

California Tideland and Submerged Land Leasing for Conservation Purposes

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March 2009

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This report focuses on the lands underlying the waters off the coast of the State of California, explaining how those lands are owned and managed—including how they may be owned or leased for conservation purposes. This report is limited to only those coastal waters over which the State has jurisdiction, generally meaning the waters within three nautical miles of the coast.

I. OVERVIEW OF TIDELANDS AND SUBMERGED LANDS IN CALIFORNIA

In the State of California, lands that lie underwater in coastal areas are, depending on their location, referred to as either “tidelands” or “submerged lands.” To distinguish— “[t]idelands are properly those lands lying between the lines of mean high tide and mean low tide. Lands seaward of the line of mean low tide are properly submerged lands.”¹ Figure 1 depicts tidelands and submerged lands.

A. Ownership and Geographic Boundary

For marine conservation purposes, the primary interest will be protecting, managing and restoring tide and submerged lands. The question of ownership of tide and submerged lands has a complicated history. More than a century of legislation and litigation has been necessary to resolve legal title issues to these unique lands. To summarize this ownership history requires going back to the birth of the State of California and the end of the Mexican-American War. The United States Supreme Court has had occasion to explain this history:

[T]he war between the United States and Mexico . . . was formally ended by the Treaty of Guadalupe Hidalgo in 1848. [Citation.] Under the terms of the Treaty of Guadalupe Hidalgo the United States undertook to protect the property rights of Mexican landowners, [citation], at the same time settlers were moving into California in large numbers to exploit the mineral wealth and other resources of the new territory. . . . To fulfill its obligations under the Treaty of Guadalupe Hidalgo and to provide for an orderly settlement of Mexican land claims, Congress passed the Act of March 3, 1851, setting up a comprehensive claims settlement procedure. . . . Claimants were required to present their claims within two years, however, or have their claims barred.²

As a result, some lands, including tidelands, that were confirmed under the 1851 Act stayed in private ownership and, as the United States Supreme Court held nearly 130 years later,³ are not subject to what is known as the “public trust” (discussed below). Except for those private tidelands confirmed in the 1850s, “[i]t is a well established proposition that the lands lying between the lines of ordinary high and low tide, as well as that within a bay or harbor and

¹ *City of Long Beach v. Mansell*, 3 Cal.3d 462, 478 n.13 (1970); *see also* Cal. Code Regs. tit. 2, § 1900(e), (f). The regulations define tidelands as “the area lying between the elevations of ordinary low water and ordinary high water on lands subject to tidal action,” which is equivalent to the “lands lying between the lines of mean high tide and mean low tide.”

² *Summa Corp. v. California Ex Rel. Lands Comm'n*, 466 U.S. 198, 202 (1984).

³ *Id.*

permanently covered by its waters, belong to the state in its sovereign character and are held in trust for the public purposes of navigation and fishery.”⁴ Historically, the state in several instances granted tideland ownership to municipalities for the development of their ports and harbors, but the tidelands remain subject to the public trust.⁵

Specifically with respect to submerged lands, in 1947, the United States Supreme Court held that the United States, rather than the coastal states, possessed all ownership rights in offshore lands and resources.⁶ Six years later, pursuant to the Submerged Lands Act of 1953 (43 U.S.C.A. §§ 1301 *et seq.*), Congress quitclaimed “the three-mile belt of submerged lands to the State of California and to those entitled thereto under California law.”⁷ To be clear, “the 1953 law ‘approved and confirmed’ the ‘boundaries’ of each coastal state as terminating three geographical (nautical) miles seaward from the coast. State claims beyond the three-mile limit were foreclosed”⁸ The Submerged Lands Act defines the coast line as “the line of ordinary low water mark where the coast ‘is in direct contact with the open sea,’ otherwise, as ‘the line marking the seaward limit of inland waters.’ (43 U.S.C.A. § 1301(c).)”⁹

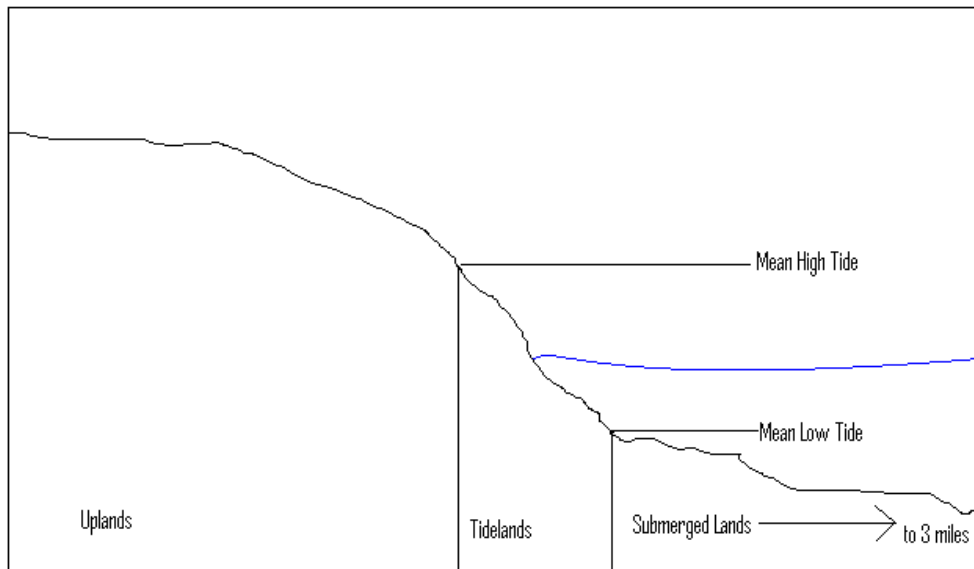


Figure 1

⁴ *People ex rel. Webb v. California Fish Co.*, 166 Cal. 576 (1913).

⁵ Tideland ownership in California is a particularly complex subject. Anyone with critical ownership questions should consider consulting an attorney.

⁶ *United States v. California*, 332 U.S. 19 (1947).

⁷ Note that “Section 8 of the [Submerged Lands Act] provided, however, that it did not affect rights in submerged lands that had previously been acquired under any law of the United States.” *Gabrielson v. City of Long Beach*, 56 Cal. 2d 224, 230-31 (1961).

⁸ *People v. Weeren*, 26 Cal.3d 654, 661-62 (1980). Beyond the three-mile limit, the lands are referred to as the Outer Continental Shelf; ownership and jurisdiction resides with the federal government in accordance with international law. See the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 *et seq.*; see also *id.* § 1302.

⁹ *Weeren*, 26 Cal. 3d at 661-62 (1980).

B. The State Lands Commission's Jurisdiction

Given California's lengthy coastline, this three-mile belt of tide and submerged lands adds up to approximately 4 million acres—an area larger than the entire state of Connecticut. Having obtained ownership through the Submerged Lands Act, California through its Legislature vested “exclusive jurisdiction over all ungranted tidelands and submerged lands” in the State Lands Commission.¹⁰ With respect to the leasing or disposal of tide and submerged lands, the law provides that the State Lands Commission “shall exclusively administer and control all such lands, and may lease or otherwise dispose of such lands, as provided by law, upon such terms and for such consideration, if any, as are determined by it.”¹¹ The State Lands Commission, therefore, controls California's tide and submerged lands and serves as the lead agency for the leasing of those lands.

C. The Public Trust Doctrine

In making decisions regarding the use or leasing of tidelands and submerged lands, the State Lands Commission is required to assure that the use is consistent with the “public trust doctrine.” The public trust doctrine is a long-standing common law doctrine, tracing its history all the way back to Roman law. Nearly a century ago, the California Supreme Court explained that the state's authority to transfer these lands was limited by the doctrine:

Our opinion is that . . . the buyer of land under these statutes receives the title to the soil, the *jus privatum*, subject to the public right of navigation, and in subordination to the right of the state to take possession and use and improve it for that purpose, as it may deem necessary. In this way the public right will be preserved and the private right of the purchaser will be given as full effect as the public interests will permit.¹²

In 1983, the Court had occasion to explain this “public right” further:

“By the law of nature these things are common to mankind—the air, running water, the sea and consequently the shores of the sea.” (Institutes of Justinian 2.1.1.) From this origin in Roman law, the English common law evolved the concept of the public trust, under which the sovereign owns all of its navigable waterways and the

¹⁰ Cal. Pub. Res. Code § 6301. The state has in some instances transferred portions of tide and submerged lands in trust to cities and counties, which were then required to develop harbors to further state and national commerce. In total, the Legislature has transferred tide and submerged lands in trust to 85 cities, counties and harbor districts for specified purposes such as harbor and port development. The ports of Los Angeles, Long Beach, San Diego, San Francisco, Oakland, Richmond, Benicia, and Eureka are all located on “granted lands.” Many marinas, aquatic parks, and environmentally sensitive habitats are also located on granted land. Even after such a transfer, the State Lands Commission still exercises oversight to ensure that the lands are managed in accordance with state law, including the public trust doctrine discussed *infra*. Cal. Pub. Res. Code § 6306. These grants encourage development of tidelands and submerged lands consistent with the public trust, while requiring grantees to re-invest revenues produced from the lands back into the lands where they are generated.

¹¹ *Id.*

¹² *People v. California Fish Co.*, 166 Cal. 576, 596 (1913).

lands lying beneath them “as trustee of a public trust for the benefit of the people.” [Citation.] The State of California acquired title as trustee to such lands and waterways upon its admission to the union [citations]; from the earliest days [citation] its judicial decisions have recognized and enforced the trust obligation.¹³

As a result, the State of California serves as trustee for these lands with “the implied power to do everything necessary to the execution and administration of the trust.”¹⁴

D. Permissible Uses of Public Trust Lands

The important question then becomes what uses are permitted under the trust. The California Supreme Court has addressed this question in a series of decisions, best summarized in the following passage:

Public trust easements are traditionally defined in terms of navigation, commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the state, and to use the bottom of the navigable waters for anchoring, standing, or other purposes. [Citations.] The public has the same rights in and to tidelands. The public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the state is not burdened with an outmoded classification favoring one mode of utilization over another. [Citation.] There is a growing public recognition that one of the most important public uses of the tidelands—a use encompassed within the tidelands trust—is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.¹⁵

According to that decision, the conservation or protection of lands in their natural state—such as submerged lands—is a use that falls squarely within the scope of public uses contemplated under the public trust doctrine.¹⁶ While some approved trust uses may appear to go beyond the limited purposes described by the California Supreme Court, such as hotels or retail activity, those uses are viewed as consistent with the doctrine to the extent that they promote trust uses, are directly supportive and necessary for trust uses, or accommodate the public’s enjoyment of trust lands.

¹³ *National Audubon Society v. Superior Court*, 33 Cal.3d 419, 433-34 (1983).

