well as other State agencies, and private entities, to assess the scope of the situation, measure the resources available (who can do what), and form partnerships to seek solutions. This often means contacting city council members, county supervisors, department heads, homeless outreach coordinators, and police or sheriff departments. Staff always inquires about the availability of homeless services, particularly housing (i.e., temporary or transitional shelters), when considering potential solutions. Agreements between the Commission and local partners are sometimes necessary to facilitate activities on property under the Commission's leasing jurisdiction.

At its April 2023 public meeting, the Commission authorized its Executive Officer to enter into cooperative agreements with cities, counties, and other state or local governments, departments, or entities to address situations and concerns related to the unhoused on state-owned sovereign or school lands. While these agreements will not solve the larger issues of homelessness, they should reduce the most severe impacts to the Public Trust and State Land resources in areas where the agreements are in place. The Commission's efforts to collaborate with local governments, unhoused individuals, nearby residents and businesses, and others, demonstrate its commitment to inviting their viewpoints and seeking solutions on these important issues affecting the state and nation. Staff subsequently entered a Memorandum of Understanding with the city of Stockton to work cooperatively to address the conditions caused by the unhoused who are camping on State Lands. Staff drafted the proposed "California State Lands Commission – Encampment Policy" pursuant to Executive Order N-1-24 to establish guidance for staff to follow when removing an unauthorized encampment occupied by people experiencing homelessness from State lands.

AUTHORITY:

State of California Governor's Executive Order N-1-24; Public Resources Code sections 6301, 6302, 6303.1; Civil Code sections 670, 1007.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

The Commission has exclusive jurisdiction over all ungranted tidelands and submerged lands owned by the State and has oversight over sovereign lands granted in trust by the Legislature to local governments. Under the common law Public Trust Doctrine, tide and submerged lands and the beds of navigable lakes and rivers are State sovereign land and must be held in trust for the benefit of all.

Even as the Public Trust Doctrine has evolved with society's own development to make space for more Public Trust-compliant functions, the function of permanent residential use is incompatible with the Public Trust.

Failure to address encampments along and on State sovereign lands impede and discourage broader public access in such areas. These unauthorized encampments displace other potential trust-consistent recreational uses. The accumulation of improvements may also create liability for the state, cause fire hazards, or result in environmental harm.

The Commission additionally manages School Lands, which were conveyed to the state “for the specific purpose of providing support for the public schools.” (Pub. Res. Code section 8702 subd. (c)). Although the School Lands are not subject to common law Public Trust Doctrine, these lands are reserved for generating revenue for the California State Teachers Retirement fund. The additional concerns about liability, hazards, and environmental harm apply equally to School Lands.

Based on this, it is in the State’s best interests and consistent with the common law Public Trust Doctrine to adopt the proposed policy providing a process for removing unauthorized encampments of persons experiencing homelessness subject to available funding.

OTHER PERTINENT INFORMATION:

1. Staff recommends that the Commission find that this policy adoption is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15061.

2. The Commission does not have a dedicated budget appropriation for implementation of this Executive Order or the proposed policy. Therefore, implementation of the policy is subject to available funding.
3. The proposed action is consistent with the “Meeting Evolving Public Trust Needs,” “Prioritizing Social, Economic, and Environmental Justice” and “Committing to Collaborative Leadership” Strategic Focus Areas of the Commission’s 2021-2025 Strategic Plan.

EXHIBIT:

- A. California State Lands Commission – Encampment Policy

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the policy adoption is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed policy will not substantially interfere with Public Trust needs and values, is consistent with the common law Public Trust Doctrine, and is in the best interest of the State.

AUTHORIZATION:

Adopt the guidance policy statement on encampments substantially in the form attached as Exhibit "A."

Exhibit A

California State Lands Commission – Encampment Policy

It is the policy of the California State Lands Commission (Commission) to act with respect and compassion when responding to the presence of encampments of people who are unhoused on State lands. This policy shall apply to all cleanup or remediation efforts to remove Encampments from State Land. If the Commission is working with another agency to conduct the removal on land under the Commission's leasing jurisdiction, then the other agency must also follow, at a minimum, the process below. Should the other agency have a similar or more detailed policy with at minimum the protections below, compliance with that policy is sufficient. Implementation of this policy is subject to available funding.

