

## STATE LANDS COMMISSION LAND USE LEASE

### OVERVIEW

Upon its admission to the United States in 1850, the State of California acquired sovereign ownership of lands that generally include all ungranted tidelands and submerged lands and the beds of navigable rivers, streams, lakes, bays, estuaries, inlets, and straits (sovereign lands). These sovereign lands are held for the benefit of all the people of the State for Statewide public-trust purposes, which include:

- waterborne commerce,
- navigation,
- fisheries,
- water-related recreation,
- habitat preservation, and
- open space.

The landward boundaries of the State's sovereign interests are generally based on the extent and location of these waterways as they last existed naturally, before artificial influences. On tidal waterways (i.e., waterways subject to tidal influences), the State owns fee title to the bed of the river below the ordinary high-water mark as it last existed naturally. In nontidal navigable waterways (i.e., navigable waterways not subject to tidal influences), the State holds a fee ownership in the bed of the waterway between the two ordinary low-water marks as they last existed naturally. However, the entire nontidal navigable waterway between the ordinary high-water marks is subject to the public trust. Very often, the precise location of these boundaries is uncertain. Boundaries may be defined through agreement or court judgment.

The **public trust** is a sovereign public property right held by the State for the benefit of the people. "It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing" free from the obstruction or interference from private parties(1)" In other words, the public trust is an affirmation of the duty of the state to protect the people's common heritage of tide and submerged lands for their common use. Uses of public trust lands are generally limited to those that are water dependent or related, and include commerce, fisheries, navigation, environmental preservation, and recreation.

(1) *National Audubon society v Superior court* (1983) 33 Cal.3d419, 441.

The State's sovereign interests are under the jurisdiction of the [State Lands Commission](#) (SLC). The SLC's Land Management Division manages the surface uses of State-owned sovereign lands.

During the 1800s, the State sold some of its tidelands (lands that lie between the ordinary high- and low-water marks), particularly those in the Bay Area. In these cases, the State retains a public-trust easement over the sold tidelands.

The State can no longer sell its sovereign lands, but the SLC may lease the sovereign fee lands for various public-trust purposes. A lease is required for any project that involves the construction of improvements to or on the sovereign fee lands, and for some activities that do not include such improvements. The SLC has discretion to issue leases and other agreements designed to encompass activities or projects that will occur over an extended period or geographic scope.

Private owners may use their lands that remain subject to the State's public-trust easement for any purpose not inconsistent with public-trust needs in the area. The SLC may assess public-trust needs when it evaluates projects proposed to be located within the easement area.

Figure 19 illustrates the SLC application and approval process.

## **WHO NEEDS TO COMPLY?**

SLC authorization is required for all CALFED actions that are conducted:

- waterward of the ordinary high-water mark as it last existed naturally, before artificial influences, in waterways that are subject to tidal action; or
- waterward of the ordinary low-water mark before artificial influences, in waterways that are not subject to tidal action.

CALFED actions that would require SLC authorization include, but are not limited to, those that involve:

- restoring aquatic or riparian habitat,
- removing or reconstructing dams,
- placing spawning gravel,
- installing fish screens,
- constructing new diversions or modifying existing diversions, and
- dredging channels.

SLC most often grants authorization in the form of a lease; occasionally, the SLC may enter into another type of agreement that authorizes specific uses. Implementation of specific CALFED actions may be subject to SLC leasing requirements.

## **HOW LONG DOES THE APPROVAL PROCESS TAKE?**

The SLC application review process may take as long as 3–4 months for projects that are not complex, or a year or longer for more complex projects.

## **WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?**

The applicant must provide the following:

- names, addresses, and telephone numbers of the applicant and the applicant's agent, if applicable;
- a description of the State-owned land on which the project is to be located (with references to a legal description, assessor's parcel number, deed, or map if possible);

- a project description, including the proposed use, the nature and extent of proposed improvements, construction methods, anticipated project life, and any relevant time constraints;
- evidence of the proponent's entitlement to use adjoining uplands to gain access to the State-owned parcel;
- environmental information that includes a description of the proposed project's environmental setting and potential environmental impacts;
- a scale drawing that shows elevations and the proposed and existing improvements; and
- engineering information, if applicable.