¹⁴ *People v. California Fish Co.*, 166 Cal. 576, 597 (1913).

¹⁵ *Marks v. Whitney*, 6 Cal. 3d 251, 259-60 (1971).

¹⁶ Shellfish harvesting was also long ago recognized by the U.S. Supreme Court as a permissible use under the public trust doctrine. *Smith v. Maryland*, 59 U.S. 71, 74-75 (1855).

E. State Disposition of Tide and Submerged Lands

Although the State has much discretion to lease tide and submerged lands for public trust purposes (see discussion below), tide and submerged lands may generally not be sold outright, except in narrow circumstances. California Constitution Article X, Section 3 generally prohibits the sale of tide and submerged lands within any incorporated city, county or town.¹⁷ Further, Public Resources Code section 7991 expands on this by withholding all tidelands from sale.¹⁸ Under certain circumstances the state may exchange *filled* or *reclaimed* tide or submerged lands for lands of equal or greater value, but only if such lands “no longer are in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, and are relatively useless for public trust purposes.”¹⁹ As such, conservation of tide and submerged lands via ownership has a narrower application.

Despite these prohibitions, due to historic ownership, some submerged and tidelands lands may currently be in private ownership and they may be donated to conservation entities. For example, The Nature Conservancy currently owns several parcels of tide and/or submerged lands in the San Francisco Bay and holds them for conservation purposes. In addition, The Nature Conservancy previously owned several additional parcels which it has since conveyed to a governmental agency or another conservation organization. While we do not have data on the amount of tide and submerged lands in private ownership, considering the narrow circumstances in which such ownership is permitted, it may be an option in only relatively narrow circumstances. Nonetheless, because owners of tide and submerged lands may be willing to sell their parcels, which likely have little value, and such sales may be simpler to carry out than leasing from the State Lands Commission (described below), ownership is an option worth exploring.

II. THE CALIFORNIA STATE LANDS COMMISSION’S LEASING PROGRAM

A. Leases and Permits

The State Lands Commission²⁰ has broad authority to lease State lands “for such purpose or purposes as the commission deems advisable.”²¹ While leases typically are for development or extraction of natural resources, such as for marinas, industrial wharves, tanker anchorages, timber harvesting, dredging, grazing, mining, oil and gas, and geothermal development, the

¹⁷ A limited number of tidelands were statutorily authorized for sale, as were some “water lots” in San Francisco. Most such lands remain subject to the public trust easement even if sold into private ownership.

¹⁸ As noted above, some tidelands in private ownership at the time of the Treaty of Guadalupe may have been confirmed under the Act of 1851 and remained in private ownership free of the public trust. It is beyond the scope of this paper to determine the extent to which tidelands remain in private ownership.

¹⁹ Pub. Res. Code § 6307.

²⁰ The Commission is the legal successor to the Surveyor General and the State Land Office. The Commission is part of the California Resources Agency and its three members are the State Controller, the Lieutenant Governor, and the State Director of Finance. The Commission’s authority is set forth in Division 6 of the California Public Resources Code and it is regulated by the California Code of Regulations, title 2, sections 1900-2970. The Commission is statutorily empowered to establish the ordinary high- and low-water mark of the “swamp, overflowed, marsh, tide, or submerged lands of this State, by agreement, arbitration, or action to quiet title.” Pub. Res. Code § 6357.

²¹ Pub. Res. Code § 6501.1.

statute does not prohibit conservation easements or leases. The criteria and procedure for leasing sovereign lands is described in more detail below. As with all decisions regarding use of public trust lands, the Commission must determine whether the use permitted by the proposed lease is consistent with the public trust doctrine.

B. Commission Actions and the Public Trust Doctrine

In all cases, the Commission's administration of public lands must be consistent with the public trust doctrine. While the public trust doctrine is a common law doctrine defined in the case law, the Commission adopted its own formal statement of the doctrine in 2001, including the following section which describes what it views as appropriate uses of public trust lands:

Uses of trust lands, whether granted to a local agency or administered by the State directly, are generally limited to those that are water dependent or related, and include commerce, fisheries, and navigation, *environmental preservation* and recreation. Public trust uses include, among others, ports, marinas, docks and wharves, buoys, hunting, commercial and sport fishing, bathing, swimming, and boating. *Public trust lands may also be kept in their natural state for habitat, wildlife refuges, scientific study, or open space.* Ancillary or incidental uses, that is, uses that directly promote trust uses, are directly supportive and necessary for trust uses, or that accommodate the public's enjoyment of trust lands, are also permitted. Examples include facilities to serve visitors, such as hotels and restaurants, shops, parking lots, and restrooms. Other examples are commercial facilities that must be located on or directly adjacent to the water, such as warehouses, container cargo storage, and facilities for the development and production of oil and gas. Uses that are generally not permitted on public trust lands are those that are not trust use related, do not serve a public purpose, and can be located on non-waterfront property, such as residential and non-maritime related commercial and office uses. While trust lands cannot generally be alienated from public ownership, uses of trust lands can be carried out by public or private entities by lease from this Commission or a local agency grantee. In some cases, such as some industrial leases, the public may be excluded from public trust lands in order to accomplish a proper trust use.²²

This policy statement, as well as California's public trust jurisprudence, guides Commission decisions on the leasing of tide and submerged lands for conservation purposes. Thus, encumbering tide or submerged lands with conservation leases would be consistent with the Commission's policy statement, particularly with the language stating that keeping public trust lands in their natural state may be an appropriate public trust use.

²² Public Trust Policy, State Lands Commission (adopted Sept. 17, 2001) (emphasis added).

C. Lands of Significant Environmental Value

The Commission must inventory tide and submerged lands and “identify such lands which possess significant environmental values, including scenic, historic, natural, or aesthetic values of statewide interest. The Commission, upon identification of such lands, shall adopt regulations necessary to assure permanent protection to these lands.”²³

In 1975, the Commission created a “Significant Lands Inventory” which identifies all lands subject to section 6370 and classifies such lands into one of three use classifications.²⁴ Class A or Restricted Use lands are areas where public use should be minimized “to preserve the integrity of the natural environment as a whole.” Class B or Limited Use lands permit limited use compatible with and “non-consumptive” of the land’s significant environmental values. Class C or Multiple Use lands are those subject to multiple use at the time of the report and are “less susceptible to environmental degradation.”²⁵ The Commission may only approve uses for such lands consistent with the use classification.

Many of the lands identified are either inland streams and lakes or unconveyed “school” lands²⁶ over which the Commission has jurisdiction. The Significant Lands Inventory identifies some sections of tide and submerged lands, although the extent of the lands identified is limited and all are within close proximity to the shore. Many of the tide and submerged lands identified as significant are already protected as a part of marine preserves or other similarly protected areas. Thus, conservation leasing would complement the environmentally significant lands program.

So long as they remain classified as such, Class A lands may already be sufficiently protected such that conservation leasing on those lands is unnecessary. However, because lands classified as Class B and C have significant environmental value, yet some amount of use is still permitted on them, conservation leasing may be appropriate to provide additional protection. A person interested in conservation leasing may wish to consult the Significant Lands Inventory and with the Commission to identify environmentally significant tide and submerged lands which would be appropriate for conservation leasing. In addition, another method of seeking protection for tide and submerged lands would be to petition the Commission to add additional lands to the inventory or to change existing use classifications to the most restrictive category.²⁷

²³ Pub. Res. Code § 6370.

²⁴ Inventory of Unconveyed State School Lands and Tide and Submerged Lands Possessing Significant Environmental Values, State Lands Commission, December 1, 1975.

²⁵ *Id.*

²⁶ In addition to lands lying under water, the State Lands Commission has jurisdiction over “school lands.” School lands are unrelated to the ocean and are beyond the scope of this paper.

²⁷ In practice, this approach may be of limited value as the Significant Lands Inventory program appears to be either defunct or inactive. The State Lands Commission created the inventory in 1975, but has not updated it since and does not appear to actively manage the identified lands. As such, petitioning for the listing of additional lands may have limited value.

D. The Commission's Standards and Criteria for the Leasing of State Lands

1. Leasing Criteria and Types of Uses

The guiding principle in the Public Resources Code is that all authority and discretion to administer State lands is “subject to the condition that it be exercised in the best interests of the State.”²⁸ This “best interests of the State” requirement parallels and complements the requirement to administer the lands consistent with the public trust doctrine.

Elsewhere, the Public Resources Code grants the Commission broad discretion in determining how to administer State lands subject to these broad mandates. The Commission may grant leases for “such purpose or purposes as the [C]ommission deems advisable.”²⁹ The statute also states that persons may apply to the Commission to lease public trust land “for any purpose not prohibited or otherwise provided for by law.”³⁰ The regulations contain similarly broad language:

Leases or permits may be issued to qualified applicants and the Commission shall have broad discretion in all aspects of leasing including category of lease or permit and which use, method or amount of rental is most appropriate, whether competitive bidding should be used in awarding a lease, what term should apply, how rental should be adjusted during the term, whether bonding and insurance should be required and in what amounts, whether an applicant is “qualified,” etc. based on what it deems to be in the best interest of the State.³¹

Thus, the Commission not only has expansive authority to determine the type of lease, but also to determine other issues such as the term, rental rate, and “qualified” applicants.

The Commission has developed lease application guidelines which provide further guidance on leasing policies. The guidelines note that State lands “vary widely in character and utility” and that the Commission “maintains a multiple use management policy to assure the greatest possible public benefit is derived from these lands.”³² In determining whether a proposed use of State land is appropriate, the Commission considers numerous factors, including consistency with the public trust doctrine, protection of natural resources and “other environmental values,” and the public’s access to the State lands.³³ Conservation leasing protects natural resources, is consistent with the public trust doctrine and would generally not impede the public’s access to State lands.

Despite this broad authority, the regulations delineate specific categories of leases and permits, none of which directly encompasses conservation leasing. The list does not specify

²⁸ Pub. Res. Code § 6005.

²⁹ *Id.* at § 6501.1.

³⁰ *Id.* at § 6502.

³¹ Cal. Code Regs. tit. 2, § 2000(b).

³² Cal. State Lands Comm’n (Land Mgmt. Div.), Application Guidelines, General Information & Application Materials Regarding Surface Leasing of State Lands (a copy of which is attached hereto as **Exhibit A**).

³³ *Id.*

whether it constitutes an exclusive list of lease types. The regulations provide for three types of leases: general leases, grazing leases, and agricultural leases.³⁴ General leases, in turn, are divided into three categories: commercial, industrial, and right of way. The regulations also describe three types of permits (general permits, private recreational pier permits, and salvage permits) and what is known as a forest management agreement. General permits are broken into three categories of use: public agency use, protective structures such as sea walls, and non-income producing uses such as piers and buoys. None of the types of leases or permits described in the regulations appears to encompass the conservation lease concept. The only category which is arguably broad enough to allow for a conservation concept is the “non income producing” general permit, although even that appears to contemplate a permit for a structure.