Authority

State of California Governor's Executive Order N-1-24

Public Resources Code sections 6301, 6302, 6303.1

Civil Code sections 670, 1007

Definitions

Encampment: Unauthorized use of state land ranging from rudimentary shelter to more complex groups of individuals experiencing homelessness unlawfully residing or temporarily seeking shelter on State property. This does not apply to campers, backpackers, or other recreational occupants whose intent is to shelter on State lands for a temporary period (ex. Seven days or less, unless otherwise authorized).

Homelessness: people who have no long-term place of residence.

Occupants: Persons experiencing homelessness who are living in Encampments.

Law Enforcement: This includes California Highway Patrol (CHP), County Sherriff's Offices, and local police departments.

Private Security: Privately owned security companies potentially contracted with the Commission.

Contractor: A third-party entity, service, consultant, or other position hired or collaborating with the Commission to remove or otherwise respond to Encampments.

State Land: Land owned by the state of California and under the Commission's leasing jurisdiction.

Encampment Response Process

This policy covers the processes of removing Encampments from State Land. The Commission may collaborate with other federal, State, or local departments, agencies, and entities to remove Encampments consistent with Executive Order N-1-24.

Each Encampment response shall be evaluated on a case-by-case basis so that the Occupants are given sufficient time to relocate and are treated with respect. Implementation of this process is contingent on available funding. The response will effectively implement the following:

A. Site Assessment

When feasible, a site assessment should be performed to determine whether the Encampment poses an imminent or near term threat to life, health, safety, infrastructure, or the environment. Encampments that pose such threats will be prioritized for removal.

Staff should contact service providers and request outreach services for the Occupants prior to any removal action.

To ensure the safety of workers, staff or its contractors shall evaluate the site prior to a removal action for hazardous materials or other hazards unique to the Encampment that may either (1) require immediate remediation or abatement, or (2) require disinfection of the area prior to clean up. Making a base assessment of the property will help workers gather the appropriate materials needed to effectively and safely remove the Encampment.

If workers find that there are any materials, substances, or anything in the Encampment that are reasonably likely to pose imminent harm or danger to the Occupants or others, such items can be removed without a 72-hour notice.

Where exigent circumstances exist, workers must give as much advance notice to vacate the Encampment as reasonable, given the circumstances.

B. Posting of Notice

Notices for vacating Encampments should be clearly posted at least 72 hours prior to any planned removal action. The notices should be posted at likely points of ingress/egress in a conspicuous manner. The notices should also be enclosed in a plastic sheet protector to avoid damage by weather.

The notice to vacate should contain:

- Name, address, and contact information of the State Lands Commission
- Address and phone number of local social services and shelters
- The posting date and time
- The location
- "Vacate by" date and time
- Telephone number for assistance in claiming property collected during removal
- Date by which property must be collected before it is disposed of
- Removal start and end dates

Staff should consider posting the notices in English, Spanish, and other commonly spoken languages. To encourage transparency and to maintain a thorough record, time stamped photographs and videos should be taken of the notice to vacate and the posting process.

Staff may consider leaving litter bags at the Encampment when posting the notices.

C. Encampment Removal Process

Law Enforcement or Private Security shall be present to perform an initial sweep to confirm all Occupants have left. Law Enforcement may remove any remaining Occupants and verify the condition of the area and remaining property. If there are any remaining Occupants not detained by Law Enforcement, the Occupants must be allowed to remove possessions before any removal action occurs to avoid potential issues with the Fourth Amendment regarding illegal seizure of personal property. If the removal cannot begin because of hostility, interference or other actions by Occupants, work should not begin until Law Enforcement mitigates the situation. No work should be conducted while Occupants are present.

If advance notice was given for the cleanup, work shall begin on the date and at the time listed on the notice.

Photographic or video records of the general condition of the encampment and the remaining property shall be made before, during, and after removal work has been completed, along with any property collected and stored as outlined below.

Workers shall be trained to handle hazardous materials and wastes, including the use of personal protective equipment and clothing. Trained personnel should evaluate the site for any hazardous materials and make a plan for removal. All cleanup workers shall be aware of the potential hazards from human waste, hypodermic needles, etc., and what actions to take if hazards are uncovered during a cleanup action.

When possible, equipment should be used to gather, pile, and load encampment debris to reduce human exposure and contamination.