### **WHAT IS THE FEE?**

The SLC charges a nonrefundable \$25 filing fee and processing costs to reimburse the SLC staff for the time involved in processing lease applications. Minimum expense deposits for lease processing range from \$600 to \$15,000. The applicant must pay for additional staff costs if the project involves the preparation of an environmental document or if the project is complex and therefore requires more staff time than is covered by the minimum expense deposit.

In addition, rental fees are generally associated with leases. However, a public agency may qualify for a rent-free permit. To qualify, the agency must submit in writing a statement of justification for the rent-free status, which is to be based on a Statewide—as compared to a primarily local—public benefit. Leases for habitat improvement projects, wildlife preservation, and bank protection may qualify for rent-free status.

### **WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?**

1. Project proponents who wish to undertake activities on lands under the SLC's jurisdiction should consult with the SLC early in their planning process to determine whether SLC authorization will be necessary. If it is, the proponents will be provided an application form and guidance on how to complete and submit the form.
2. SLC staff must review all applications to determine whether they are subject to the State Permit Streamlining Act.
3. If the project is a development project as defined in the State Permit Streamlining Act, within 30 calendar days of receiving the application, the staff must notify the applicant in writing whether the application is complete. Among other things, during the review of the application, the staff determines whether:
  - the data submitted are sufficient to allow the staff to locate and describe the nature and extent of State-owned land to be used in the project;

- the project involves State-owned land subject to the SLC’s leasing requirements;
- the application has sufficient environmental data for the staff to determine the level and scope of environmental review required under CEQA; and
- the information is sufficient to allow the staff to analyze whether the application is:
  - consistent with the SLC’s policies, practices, and procedures;
  - consistent with environmental safeguards and policies of the State; and
  - otherwise in the best interests of the State.

If the application is determined to be incomplete, the staff will specify what additional information is required. Upon receipt of any additional material, the staff will inform the applicant within 30 days whether the application is complete.

4. Once the application is accepted as complete, the SLC staff processes the application. Steps in application processing include researching land titles, preparing land descriptions, and performing land appraisals.
5. If the SLC is the CEQA lead agency, the staff prepares the required CEQA documents. The staff submits completed CEQA documentation and application materials to the SLC.
6. All applications must be considered by the SLC for approval or denial. The SLC establishes terms and conditions for each lease, which are subject to negotiation on a case-by-case basis. The SLC considers numerous factors when it determines whether a proposed use of the State’s land is appropriate, such as:
  - consistency with the public trust,
  - protection of natural resources and other environmental values, and
  - preservation or enhancement of the public’s access to State lands.

#### **DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?**

CEQA compliance is required before the SLC can issue a land use lease.

#### **WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?**

The following are recommended steps to simplify and streamline the SLC authorization process for CALFED actions.

- **Consult early with SLC staff members to determine whether a SLC lease is required.** By consulting early with SLC staff members, the project proponent can find out whether the project is subject to the SLC’s leasing requirements. If the SLC

staff were to determine that the project does not involve sovereign fee lands, or if the project could be redesigned to avoid the SLC's jurisdiction, the proponent would not have to obtain a lease from the SLC.

- **Develop a memorandum of agreement (MOA) with the SLC in place of a lease.** Applicants should explore the possibility of entering into an MOA with the SLC. An MOA is a negotiated alternative to formal determination of ownership. Within the MOA, the applicant and the SLC agree which lands are subject to SLC jurisdiction for all future uses, without the sometimes time-consuming process of title research.
- **Develop master leases with the SLC to cover multiple CALFED actions.** The SLC has issued master leases for programs that involve a single agency. All activities of the agency are included in the master lease; however, each separate project is reviewed as outlined above, and each project requires SLC authorization.

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