The regulations do not address whether the leases and permits identified in section 2002 of the regulations are an exclusive list or whether the language in section 2000(b) granting the Commission “broad discretion in all aspects of leasing including category of lease or permit” allows the Commission discretion to grant additional types of leases beyond those delineated in section 2002. For several reasons, section 2002 appears to be a non-exclusive list and does not preclude the Commission from granting conservation leases. First, section 2002 does not indicate that it is an exclusive list and the statutory language described above confirms that the Commission has broad discretion in exercising its leasing authority. Second, conservation leases would be, in most instances, consistent with the public trust doctrine. Finally, the Commission’s lease application form lists, in addition to the types of leases/permits described in the regulations, a catchall “other” option indicating that the Commission does not believe it is limited by the section 2002 categories. If the Commission were to conclude that its existing regulations do not authorize conservation leasing, a request to promulgate regulations clarifying that State lands may be encumbered with conservation leases could be made.

2. Littoral Owners

The regulations also direct that leases for tide and submerged lands “shall generally only be issued to riparian or littoral upland owners or use right holders, provided however that such leases or permits may be granted to the best qualified applicant irrespective of riparian or littoral status.”³⁵ Thus, although leases are typically granted to the littoral upland owners, that is not a requirement so long as leases are granted to the “best qualified applicant”—a determination that is soundly within the Commission’s discretion. Although unstated in the regulations, this provision is likely directed at ensuring that tide and submerged lands developed with structures such as a pier are developed by the owner of the land directly adjacent to the submerged lands. In the case of conservation leasing where no development would take place and thus there is little functional connection to the upland, the Commission would likely be able to find that the “best qualified applicant” is someone other than the littoral owner, such as an organization capable of enforcing and managing the conservation lease.

³⁴ Cal. Code Regs. tit. 2, § 2002.

³⁵ *Id.*, at § 2000(c).

3. Lease Application Procedure

The statute requires that applications for leases or permits on State lands must include an outline of the proposed project, supporting environmental data, and payment of appropriate fees. Staff then reviews such applications and makes recommendations to the Commission. Applications to lease lands shall be acted on within 180 days after receipt or within 90 days after completion of the environmental review document required under the California Environmental Quality Act (“CEQA”), whichever is later. In no event shall the Commission hold an application for more than 270 days.³⁶

The lease application process begins with the submission of a form application. (A copy of the form is attached hereto as **Exhibit B.**) The application requires submittal of a variety of information, including the identity of the applicant, the type of project, project location including the property description, existing conditions, a detailed project description, the environmental setting and a brief assessment of the environmental impacts, and whether the project is a “development project” under Government Code section 65920 *et seq.* Most of the required information is pertinent to projects involving some sort of development, such as the type of development and likely impacts, and would have limited applicability to a conservation lease. Within 30 days of receipt of a completed application, Commission staff notifies the applicant whether the application is complete.

All applications must be accompanied by a filing fee which varies depending on the type of project. Filing fees range from \$1,000 for certain leases such as recreational piers to \$25,000 for an industrial lease. Transaction types not listed on the form are typically subject to a \$1,500 fee, which would include conservation leases. An application is not deemed complete without receipt of the filing fee. In addition to the set fee, the Commission may require reimbursement of its costs in providing other services, such as, among others, processing environmental documents, compliance with public notice requirements, and processing archaeological, biological or other necessary surveys.

Additional steps to process an application include completion of title work, land descriptions and appraisals. Commission staff will also negotiate terms and conditions of the lease with the applicant, many of which are subject to negotiation on a case-by-case basis. Once the terms and conditions have been agreed to and the lease has been executed by the applicant, staff schedules the item for consideration by the Commission. The Commission normally meets once a month.

4. Compliance with CEQA

A key step in the lease application procedure is compliance with the California Environmental Quality Act (“CEQA”), as approval of a lease requires discretionary action by the Commission.

Conservation leases which are designed to protect natural resources may be subject to the categorical exemption from the CEQA review process for actions aimed at the protection of

³⁶ Pub. Res. Code § 6502.

natural resources, and thus would require minimal CEQA processing.³⁷ Commission regulations support the application of this exemption as they state that the natural resources exemption applies to “[l]eases or permits to public agencies or *conservation organizations for wildlife preservation activities*.”³⁸

If the exemption is found not to apply, a conservation lease could likely be approved pursuant to a negative declaration because it would have no adverse impact on the environment, but rather would protect the environment. As such, CEQA compliance is unlikely to be a significant obstacle in obtaining approval of a conservation lease.

5. Rental Rate

The regulations state that the rent for the various categories of use discussed above shall “generally” be set according to the rates set forth in the regulations.³⁹ As discussed above, none of the categories of use in the regulations neatly encompasses conservation leases, so similarly none of the rental rates directly apply. However, the factors considered when setting rental rates generally look to a percentage of the appraised value of the leased land and the income derived from the lease. All uses have minimum rental rates, ranging from \$50 to \$250 per year. The regulations also provide that no rent shall be charged for public agency use of tide and submerged lands if the Commission finds that a statewide public benefit will result.

The regulations also set forth the following factors the Commission shall consider when determining rent:

- (1) The amount of rental the State would receive under various rental methods;
- (2) Whether relevant, reliable and comparable data is available concerning the value of the land proposed to be leased;
- (3) Whether a particular method or amount of rental would effectively cause an applicant to use more competitive substitute land or to abandon its project altogether;
- (4) Whether the land proposed to be leased has been classified as environmentally significant pursuant to Public Resources Code Section 6371;
- (5) The monetary value of actual or potential environmental damage anticipated from an applicant's proposed use to the extent such damage is quantifiable;

³⁷ CEQA Guidelines § 15307 (“actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment”).

³⁸ Cal. Code Regs. tit. 2, § 2905(f).

³⁹ *Id.*, at § 2003.

(6) Other factors relating to the appropriateness of the proposed rental method.⁴⁰

Arguably, very minimal rent should be required for conservation leases. Tide and submerged lands, particularly those lands without valuable resources such as oil, gas, or minerals, may have minimal appraisal value, the lease will protect the lands rather than cause environmental damage, and the lessee will typically derive no monetary benefit.

6. Term of Lease

The regulations provide that the term of the lease “shall be no longer than necessary to accomplish the intended use or purpose.”⁴¹ The regulations limit term lengths depending on the type of lease, with general leases and general permits potentially having terms up to 49 years. *Id.* Because conservation is ongoing and does not “end” at any point, arguably the term of conservation leases should be for the 49-year limit.

7. Leases of Granted Tide and Submerged Lands

The state has in some instances granted portions of tide and submerged lands in trust to cities and counties, which were then required to develop harbors to further state and national commerce. In total, the Legislature has transferred tide and submerged lands in trust to 85 cities, counties and harbor districts for specified purposes such as harbor and port development.

Special consideration must be given when leasing tide and submerged lands which have been granted to cities or counties. Under the Government Code, the grantee may lease tidelands for up to 50 years.⁴² However, grants are completed through legislation and each individual grant may place restrictions on the way in which the granted land may be used and administered, including the terms under which it may be leased. Thus, the terms by which granted tide and submerged lands may be leased often vary and a person seeking to lease such lands must review the grant.

The Public Resources Code protects the rights of third parties holding rights to granted tide and submerged lands, such as lessees, in the event that the grant is subsequently amended, modified or revoked, in whole or in part.⁴³ That is, in certain circumstances, the modification, amendment or revocation of granted land would not impact the rights of lessees of the granted land. In order to avail oneself of this protection, the lessee must submit the lease to the Commission and the Commission must make the following determinations: (1) the lease is in accordance with the terms of the grant; (2) the proceeds of the lease shall be deposited in an appropriate fund expendable for statewide purposes authorized by legislative grant; and (3) the lease is in the best interests of the state.⁴⁴ The regulations direct that, for purposes of making this “best interests of the State” determination, the Commission shall consider whether the lease is “(a) [c]onsistent with current Commission policies, practices and procedures used for

⁴⁰ *Id.*, at § 2003(b).

⁴¹ *Id.*, at § 2004.

⁴² Gov’t Code § 37384.

⁴³ Pub. Res. Code § 6701.

⁴⁴ *Id.* § 6702(b).

administering lands within its jurisdiction; (b) economically viable, necessary and desirable; (c) appropriate for development mix; (d) conducive to public access; (e) consistent with environmental protection; (f) otherwise in the best interests of the state.”⁴⁵ Thus, if an entity obtains a conservation lease on granted tide or submerged lands, it may wish to obtain a determination that the lease meets the criteria of section 6702(b) in order to protect itself in the event that the grant is later modified or revoked.

8. Audubon’s Richardson Bay Lease

Although the leasing of tide or submerged lands for conservation purposes is uncommon, it is not unprecedented. In fact, one conservation leasing program involves leases first entered into by National Audubon and Audubon California over 50 years ago. Those leases, entered into with the Town of Belvedere, the City of Tiburon, and the County of Marin, protect approximately 900 acres of tide and submerged lands in Richardson Bay and require that the lands be used as a wildlife sanctuary. The leases were recently renewed for another 50 year term. Within the sanctuary, Audubon is experimenting with different techniques of eelgrass and native oyster restoration. This shows that, while still a rarity, leasing of tide and submerged lands can successfully be used for conservation purposes.

E. Submerged/Tidelands Leasing and the MLPA Process

The Marine Life Protection Act (“MLPA”), enacted in 1999, requires that the Department of Fish and Game develop a plan for establishing networks of marine protected areas (“MPA”) in California waters to protect habitats and preserve ecosystem integrity, among other things. Under the MLPA, the Department of Fish and Game is undertaking a process of designating a series of MPAs throughout the State. During this process, the topic of the status of existing submerged or tideland leases has arisen, as have aquaculture and kelp leases. First, there has been some debate about whether, under the MLPA process, such leases should be considered to have a positive or negative conservation impact. Second, while existing leases prevail over new MPA designations, to address future conflicts, it appears likely that the Department of Fish and Game will start requiring contingency language in leases that says that the lease is subject to additional restriction and regulation under subsequent regulatory action. How the MLPA process relates to the submerged and tideland leases, including the aquaculture and kelp leases discussed below, is uncertain at this point. Due to this uncertainty, any entity considering any of the leases discussed herein, should consider determining whether the area being considered for a lease is also being considered for MPA designation under the MLPA process and discuss with the Department of Fish and Game how any conflicts would be resolved.