For health and safety reasons, workers are directed to collect items of apparent value if they can be easily and safely retrieved by hand or the item has been identified by the Occupant as an item of value. For health and safety reasons, workers are not to sift through the Encampment to find specific items of value. Items of apparent value that require collection shall be readily seen, and not searched for under potentially hazardous cover. To protect workers' safety, items located in unsafe, inaccessible, or potentially hazardous areas or cover should be assumed to have no apparent value and are to be discarded with the proper mechanical equipment.

Items that have no apparent value, including but not limited to empty food containers, items damaged beyond repair or items that are extremely unsanitary, should be disposed of as soon as practicable.

D. Personal Property Storage and Reclamation

Personal property that is not a health or safety hazard, in plain sight, shall be collected, labeled, and stored. Collected personal property should be time-stamped, photographed and inventoried by describing and labeling the items and identifying the Encampment location and removal date. The following items will be collected:

- Items having an apparent value of \$50 or more
- Items of personal value including:

- Eyeglasses, operational wheelchairs, walkers, crutches, or other medical equipment
- Tents (habitable and uncontaminated)
- Personal papers such as photographs, albums, ID's, bank statements, legal papers etc.
- Bicycles, scooters, or strollers in good repair.

Items that present an immediate health or safety risk will not be collected, including:

- Toxic sharps: needles, scissors, knives.
- Chemicals: bleach paint, oils, etc.
- Items (including bedding and clothing) soiled by infectious materials, human waste or bodily fluids.
- Moldy, mildewed items
- Items that may be infested by rats, mice, fleas, lice, bed bugs, or other similar infestation.

Other items that will not be collected:

- Bulky items, including furniture, mattresses, sheds, or structures
- Perishable items, and food
- Controlled substances, drugs, or medications without prescriptions
- Contraband, weapons, and illegal items. When such items are found or reasonably suspected to be present in containers, Law Enforcement should be contacted.
- Trash, garbage, debris, discarded items, and broken items.

Backpacks or closed containers may not be opened, searched, or collected unless a hazmat trained contractor is present for the safety of workers. If a hazmat trained contractor is able to safely open a backpack or container, and there are items inside of the container that are listed above as the type that will not be collected, the entire container or backpack will not be collected.

To allow for Occupants to reclaim their personal property, workers shall label collected items with the date of the clean-up, the location of clean-up, and the name of the owner of such items, if known, prior to transferring it to appropriate Commission storage locations, a partnered State entity, or other storage facilities, in accordance with Commission storage policies, for at least 60 days. Only personal property with apparent value that does not pose a health or safety hazard shall be stored.

Items belonging to Occupants arrested by Law Enforcement may be collected by the arresting Law Enforcement agency and may remain in such agency's possession according to the Law Enforcement agency's storage policy.

Persons attempting to reclaim personal property should be able to describe where and when it was last possessed (the Encampment Location and date prior to the removal action) and describe the items. A copy of the numbered inventory sheet shall be signed and dated by the claimant and serve as a receipt. Occupants should be able to make arrangements to reclaim property within a reasonable time after contacting staff.

Workers shall not take possession of personal property. Civil Code 2080 provides that a person who finds property shall inform the owner within a reasonable time and return the property to the owner. Civil Code 2080.1 provides direction regarding property with a value of more than \$100 when the owner of such property is unknown. The property shall be turned over to the city police department if found within the city limits, or to the sheriff's department if found outside the city limits. Civil Code Section 2080.3 provides that if the owner of property cannot be located, the person who finds the property takes title *"unless the property was found in the course of employment by an employee of any public agency, in which case the property shall be sold at public auction."* (Emphasis added.)

Property will be stored in a secured location for not less than 60 days, then discarded if not claimed.

E. Post Clean-Up Recommendations

The records retention schedule for each unique file containing Encampment clean-up records, photographs, videos, and relevant documents is four (4) years, with archiving thereafter, in accordance with the Commission's record retention policy.

Where feasible, regular monitoring of removed Encampments should be considered. This monitoring could be done by Commission staff, local agency partners, or by collecting reports from local residents.

Commission staff may consider opportunities to reduce the attractiveness of a particular site for Encampments. This may include fencing, reducing vegetation growth that provides cover or concealment, posting of signs, increased patrol of the location by Law Enforcement, or barriers to access.

Commission staff and other collaborating agencies may find it advantageous to participate in meetings or proceedings regarding homeless policy at the local governmental level to connect with the public to hear their concerns and raise awareness of the issues.