III. LEASING FOR SUSTAINABLE SHELLFISH AQUACULTURE

An alternative method of promoting conservation of tide and submerged lands is via sustainable shellfish aquaculture. Aquaculture is the practice of propagating, cultivating, maintaining, and harvesting aquatic plants and animals in marine, brackish, and fresh water.⁴⁶

⁴⁵ Cal. Code Regs. tit. 2, § 2802.

⁴⁶ Fish & Game Code § 17.

The Nature Conservancy has identified sustainable shellfish aquaculture as a potential conservation strategy.⁴⁷

A. Regulation of Aquaculture

Aquaculture is subject to extensive regulation by several state agencies, primarily the Fish and Game Commission, but also the California Coastal Commission, the San Francisco Bay Conservation and Development Commission, the California Environmental Protection Agency, and the Department of Health Services. The regulation of aquaculture covers a variety of issues, including food safety issues, invasive species, and water quality. This report only examines those provisions pertinent to leasing tide or submerged lands for aquaculture purposes, particularly for cultivation of shellfish species.⁴⁸

The Legislature encourages aquaculture in order to “augment food supplies, expand employment, promote economic activity, increase native fish stocks, enhance commercial and recreational fishing, and protect and better use the land and water resources of the state.”⁴⁹ Thus, the State’s primary goals for aquaculture are economic, although the goal to “protect and better use the land and water resources of the state” has a conservation element to it.

1. Aquaculture Regulation by the Fish and Game Department and Commission

All aquaculture projects in California must first register with the Department of Fish and Game, and obtain approval from the Department.⁵⁰ The Department then makes a determination regarding the species to be grown, and facility siting and design. The Department may prohibit aquaculture where it is determined that it may be harmful to adjacent native wildlife.⁵¹ It may also regulate the transportation, purchase, placement, possession and sale of specific aquaculture products.⁵² The Department may also take steps to address concerns relating to invasive species, escapement and disease.⁵³

The Fish and Game Commission may lease “state water bottoms or the water column” to any person for aquaculture purposes.⁵⁴ Prior to issuing an aquaculture lease, the Commission

⁴⁷ Marsh, T.D., M.W. Beck, S.E. Reisewitz, 2002 *Leasing and Restoration of Submerged Lands: Strategies for Community-Based, Watershed-Scale Conservation*. In addition to shellfish aquaculture, another aquaculture practice that may warrant consideration for conservation purposes is growing kelp for carbon sequestration or biofuel feed stock. As with shellfish aquaculture, the ocean bottom may be leased for kelp growing purposes and the same regulations would apply. Harvesting of existing kelp beds is subject to regulations not discussed in this paper.

⁴⁸ In 2006, the Legislature passed the Sustainable Oceans Act, which overhauled the state’s regulation of finfish aquaculture. This paper focuses on shellfish aquaculture and thus does not discuss the Sustainable Oceans Act.

⁴⁹ Pub. Res. Code § 826.

⁵⁰ Fish & Game Code §§ 15100-15105.

⁵¹ *Id.* at § 15102.

⁵² *Id.* at §§ 15100 *et seq.*

⁵³ *Id.* at §§ 15200-15202.

⁵⁴ *Id.* at § 15400(a). The term “state water bottoms” is not defined in the statute or regulations. However, several oyster farms in tidal areas are operated subject to state water bottom leases, supporting an assumption that this term includes both tide and submerged lands. It should be noted though that under Fish and Game Code section 8500,

must first conduct a duly noticed public hearing to determine that the lease is in the public interest.⁵⁵ A lessee of a state water bottom owns all lawfully cultivated organisms described in the application for the lease in the area leased and the lessee has the exclusive right to cultivate and harvest the aquatic organisms in the area leased.⁵⁶ A state water bottom lessee may not “unreasonably impede public access to state waters for purposes of fishing, navigation, commerce, or recreation,” however, the lessee may “limit public access to the extent necessary to avoid damage to the leasehold and the aquatic life culture therein.”⁵⁷ The Fish and Game Department must notify the State Lands Commission of all water bottom lease applications and all such leases executed, renewed, or assigned, however, the State Lands Commission does not play a role in the aquaculture leasing process.⁵⁸

Once granted, shellfish aquaculture leases must actually be used to harvest shellfish as they have minimum planting and harvesting requirements “to insure that water bottoms so encumbered will be used for the purpose intended.”⁵⁹ That is, a conservation organization may not obtain an aquaculture lease and then do nothing—it must actually engage in aquaculture. Oyster cultivation requires an average annual production of 2,000 oysters per acre and all other species are subject to minimum harvesting requirements determined on a case-by-case basis.⁶⁰

State water bottom leases for aquaculture may have an initial term of up to 25 years, subject to renewal if the lessee is still “actively engaged in aquaculture.”⁶¹ State water bottom leases are awarded to the highest responsible bidder, which must be at least \$2/acre.⁶² Aquaculture is subject to a privilege tax based on the product weight, with the oyster cultivation privilege tax set at four cents (\$0.04) per packed gallon.⁶³ Upon termination, the lessee must remove all structures and restore the area to its original condition.⁶⁴

2. Regulation of Aquaculture by Other Agencies

In addition to obtaining a state shellfish aquaculture lease, an entity seeking to conduct aquaculture activities must obtain other permits and approvals from other agencies. A detailed review of the other processes is beyond the scope of this paper and an entity seeking an aquaculture lease would be advised to consult legal counsel. It should be noted, however, that permits or approvals may be required, including permits from the Army Corps of Engineers, the Coastal Commission, the California Environmental Protection Agency, the Department of Health Services, and potentially the San Francisco Bay Conservation and Development Commission. The Army Corps of Engineers has jurisdiction over the placement of structures on state water bottoms through the Rivers and Harbors Act. The Coastal Commission reviews aquaculture

commercial harvesting of invertebrates in the “tidal area” is subject to special permit requirements, where “tidal area” extends from the high water mark to 1,000 feet beyond the low tide mark.

⁵⁵ *Id.*

⁵⁶ *Id.* at § 15402.

⁵⁷ *Id.* at § 15411.

⁵⁸ *Id.* at § 15415.

⁵⁹ Cal. Code Reg., tit. 14, § 237(i).

⁶⁰ *Id.*

⁶¹ Fish & Game Code, § 15405.

⁶² *Id.* at § 15406.5.

⁶³ *Id.* at §§ 15003, 15406.7.

⁶⁴ *Id.* at § 15409.

operations to determine whether there are likely impacts to coastal resources, including water quality impacts, habitat and wildlife impacts, and recreational and commercial fishing impacts. In addition, an entity seeking to obtain aquaculture rights may be required to consult with the National Marine Fisheries Services to determine whether the aquaculture activity will adversely affect essential fish habitat, as defined in the Magnuson-Stevens Fishery Conservation and Management Act.⁶⁵ While using sustainable aquaculture for conservation purposes may be a viable conservation strategy, it poses greater regulatory hurdles.

B. Limitations on Aquaculture Leasing for Conservation Purposes

The Nature Conservancy has recognized that bivalve shellfish are ecologically important for maintaining healthy oceans and that native shellfish harvested in a responsible and sustainable manner can contribute to conservation efforts.⁶⁶ However, using aquaculture for conservation purposes has its limitations. Aquaculture leases have minimum harvest requirements which may not always be consistent with conservation principles and thus may require the conservation organization to become an aquaculturist, an activity in which it may lack expertise. Further, there are limitations on the area that can be protected in this manner because the area covered by the lease is generally only as large as is necessary for the aquaculture project. Under conservation leasing, on the other hand, there is no set limit on the area covered and no production requirement. Nevertheless, aquaculture leasing is a clearly established practice (unlike conservation leasing) and may be the most appropriate approach in some circumstances, such as for shellfish restoration projects.

IV. LEASING AND HARVESTING KELP BEDS

In addition to leasing tide and submerged lands and leasing water bottoms for aquaculture, conservation entities may be interested in leasing kelp beds for conservation purposes.⁶⁷ Kelp is currently harvested for use in a variety of commercial products and for feed at abalone farms. Kelp harvesting is not subject to significant regulatory oversight which some claim has led to overharvesting. Thus, a conservation entity may be interested in leasing kelp beds and harvesting them in a sustainable manner, or otherwise seeking to protect kelp beds.

All people engaged in harvesting kelp for profit in California waters must have a license, which may be obtained by submitting an application and a \$100 payment to the Department of Fish and Game.⁶⁸ All harvesters must maintain harvest records containing the weight of harvested kelp and category of plants harvested.⁶⁹ Giant and bull kelp may not be cut at a depth greater than four feet.⁷⁰ If Fish and Game determines that the harvesting of kelp will “tend to destroy or impair any kelp bed or beds, or parts thereof, or tend to impair or destroy the supply of food for fish or marine mammals,” it may limit or prohibit the harvest of kelp within a bed “for

⁶⁵ See 16 U.S.C. 1855(b); 50 CFR 600.905 – 600.930.

⁶⁶ Marsh, T.D., M.W. Beck, S.E. Reisewitz, 2002 Leasing and Restoration of Submerged Lands: Strategies for Community-Based, Watershed-Scale Conservation.

⁶⁷ This section discusses leasing existing kelp beds for harvesting purposes. Growing kelp on leased state water bottoms is subject to the aquaculture regulations discussed above.

⁶⁸ Fish & Game Code, §§ 6650, 6651(a).

⁶⁹ Cal. Code Regs., tit. 14, § 165(b).

⁷⁰ *Id.* at § 165(c).

any length of time.”⁷¹ Further, it is unlawful to “cause or permit waste of any kelp . . . or agree to receive more kelp or other aquatic plants than can be used without waste or spoilage.”⁷²

The Fish and Game Commission may lease to any person “the exclusive privilege to harvest kelp in any designated kelp bed or beds, or part thereof, if the [C]ommission determines that the lease is in the public interest.”⁷³ The Commission has designated a total of 89 separate kelp beds available for lease, totaling approximately 74 square miles.⁷⁴ No lessee may have an exclusive lease to an area in excess of 25 square miles or 50 percent of the total area of the designated kelp beds, whichever is greater.⁷⁵ Applications for a kelp bed lease must include, among other things, a description of the bed or portion of bed to be leased, a minimum deposit,⁷⁶ a detailed development plan showing the intended use, the manner of harvesting and transportation, and the amount of kelp the lessee proposes to harvest, and the financial capabilities of the lessee.⁷⁷ Leases are awarded to applicants determined to have the capability to harvest and utilize kelp “in a manner beneficial to the state.”⁷⁸ If there is more than one applicant for a kelp bed, the lease is awarded to the highest bidder; however, the royalty rate for kelp harvested may not be less than \$1.71 per wet ton of kelp.⁷⁹ The initial term of a kelp bed lease may not exceed 20 years, although a lease holder may renew the lease if all conditions of the lease have been met during the renewal period. If the lease is not renewed, the Commission must advertise for bids to lease the beds comprising the lease.⁸⁰

The above provisions all pertain to the regulation of kelp harvesting for profit; they do not apply to noncommercial uses of kelp. The Fish and Game Code provides that the Commission may regulate the “taking, collecting, harvesting, gathering, or possession of kelp for purposes other than profit” and that the provisions discussed above regulating royalties and leases of kelp for profit do not govern noncommercial uses.⁸¹ The Commission has not promulgated separate regulations for noncommercial uses of kelp so it is unclear how such practices would be regulated. However, under this Code provision, a non-profit entity seeking to protect kelp may be subject to different regulation than what is described above.

To the extent that kelp may currently be overharvested or that kelp harvesting may be destructive to important marine habitat, a conservation entity may seek to lease kelp beds and manage them in a more sustainable manner. A conservation entity may seek to either lease kelp beds under the regulations applicable to commercial harvesting and harvest sustainably, or it may claim that the kelp bed lease provisions are inapplicable to a non-profit entity with conservation goals. While the latter approach may offer a cheaper alternative, there are no regulations specifying how the Department of Fish and Game regulates non-profit uses of kelp so that

⁷¹ *Id.* at § 165(c)(4).

⁷² *Id.* at § 165(b)(6).

⁷³ Fish & Game Code § 6700.

⁷⁴ Cal. Code Regs., tit. 14, § 165.5(j).

⁷⁵ *Id.* at § 6703.

⁷⁶ \$2,565 per square miles for kelp beds south of Point Arguello; \$1,368 per square mile for kelp beds north of Point Arguello. Cal. Code Regs., tit. 14, § 165.5(b)(2).

⁷⁷ *Id.* at § 165.5(b).

⁷⁸ *Id.* at § 165.5(c).

⁷⁹ *Id.*

⁸⁰ *Id.* at § 165.5(f)(h).

⁸¹ Fish & Game Code § 6750.

approach may be subject to greater legal uncertainty. If a conservation entity is interested in protecting kelp but it does not want to become a kelp harvester, it may petition the Commission to develop regulations governing noncommercial uses of kelp.⁸²

V. CONCLUSION

The leasing of tide and submerged lands primarily falls within the jurisdiction of the State Lands Commission. The guiding principle that the Commission must always abide by when determining the appropriate use of the land and whether to grant a lease is whether the proposed use is consistent with the public trust doctrine. Both courts and Commission policies recognize conservation of natural resources as a valid trust purpose, so the Commission has the authority to grant conservation leases. Although leases covering State lands typically are granted for projects involving some sort of development on the tide or submerged land, such as a pier, and although conservation leasing has been little utilized, the practice should be permitted under existing laws and regulations. Due to its novelty, the Commission may exhibit some skepticism toward conservation leasing, and thus a pilot program may be warranted initially. In addition to conservation leasing, sustainable shellfish aquaculture may be an additional method of improving the health of the ocean. The Department of Fish and Game has authority over granting water bottom leases for aquaculture purposes. While this practice may be more accepted, it has its limitations. An aquaculture lessee must be actively engaged in aquaculture and must produce minimum yearly harvests. Further, the area covered by an aquaculture water bottom lease is generally no larger than the area needed for aquaculture, so it may not be used to protect large areas. Each practice has its place though and they may be used in conjunction to help protect and restore the health of the ocean.

⁸² The Nature Conservancy (“TNC”) recently experimented with kelp leasing as a conservation technique. In 2004, TNC sought to lease one kelp bed from the state and to sublease another bed from ISP Alginates (then the state’s largest kelp leaseholder) in order to examine the nursery role of kelp forests and their canopies for rockfish and other marine species. Envisioned as a California test case for marine research and conservation leasing, the study required permission for experimental manipulation, as well as the establishment of control sites. Researchers at TNC and the University of California Santa Cruz used both leases for the purpose of experimentally removing kelp canopies and examining the impacts on kelp communities. They sought to determine whether the removal of kelp canopies affected biodiversity and how any detrimental impacts might be reduced. This test case demonstrated that kelp leasing can be used to foster research partnerships and that it is a viable option for achieving conservation goals.

APPENDIX A
LEASE APPLICATION GUIDELINES

APPLICATION GUIDELINES

GENERAL INFORMATION AND APPLICATION MATERIALS REGARDING SURFACE LEASING OF STATE LANDS

The State Lands Commission ("Commission") has jurisdiction and management control over those public lands of the State received by the State upon its admission to the United States in 1850 ("sovereign lands"). Generally these sovereign lands include all ungranted tidelands and submerged lands, beds of navigable rivers, streams, lakes, bays, estuaries, inlets, and straits. The Commission manages these sovereign lands for the benefit of all the people of the State, subject to the Public Trust for water related commerce, navigation, fisheries, recreation, open space and other recognized Public Trust uses. In addition the State manages lands received after Statehood including swamp and overflowed lands and school lands. The Commission's Land Management Division in Sacramento administers the surface leasing of these lands, sand and gravel extraction from these lands, and dredging or disposal of dredged material on these lands. The Commission also manages the development of all mineral resources contained on such lands.

Land Ownership Determination

Upon receipt of an application or an inquiry about use of State lands, the Commission's Title Unit reviews its files and information submitted by the applicant to determine the extent of the State's property interest in the proposed project site. In some cases, the complex nature of the title to the lands may result in the applicant having to submit a title report (preliminary report of title or title policy) as part of the application process.

Leasing Policies

The lands managed by the Commission vary widely in character and utility. The Commission maintains a multiple use management policy to assure the greatest possible public benefit is derived from these lands. The Commission will consider numerous factors in determining whether a proposed use of the State's land is appropriate, including, but not limited to, consistency with the Public Trust under which the Commission holds the State's sovereign lands, protection of natural resources and other environmental values, and preservation or enhancement of the public's access to State lands.

Applicants are advised that the Commission is under no obligation to approve any application submitted to it. The Commission may approve, condition, or deny any application, based upon the above referenced factors or other issues raised during the application review process.

California Environmental Quality Act (CEQA)

The issuance of any lease, permit or other entitlement for use of State lands by the Commission requires review for compliance with the California Environmental Quality Act (CEQA). The terms of CEQA may be found in the California Public Resources Code (PRC), Sections 21000 et seq., and in the State CEQA Guidelines, California Code of Regulations, Title 14, Sections 15000 et seq. No proposed project will be approved until the requirements of CEQA have been met. Additionally, if the application involves lands found to contain "Significant Environmental Values" within the meaning of PRC Section 6370, consistency of the proposed use with the identified values must also be determined through the CEQA review process. Pursuant to its regulations the Commission may not issue a lease for use of "Significant Lands" if such use is detrimental to the identified values.

Most leases, permits or other entitlements for use require approvals from other public agencies. On many proposed projects the Commission is the Lead Agency under CEQA (the public agency with the principal responsibility for carrying out or approving a project.)

Where the Commission is the Lead Agency, its initial step in reviewing an application is to determine whether the proposed project is exempt from CEQA. Exemptions from CEQA are either statutory or categorical. A listing of some exemptions may be found in the Commission's administrative regulations and others may be found in Title 14 of the California Code of Regulations. Categorical exemptions will not apply if there is a reasonable possibility that a proposed project will have a significant effect on the environment due to unusual circumstances.

If a proposed project is not exempt from CEQA, the staff of the Commission conducts an Initial Study to determine whether the proposed project may have a significant effect on the environment. The Initial Study is circulated to Responsible, Trustee, and interested public agencies and others who have expressed an interest in such documents of the Commission for review and comment. The circulation period is normally 30 days. Based upon the responses received and Commission staff analysis, a determination is made as to whether a Negative Declaration or an Environmental Impact Report is required.

A Negative Declaration ("ND") is the simpler of the two documents. Generally, the ND consists of the Initial Study accompanied by a determination by the staff that the proposed project will not have a significant effect on the environment. The ND may also include mitigation measures that help insure that the proposed project is not environmentally harmful. The ND is circulated for 30 days to appropriate agencies and interested persons. This review is provided through the State Clearinghouse. If no significant environmental effects are identified, the Commission considers the ND together with any comments received, and approves or disapproves the ND, and then approves or disapproves the proposed project.

An Environmental Impact Report ("EIR") is required in instances where responses to the Initial Study reflect concern that the proposed project may or will have a significant effect on the environment. In some cases it is clear without preparation of an Initial Study that a project could have a significant effect on the environment. In such cases, the EIR process may begin without preparation of an Initial Study. Usually a third party consultant will be hired by the Commission to prepare the EIR.

In most instances, the preparation of an EIR takes from six to nine months. A Draft EIR is circulated for 45 days to agencies and individuals concerned about the project. The State Clearinghouse provides for circulation to State agencies. During the 45-day review period, a public hearing may be held. Comments and recommendations received and significant environmental points raised in the review and consultation process are responded to in the final EIR. This document is then circulated for an additional 15 days to those agencies and persons who commented on the Draft EIR. After the review period has ended, the final EIR is presented to the Commission for certification, and the proposed project, including any recommended alterations or mitigation measures, is presented to the Commission for approval or disapproval.

The applicant will be required to cover the costs of preparation of the environmental documentation for the project. Experience has shown that ND and EIR costs vary considerably, from several hundred to hundreds of thousands of dollars. The applicant must deposit an amount specified by the staff of the Commission within 21 days after Commission staff gives written notice of the anticipated costs of environmental processing, and will be required to execute a reimbursement agreement committing to full payment of the Commission's costs. (IMPORTANT: Please refer to Submittal of Fees below for more specific information regarding payment of Commission costs in processing your

application.) If the cost for the preparation of a ND or EIR exceeds the amount deposited, the amount of excess costs must be deposited within 15 days after written notice is given. Any unexpended portion of the deposit will be refunded to the applicant after the ND or EIR is determined by the Commission to be adequate. Should the applicant fail to deposit the requested costs, the application may be canceled without further notice. Staff will not contact consultants regarding preparation of an EIR until required deposits and reimbursement agreements are received.

Where the Commission is a Responsible Agency as defined in CEQA (a permitting agency other than the Lead Agency), it must review the environmental documentation prepared by the Lead Agency, and comply with all applicable, substantive and procedural requirements of CEQA.

Time Constraints/Completeness of Application

Not later than 30 calendar days after the Commission receives an application for a development project, the staff will notify the applicant in writing whether the application is complete. Please see PART IV of the attached application form for the definition of "development project".

The Staff of the Commission shall deem an application complete if:

1. The data submitted is sufficient to allow the staff of the Commission to locate and describe the nature and extent of State-owned land to be utilized in the project;
2. The applicant submits all deposits and fees required by the Commission (See Submittal of Fees below);
3. The applicant submits environmental data sufficient for the Commission to determine the level and scope of environmental review required under CEQA and the State CEQA Guidelines;
4. The applicant submits data sufficient for the State to determine the fair rental to be paid the State for the applicant's use of the State's property; and
5. The data submitted by the applicant is sufficient to allow staff of the Commission to begin an analysis to determine if the application is: (a) consistent with Commission policies, practices and procedures; (b) conducive to public access; (c) consistent with environmental safeguards and policies of the State; and is (d) otherwise in the best interests of the State.

In the event the application is determined not to be complete, the staff will specify what additional information is required. Upon receipt of any additional material, the staff will respond within 30 days as to whether the application is complete. Should the applicant fail to provide a complete application within a reasonable period of time, the file may be closed and all or any part of the fees retained by the Commission. Please see Notice on Page vii of these guidelines. There is an appeal process whereby an applicant may appeal the determination of the staff that the application material is incomplete. The adequate completion of Parts I through IV of the attached application form shall constitute a complete application.

After an application is found to be complete, applicant may be required to submit additional information to clarify, amplify, correct or otherwise supplement the information requested in the application form.

Where the Commission is the Lead Agency and an EIR is prepared, the Commission must approve or disapprove a development project within one year from the date on which the application was

received and accepted as complete by the staff of the Commission. Where an ND is prepared or if the development project is exempt from CEQA, the development project shall be approved or disapproved within six months from the date the application was received and accepted as complete by the staff. One extension of this time period of up to 90 days may be allowed if mutually agreed to by the staff and the applicant.

Where the Commission is a Responsible Agency, it must approve or disapprove a development project within 180 days from the date the Lead Agency approves the project, or within 180 days from the date the application was received and accepted as complete by the staff of the Commission, whichever is later.

The following are some of the circumstances that may cause the Commission to deny a project:

1. Failure of an applicant to furnish requested additional information;
2. Environmental considerations;
3. Failure to meet any statutory requirements;
4. Failure to submit requested additional fees;
5. Failure to conclude negotiations or to execute documents;
6. Inability of applicant to meet financial qualifications as deemed appropriate by the staff;
7. Misrepresentation by the applicant or its agent; or
8. Inconsistency with Public Trust restrictions, resources, or values.

This list should not be considered exclusive.

Application Processing

It is the policy of the State Lands Commission to recover all costs for the processing of leases, permits or other entitlements for the use of State land.

As soon as the application is accepted as complete the staff will take all steps necessary, including but not limited to title work, land descriptions, and appraisals to process the application. In most cases many of the terms and conditions of a Commission lease, permit or entitlement are subject to negotiation on a case by case basis. Once the terms and conditions have been agreed to and the lease, permit or entitlement has been executed by the applicant, staff will schedule the item for consideration by the Commission. The Commission normally meets one day per month. Items to be considered by the Commission must be finalized at least one month prior to the scheduled meeting in order for the item to meet applicable legal notice requirements.

Submittal of Fees

Each applicant is required to pay the Commission's costs of processing the application. Each applicant, at the time of filing an application, shall submit a Filing Fee and the appropriate Minimum Expense Deposit for processing fees as set forth below. Each applicant will also be asked to execute a reimbursement agreement to cover the total cost of processing the application (see below).

(IMPORTANT: Submittal of this form will NOT be considered an application unless accompanied by the Filing Fee and appropriate Minimum Expense Deposit set forth in Part IV of this form.) The Minimum Expense Deposits listed below are based upon typical Commission costs in processing routine uncomplicated transactions, and may not cover the total cost of processing your application.

A. Filing Fee. *Same fee required of all applicants.* \$ 25.00

B. Minimum Expense Deposits for Processing Fees. *Use the chart below to determine the deposit required for this project.*

<u>TRANSACTION</u>	<u>MINIMUM EXPENSE DEPOSIT</u>
(a) Commercial Lease (New)	\$17,500.00
(b) Industrial Lease (New)	\$25,000.00
(c) Right of Way	\$ 2,500.00
(d) Public Agency Lease/Permit	\$ 3,000.00
(e) Recreational Pier Lease	\$ 1,000.00
(f) Protective Structure	\$ 2,500.00
(g) Grazing or other Agricultural Lease	\$ 2,500.00
(h) Dredging Lease	\$ 1,500.00
(l) Lake Tahoe Trust Inspections	* \$ 1,000.00
(j) Consent to Encumber Leasehold	\$ 1,000.00
(k) Assignment not involving amendment of Lease	\$ 1,000.00
(l) Amendment of Lease to accommodate Lessee	\$ 2,000.00
(m) Sublease Approval	\$ 1,500.00
(n) Most other transactions not listed herein	\$ 1,500.00

**Fee included in environmental processing cost if Negative Declaration or EIR required.*

In addition to the above listed application processing fees, the Commission may require reimbursement of its costs in providing other services associated with processing applications for leases. These services include but are not limited to:

1. Processing environmental documents (See General Information enclosed with this application).
2. Review of environmental documents by the California Department of Fish and Game (See Fish and Game Code Section 711.4).
3. Advertising or public notification.
4. Duplicating or certifying papers.
5. Searching records or ordering title reports.
6. Processing archaeological, biological or other necessary surveys.
7. Appraisals
8. Monitoring compliance with environmental mitigation requirements of lease.
9. Lease management, including rent reviews, compliance with lease terms, etc.
10. Engineering Review

Upon receipt of your application form and determination by staff of estimated costs to process your application, you will be provided a reimbursement agreement to assure recovery by the Commission of the total cost to process your application for the use of State land.

NOTE: The California State Lands Commission is now accepting MasterCard, Visa and Novus/Discover Cards for payments including filing fees, application fees, rent, etc., if you wish to use this method of payment, please contact our Accounting Office at (916) 574-1886.

Miscellaneous Information

The following concerns all applications:

An applicant acquires no property interest in State lands or the right to the use of State lands until the Commission grants a lease, permit or other entitlement, and until the appropriate document is complete in all and respects has been executed by the applicant and the State.

An application is not transferable; therefore, an agent should not submit an application without disclosing his agency status and the principal's identity, nor should an application be submitted with the later intention of attempting to transfer the application or an interest in an application.

The preceding information is an outline of the general requirements and procedures applicable to all surface leasing developments. Prospective applicants wishing to obtain a lease, permit or other entitlement for use of State lands should read and complete the attached application form and any attached parts that may be applicable and return it together with the data requested to the staff of the Commission for review and processing. Questions involving the surface leasing of State lands and the completed application form should be directed to:

**California State Lands Commission
Land Management Division
100 Howe Avenue, Suite 100 South
Sacramento, California 95825-8202
Telephone: (916) 574-1900**

Accommodations for the Deaf and Hearing Impaired

The State Lands Commission has available the services of the California Relay Service to provide telephone capabilities to deaf or hearing impaired persons. The telephone number of the California Relay Service is 1-800-735-2929 (TDD/TT). In addition, a sign language interpreter will be provided, upon reasonable advance notification of need by a deaf or hearing impaired individual.

APPLICATION INSTRUCTIONS

FOR LEASE OF STATE LANDS

This application form has been developed in accordance with California Government Code Section 65940. The form has been designed to apply to a variety of surface use situations including commercial, industrial, right-of-way, and recreational developments. The form requires an applicant to fully describe its proposed use of State lands and consists of several parts: Part I - General Data; Part II - Specific Project Information; Part III - Project Environmental Data; and Part IV - Signature and Certification.

The information sought in this application form is required from the applicant, and the sufficiency of the information provided by the applicant will be the basis by which the staff will determine the completeness of the application as specified in Government Code Section 65940.

When completing this application, please type or print clearly and submit it to the principal office of the Commission in Sacramento. Please answer all applicable questions and write "N.A." where questions do not apply. Applications for any use or entitlement of State lands, including but not limited to, applications for amendments, assignments, new leases for continuation of existing uses, or replacements of existing leases or permits, must be submitted on this form. Requests or inquiries not submitted on this form will not be considered applications and will be returned to the submitting party. (IMPORTANT: Submittal of this form will NOT be considered an application unless accompanied by the Filing Fee and appropriate Minimum Expense Deposit set forth in Submittal of Fees above.)

In addition, please submit any information believed important in support of the application. All plans or other materials submitted become a part of the official file and cannot be returned; however, certain information deemed proprietary by statute may be withheld from public view if requested by the applicant.

NOTICE

If an application becomes inactive for a period of six months, the application will be terminated and all fees submitted with the application will be forfeited, subject only to the return of any unused deposit of processing fees. An application will be considered inactive if the applicant fails to provide requested information or indicate in writing why such information is not forthcoming for a period of ninety days following written request for such information by Commission staff.

PROCESSING COSTS

In addition to the costs of preparation of environmental documentation for the proposed project, applicant will be charged for Commission costs and expenses for processing this application. The applicant shall deposit with the Commission the applicable Minimum Expense Deposit as set forth in Submittal of Fees above, and submit an executed reimbursement agreement to cover those costs. A reimbursement agreement form will be provided by Commission staff following review of the application and an estimate of anticipated Commission costs. If any reimbursement agreement(s) and any payment required under any reimbursement agreement(s), is(are) not received within 21 days of request, the application may be canceled. Processing costs and environmental fees are calculated based on actual or estimated costs plus proportional overhead. If the deposit amount is less than those costs, the applicant will be required to submit additional costs within the allowable time period. If the deposit amount is more than these costs, the applicant will be refunded the

difference.

Please note that if your application is ultimately approved by the Commission, you may also be charged other fees as provided by law, including, but not limited to environmental review fees charged by the California Department of Fish and Game, pursuant to Fish and Game Code Section 711.4.

MISCELLANEOUS

The application information outlined on the following forms is necessary in order to process your application for use of State land. You have the right to review files maintained about your project by the Commission, except as provided by law. The Commission Records Coordinator, State Lands Commission, 100 Howe Avenue, Suite 100 South, Sacramento, California, 95825, telephone (916) 574-1900, is responsible for maintenance of the information which is collected by the Commission.

The conduct of the Commission is governed by California Public Resources Code Sections 6000 et seq. and Title 2, Division 3, Sections 1900 et seq. of the California Code of Regulations. These provisions are included herein by reference.

DEFINITIONS

1. CEQA: California Environmental Quality Act: Public Resources Code Sections 21000 et seq.
2. EIR: Environmental Impact Report
3. PRC: Public Resources Code
4. "Proposed Project" shall include the construction, operation, and maintenance of a new facility, a change in an existing facility, or the continued use of State land for an existing facility for which Commission authorization has expired or never been granted.
5. "Water body" shall include the Pacific Ocean and any river, stream, slough, lake, bay, estuary, inlet, or strait.

APPENDIX B
LEASE APPLICATION

PART I

GENERAL DATA

SECTION A: IDENTIFICATION OF APPLICANT

1. Applicant:

Name:		
Address:		
City:	State:	Zip:
Phone:	FAX:	
E-mail Address:		

2. Applicant's authorized agent or representative (if any):

Name:		
Address:		
City:	State:	Zip:
Phone:	FAX:	
E-mail Address:		

3. Who should receive correspondence relevant to this application? (Check one)

Applicant: Representative: Both:

FOR COMMISSION USE ONLY:

Date Received:	
Work Order No.:	Assigned to:
Type of Document:	
Filing Fee:	Processing Fee:
Other Fees:	

SECTION B: LEGAL STATUS OF APPLICANT

Check one of the following and submit the required information:

- INDIVIDUAL(S):
- CORPORATION: Attach a Certificate of Incorporation issued by the State of California or a Certificate of Incorporation issued by the State of incorporation with the Certificate of Good Standing of Foreign Corporation issued by the Secretary of State of California authorizing the transaction of business in California; Articles of Incorporation and/or By-Laws; a certified statement of the names of the corporate president, secretary and/or officer(s) authorized to execute contracts; and a board resolution or other evidence of authority to enter into the requested transaction.
- PARTNERSHIP: Attach a certified copy of the partnership statement. If no partnership statement has been filed in the county in which the partnership does business, so state in the application and further give all particulars of the partnership.
- PUBLIC AGENCY: Generally, all permits and leases issued by the State Lands Commission require monetary consideration. However, a public agency applicant may qualify for a rent-free lease/permit. In order to so qualify, the applicant must submit in writing a statement of justification for the rent-free status, which status shall be based on a statewide, as compared to a primarily local, public benefit. Such statement shall detail the statewide public benefit derived from the project. The State Lands Commission shall determine whether a statewide public benefit is derived from the project.

Leases and permits involving "School Lands" cannot qualify for rent-free status.

Public agencies will also be required to submit evidence of the authority of the official(s) to execute contracts together with a resolution or other document authorizing execution of the appropriate lease or permit.

- OTHER: State the nature, membership and other particulars regarding the legal status of applicant. Provide legal documentation establishing the authority of applicant to enter into the requested transaction, and designating who is authorized to act on behalf of applicant.

SECTION C: TYPE OF PROJECT AND AUTHORIZATION

You will be asked to provide specific project information in Parts II and III of this application.

1. Please check the type(s) of activity for which you are seeking Commission authorization:
 - Commercial (Income producing uses such as marinas, restaurants, clubhouses, recreation piers or facilities, docks, moorings, buoys, helicopter pads, decks or gas service facilities).
 - Industrial (Uses such as oil terminals, piers, wharves, warehouses, stowage sites, moorings, dolphins and islands together with necessary appurtenances).
 - Right of Way (Uses such as roadways, power lines, pipelines or outfall lines, except when used only as necessary appurtenances).
 - Public Agency Use for public roads, bridges, or for recreational, ecological or open space purposes of statewide benefit.
 - Private Recreational Pier. Uses are limited to any fixed facility for the docking or mooring of boats constructed for the use of the littoral landowner, as specified in Public Resources Code Section 6503.5, and does not include swimming floats or platforms, sun decks, swim areas, fishing platforms, residential, recreational dressing, storage or eating facilities or areas attached or adjacent to recreational piers, or any other facilities not constructed for the docking or mooring of boats.
 - Non-income producing uses such as piers, buoys, floats, etc., which do not qualify as Private Recreational Piers (above).

- Protective Structure (Riprap, seawall, groins, jetties, breakwaters, bulkheads, etc.).
- Grazing or other Agricultural Use.
- Dredging Permit (Please check if any portion of the proposed project will involve dredging during construction or ongoing maintenance of the project).
- Sand and Gravel Extraction.
- Salvage Permit (Salvage of any abandoned property on State owned lands; see Public Resources Code Section 6309).

Other (please describe):

2. Please indicate whether you are seeking Commission authorization for:

- A new lease or permit for a proposed use of State owned land.
- A new lease for the continuation of an existing use of State owned land.
- An amendment of an existing lease*.
- A sublease of an existing lease*.
- Consent to encumber an existing lease*.
- An assignment of an existing lease*.

Other (please describe):

***Where applicable, please indicate file number of existing or prior lease _____.**

SECTION D: PROJECT LOCATION

County:	
If unincorporated, nearest City:	
Waterway:	Assessor's Parcel # (APN):
Township, Range, Section and Reference Meridian:	
Upland Owner's Name:	
Upland Owner's Address (if different from applicant):	
Telephone: ()	Upland Address:
Subdivision, Block, and Lot Number:	

SECTION E: PROPERTY DESCRIPTION, INCLUDING TITLE AND BOUNDARY INFORMATION

1. Submit a copy of the current vesting document (deed) for the property lying landward of and adjacent to the State lands you seek to use. If you are not the owner of this adjacent property, you should also submit a copy of a lease, permit, or other evidence of your right to use this property.
2. Submit a detailed plan or plot of proposed lease areas and existing and proposed structures showing their locations with respect to property lines, high and low water with reference to the datum of water line elevation and their dimensions.
3. Submit a vicinity map (8 ½" x 11" with scale) showing the general area and the project site in relation to the shoreline, major roadways, and other landmarks.
4. Submit a legal description of the area to be leased from the State, tied to a monument or monuments of record. The area to be leased includes the area occupied by the structures, or otherwise under the exclusive control of the lessee/permittee.

SECTION F: OTHER GOVERNMENTAL JURISDICTIONS

On a separate sheet of paper, please provide the following:

Identify other public agencies having approval authority over your proposed project: (i.e., U.S. Army Corps of Engineers, local or regional planning bodies, city and/or county governmental permitting authorities, air or water quality boards, Coastal Commission, San Francisco Bay Conservation and Development Commission, Tahoe Regional Planning Agency, etc.)

If applicable, submit a U.S. Army Corps of Engineers Public Notice, Notice Number, or Letter of Approval for the project. If applicable, submit the number assigned to the project from the San Francisco Bay Conservation and Development Commission or the State Coastal Commission. Submit copies of any other existing approvals with the application.

Identify any General Plan and Specific Plans which include the area in which the project will be located, including the date of the most recent revisions to such Plan(s). What is the land use designation and zoning of the upland portion of the project under the General Plan and any applicable Specific Plan? Will the project require the amendment of the General and/or the Specific Plan? Will a variance from the existing zoning be required? Please provide the name and telephone number of the individual(s) contacted within the local jurisdiction to answer the foregoing questions.

You will be required to submit a copy of local approvals (city and/or county) for your project prior to consideration of your application by the State Lands Commission. If you cannot obtain local approval of your project prior to consideration by the State Lands Commission, you must submit a letter or other document from the local agency setting forth the status of your local application and any concerns the local governmental agency has regarding your project.

PART II

SPECIFIC PROJECT INFORMATION

Please complete this Part II as indicated below. Submit responses on separate 8½" x 11" paper, indicating clearly the number of the information request to which each response applies.

SECTION A: EXISTING CONDITIONS

1. Describe in detail existing activities, uses and improvements at the proposed project site, both on water covered lands ("water bodies") and on adjacent uplands. Provide construction dates and aerial or ground photographs of existing improvements. Indicate whether facilities are temporary or permanent.
2. Describe existing public use of the water body and adjacent uplands, the type and frequency of the public use, and any existing public access to the water body across the project site.
3. Provide maps and/or aerial or ground photographs which delineate existing vegetation at the proposed project site and along the shore of the water body upon which the project is to be located within a one-half (½) mile radius of the proposed project site.
4. Identify the type and location of any known habitat of rare, threatened, or endangered species of plant or animal within a one mile radius of the proposed project site. Information in this regard may be acquired from the California Department of Fish and Game or the United States Fish and Wildlife Service.
5. **Only if the proposed project involves a marina**, list and describe, within one river or lakeshore

mile of the proposed project site:

- (a) Existing or proposed marina facilities (indicating for each facility) available berthing by berth size, whether finger, slip or side tie, fuel facilities, pump outs, restrooms, restaurants, grocery stores, and other ancillary facilities.
- (b) Public and private boat launching and storage facilities.
- (c) Public fishing access and parking availability.
- (d) Other recreational facilities open to the public which are used for swimming, sunbathing, picnicking, sightseeing, etc.

Provide a site map illustrating the approximate distances of each of these facilities from the proposed project site.

SECTION B: PROJECT DESCRIPTION

SUBSECTION 1: ALL PROJECTS. *All applicants should respond to (a) - (d) below.*

- a. Provide a project development plan which clearly shows the following:
 - (1) A scale drawing of proposed improvements that show existing topographic features and dimensions of the area to be occupied within any water body. (This should include identification of the width of the waterway at the project site).
 - (2) The nature and location of all significant project features, including, but not limited to, the number, size and design of any berths, boat ramps or launches; the type, dimensions and location of any associated commercial facilities, utilities, parking, public access, and marine services; and any proposed exterior lighting or other security measures.
 - (3) The type and location of any existing vegetation which will be preserved, any existing vegetation proposed for removal, and any planned restoration of vegetation or other landscaping.
 - (4) The size of the proposed project relative to any other improvements or facilities within 100 feet upstream or downstream of the proposed project site, including facilities on the opposite bank, particularly with regard to its linear extension into and along the waterbody.
- b. If the project will involve construction, describe in detail the construction methods and equipment which will be used and the anticipated time frame for construction activities.
- c. Describe how the project will affect any levees in the project area. Identify existing ecological and/or habitat features along the levee, and any proposed alterations or modifications to any levees and associated ecological and/or habitat features.
- d. Identify any project features which you believe will avoid or mitigate any effects of moving vessels (e.g., wave wash) on the proposed facility or shore of the waterbody.

SUBSECTION 2: SPECIFIC PROJECTS. *Applicants should respond only to those paragraphs which apply to their project.*

- a. For any project which involves a **MARINA OR OTHER MULTIPLE BERTHING FACILITY**, provide the following:
(If your project does not involve a marina or other multiple berthing facility, go on to (b) below).

- (1) Identify whatever provisions are proposed for sewage disposal from boats, commercial uses, etc. If none, please identify the nearest pump-out facility, by name, location, and operating hours.
- (2) Identify whatever provisions are proposed for litter/garbage disposal, including frequency of pick-up.
- (3) Identify any proposed fueling facility and fully describe spill prevention and control features. Are fueling stations such that they are accessible by boat without entering or passing through the main berthing area, in order to avoid collisions? Provide a spill contingency plan and list equipment and training needed to implement the plan.
- (4) Describe any proposed vessel maintenance facility, i.e., its capacity, typical activities and quantities of potentially toxic materials expected to be used. Boat maintenance areas should be designed so that all maintenance activities that are significant potential sources of pollution can be accomplished over dry land and under roofs (where practical), allowing for proper control of by-products, debris, residues, solvents, spills, and stormwater runoff. All drains from maintenance areas should lead to a sump, holding tank, or pumpout facility from which the wastes can later be extracted for treatment and/or disposal. Indicate whether maintenance areas drain directly into surface or ground water or wetlands.

Will curbs, beams or other barriers be built or placed around areas used for the storage of liquid hazardous materials to contain spills?

If no boat maintenance facility is proposed, identify the off-site facility(ies) most likely to be used.

- (5) Identify the location of any engine and hull washing activities, expected numbers of washings and the types of detergents proposed for use. Only phosphate-free and biodegradable detergents should be used for boat washing.
- (6) Describe any proposed pollution control measures for vessel maintenance and haulout facilities.

Examples include:

- Use of tarps and vacuums to collect solid wastes produced by cleaning and repair of boats. Such wastes should be prevented from entering adjacent water.
- Vacuum or sweep up and catch debris, sandings, and trash from boat maintenance areas on a regular basis so that runoff will not carry it into the water.
- An oil water separator should be used on outside drains and maintained to ensure performance.
- Tarps should be used to catch spills of paints, solvents, or other liquid materials used in the repair or maintenance of boats.
- Used antifreeze should be stored in a barrel labeled "Waste Antifreeze Only" and should be recycled.

- (7) Describe any special measures proposed to control the quality and quantity of urban and other runoff from surrounding areas.

- (8) Describe the terms and conditions under which periodic and transient berthing will be permitted at the proposed facility, and how those terms and conditions will be enforced. Indicate percentage of dry boat storage compared to wet slips.
 - (9) Identify the method of handling fish wastes back into the natural ecosystem. Indicate how recycling of fish wastes will not degrade water quality or cause other adverse environmental impacts.
 - (10) Describe the depth and location of navigation and access channels, if any. Are these channels located in areas with safe and convenient access to waters of navigable depth, based on the kind of vessel expected to use the marina?
 - (11) Describe the stormwater management system. Does the system provide a bypass or overflow systems so that the peak discharge from a 10-year, 14-hour storm will be safely conveyed to an erosion and scour-protected storm water outfall?
 - (12) For proposed offshore marinas or berthing facilities, provide a water circulation plan for the facility which has been prepared and certified by a qualified hydrologic engineer. Such plan must indicate the direction and amount of flushing action in the facility.
- b. For any project which involves a **LAUNCH RAMP OR OTHER LAUNCHING FACILITY** describe the following:
(If your project does not involve any launching facility, go on to (c) below).
- (1) The capacity of related parking areas for boats, trailers, and vehicles.
 - (2) Any ancillary features such as restrooms, trash disposal bins, and the like.
 - (3) Any provisions for pump out and disposal of bilge water.
- c. For all projects involving **DREDGING OR DREDGED MATERIAL DISPOSAL**, provide the following: This section is to be prepared and certified by a qualified engineer with relevant expertise.
(If your project does not involve dredging or dredged material disposal, go on to (d) below).
- (1) An estimate of the amount and description of the method of dredging necessary to complete construction of the proposed project.
 - (2) An estimate of the amount and frequency and a description of the method of any maintenance dredging anticipated for operation and maintenance of the project.
 - (3) Identification and estimate of amounts and persistence of contaminants which may be released from the sediments during dredging, and during construction and operation and maintenance of the proposed project.
 - (4) The method and location of disposal of dredged materials.
 - (5) During dredging operations, will the dredging result in turbidity? If so, indicate how turbidity can be minimized (e.g., through the proper placement of silt screens or turbidity curtains).
 - (6) Describe how the need to dredge has been minimized or avoided. For example, the marina could be sited adjacent to deep water and the area to be dredged could be the minimum needed for the marina itself, including the docking areas, fairways, and channels, and for other maneuvering areas that are needed. Is the bottom of the marina deeper than the adjacent open water?

- (7) Has siting been planned near currently permitted public areas for disposal of dredged materials? How far is it to the disposal area?
- d. For all projects involving **GRAZING**, provide the following:
(If your project does not involve grazing, go on to Subsection 3, below).
- (1) Indicate the type and number of animals that will be located on State lands.
 - (2) Indicate the months during which the animals will be located on State lands.
 - (3) Estimate the carrying capacity of each parcel applied for.
 - (4) Indicate whether applicant holds a current grazing permit from the United States Bureau of Land Management (BLM). If so, indicate when the permit expires, and provide a map showing the location of the grazing allotment.
 - (5) Indicate whether there are any known water sources on the parcel(s) applied for. If such water sources are inadequate for the number of animals to be located on the State land, indicate how you will provide additional water.

SUBSECTION 3: PROJECT SITING AND FEASIBILITY. *Complete if the proposed project is a commercial or industrial use as defined in Part I, Section C, above.*

- a. If the project involves berthing or docking facilities, describe how siting has been planned to ensure that tides and currents are adequate to flush the site, or renew its water regularly. Will water quality standards be violated?
- b. Will the project be sited away from wetlands, shellfish resources, submerged aquatic vegetation, and critical habitat areas?
- c. Is the project sited such that it will have easy access to roads, utilities, public sewers (where available), and water lines?
- d. Were alternative sites considered for the proposed project? If the answer is no, please explain. If the answer is yes, please identify such alternative sites. List any criteria which were used during the site selection process: 1) What factors were used in the selection of the proposed site? 2) What factors make this site superior for the proposed project?
- e. On what basis is there a demonstrated public need for the proposed project at the designated location?
- f. Please furnish any studies, which demonstrate demand for and feasibility of the proposed project. What is the minimum size or level of activity necessary to sustain the commercial viability of the project?
- g. If the proposed project will generate revenue, estimate the anticipated annual gross and net revenues and show your basis for the estimates.
- h. Describe any other existing or proposed projects that will be related to or dependent upon this project, will be affected by this project, or will affect this project, and explain the anticipated relationship or effect.

SUBSECTION 4: PUBLIC BENEFIT

Describe any statewide or regional, rather than purely local, benefits of the proposed project, and the extent to which such benefits are provided by other facilities within a one mile radius of the proposed project site.

PART III

PROJECT ENVIRONMENTAL DATA

SECTION A: ENVIRONMENTAL SETTING

1. Describe the project site as it presently exists. Include information such as topography, soil stability, plants and animals, and any cultural, historical or scenic aspects. Describe any existing structures on the site, the use of the structures, and whether they will be retained or removed. Include photograph(s) of the site. Information regarding historic or archaeologically significant values within the site may be obtained from the University Information Center in the county in which the project is to be located.
2. Describe the surrounding properties. Include information such as topography, soil stability, plants and animals, and any cultural, historic or scenic aspects. Indicate the type of land use, (e.g. residential, commercial, agricultural, etc.) intensity of land use (e.g., single-family dwellings, apartments, shops, etc.) and the scale of development. Include photographs.
3. Include a statement of the proposed liquid, solid or gaseous waste disposal methods necessary for the protection and preservation of existing land and water uses.

SECTION B: ASSESSMENT OF ENVIRONMENTAL IMPACTS

All phases of a project, such as planning, acquisition, development, and operation, shall be considered when evaluating its impact on the environment. Please answer the following questions by placing a check in the appropriate box. Provide an explanation of each answer on a separate 8½" x 11" paper, listing, as appropriate, studies, documents, or other information used to support your answer.

Will the project involve:	Yes	Maybe	No
1. A change in existing features of any bays, tidelands, beaches, lakes, or hills, or substantial alteration of ground contours?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. A change in scenic views from existing residential areas or public lands or roads?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. A change in pattern, scale or character of the land use at or in the general area of the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Impacts to plants or animals?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Significant amounts of solid waste or litter?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Generation of or additional, dust, smoke, fumes or odors in the vicinity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. A change in ocean, bay, lake, stream or ground water quality or quantity or an altering of existing drainage patterns?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- | | | | |
|--|--------------------------|--------------------------|--------------------------|
| 8. A change in existing noise or vibration levels in the vicinity? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Construction on filled land or on a slope of 10% or more? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Use or disposal of potentially hazardous materials such as flammable, toxic, or radioactive substances, or explosives? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. A change in demand for municipal services (e.g., police, fire, water, sewage, electricity, gas)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. Increase in fossil fuel consumption (e.g. electricity, oil, natural gas)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. A larger project or a series of projects? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. Historic structures and/or archeological sites? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

SECTION C: STATE LANDS COMMISSION AS A RESPONSIBLE AGENCY

When it is determined that the Commission is a Responsible Agency under CEQA (another governmental agency prepares the appropriate environmental documentation) the applicant must submit the following materials as early as possible in the application process and substantially prior to scheduling the application for consideration by the Commission:

1. A copy of the project's environmental documents prepared by the Lead Agency, i.e. the Initial Study, a Negative Declaration, or the draft and Final EIR, and evidence that these documents have been circulated through the State Clearinghouse pursuant to CEQA Guidelines Section 15073.
2. A copy of any environmental mitigation monitoring program prepared and adopted by the Lead Agency pursuant to PRC Section 21080.6.
3. A copy of the "findings" made by the Lead Agency relative to potential environmental impacts of the project as approved by the Lead Agency, pursuant to Section 15091 of the State CEQA Guidelines.
4. A copy of the Notice of Determination filed with the Office of Planning and Research by the Lead Agency.

PART IV

SIGNATURE AND CERTIFICATION

AB 884 (Government Code Section 65920 and following). Government Code Section 64943 requires that an applicant state whether its proposal constitutes a development project. A "development project" is defined as "... any project undertaken for the purposes of development. 'Development project' does not include any ministerial projects to be carried out or approved by public agencies."

Government Code Section 65928 - Development is defined as "... on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions to the Z'berg-Nejedly Forest Practice Act of 1973" (commencing with Section 4511 of the Public Resources Code).

As used in this section, "structure" includes, but is not limited to, any building, road pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

Government Section 65927 - Please complete the following statement:

The project which is the subject of this application is is not a development project as defined by Government Code Section 65928.

Your application will not be complete without this information.

Government Code Section 65941.5 requires the State Lands Commission to notify its applicants of the public notice distribution requirements relative to any proposed Commission action on applications for development projects. The Commission has compiled an extensive list of persons who have requested notice of all Commission actions and are notified of all Commission meetings. Additional parties must be provided notice of pending Commission action on a project specific basis. Upon your request, staff will provide a list of persons entitled to notice of proposed Commission action on your application.

All statements contained on the application form(s) submitted herewith and related exhibits are true and correct to the best of my knowledge and belief and are submitted under penalty of perjury.

Applicant: _____

Applicant: _____

By: _____ Title: _____

(If Agent)

Date: _____

NOTE: Please remember to submit the fees as outlined on pages iv and v of the Application Guidelines. You only need to return pages 1-11 of the application.