

BOARD OF SUPERVISORS  
**THE CALIFORNIA STATE LANDS COMMISSION**  
**NOTICE OF PROPOSED RULEMAKING**  
2015 MAY 27 P 3:01

Notice is hereby given that the California State Lands Commission (Commission) proposes to add Article 14, Sections 3000 through 3016 to Title 2, Division 3, Chapter 1 of the California Code of Regulations (CCR). These sections implement administrative hearings under Public Resources Code section 6224.3 and following. At an informal administrative hearing, the Commission will determine whether a person has built or maintains a structure on state-owned land under the Commission's jurisdiction without authorization. Violators may be subject to fines and an order to remove the structures. For the purposes of these regulations, structures include any manmade construction, but exclude boats and vessels.

**PUBLIC HEARING**

The Commission will hold a public hearing starting at 1:00 p.m. on June 8, 2015, in the main conference room at the Sacramento offices of the California State Lands Commission, located at 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825. The facilities are wheelchair accessible. At the hearing, any person may present statements or arguments relevant to the proposed action described in the Informative Digest. Statements may be given orally or in writing. The Commission requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. The hearing will continue until all testimony is completed. Although timely submitted comments will be addressed in the Final Statement of Reasons, Commission staff will not respond to comments at the public hearing.

**WRITTEN COMMENT PERIOD**

Any interested person, or an authorized representative, may submit written comments addressing the proposed regulatory action to the Commission. All written comments must be received by the Commission staff no later than 5:00 p.m. on June 9, 2015, in order to be considered. Written comments may be submitted by mail, fax, or email as follows:

Warren Crunk, Staff Attorney  
California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825  
Fax: (916) 574-1855  
Email: [CSLC.Regulations@slc.ca.gov](mailto:CSLC.Regulations@slc.ca.gov)

**AUTHORITY AND REFERENCE**

Public Resources Code section 6103 requires that the Commission administer all laws and statutes committed to it through the Division of State Lands.

Public Resources Code section 6108 authorizes the Commission to make and enforce all reasonable and proper rules and regulations consistent with law for the purpose of carrying out the duties of the Commission.

Public Resources Code sections 6224.3, 6224.4, and 6224.5 (Trespass Statute) prohibit unauthorized structures on land owned by California and under the Commission's jurisdiction; authorize the Commission to hold administrative hearings to determine whether a violation has occurred; authorize the Commission to impose penalties and issue injunctions if a violation has occurred; and authorize the Commission to adopt regulations to implement these sections. The regulations proposed in this rulemaking are intended to implement these sections.

Public Resources Code section 6301 grants the Commission exclusive jurisdiction over the beds of navigable rivers, streams, lakes, bays, estuaries, inlets, straits, and tidelands not granted in trust to local municipalities.

Public Resources Code section 8705 grants the Commission exclusive jurisdiction to administer the lands granted to California for support of the public school system. This section is also known as the School Land Bank Act.

Government Code section 11445.20(c) authorizes an agency to adopt informal hearing procedures by regulatory action.

## **INFORMATIVE DIGEST**

Existing Law requires Commission authorization for structures on land owned by California and under the Commission's jurisdiction (State Lands). Since the Commission was established in 1938, the Commission's sole remedy for unauthorized use of State Lands was to file a civil action for trespass and ejectment. Public Resources Code sections 6224.3, 6224.4, and 6224.5 (collectively "Trespass Statute") were added in 2012, and authorize the Commission to hold administrative hearings to determine whether a person is maintaining a structure on State Lands without authorization. These sections also authorize the Commission to impose fines and issue injunctions against a person found to have unauthorized structures on State Lands. Persons suspected of violating the Trespass Statute will be referred to as "Respondents" herein. The proposed rulemaking will implement this administrative process.

The proposed Section 3000 sets forth the authority and purpose for the proposed rulemaking. Section 3001 defines a number of terms for clarity and convenience. Section 3002 clarifies the conduct prohibited under Public Resources Code section 6224.3. Unauthorized expansion of structures, or structures for which authorization is expired are also prohibited. Section 3003 specifies that staff may initiate investigation of a suspected violation. Section 3004 details what a Notice of Violation must contain and how it may be served on Respondents. Section 3005 allows Respondents to reduce the duration of a hearing, or resolve an entire matter by stipulating to facts not in dispute. Section 3006 provides that notice of a pending enforcement matter will be distributed to the public through the Commission's meeting agenda. Section 3007 prohibits communications by either Respondents or Commission staff to the Commissioners without notice and opportunity to participate by the opposing side. Communications between

Respondents and Commission staff are encouraged in order to resolve a matter. Section 3008 allows the Presiding Officer to exclude persons from an enforcement hearing if they are disruptive or obstructive. Section 3009 specifies that the Commission's Executive Officer, or the Commission's Assistant Executive Officer, will prepare a proposed decision and order. The recommended decision will function much like a tentative ruling in that it will provide an analysis of the known facts and law for both the Commissioners and Respondents to examine before, and comment on, during the enforcement hearing. This important protection allows Respondents to be fully prepared for their hearing and helps to focus the hearings on contested issues.

Section 3010 allows any type of evidence to be admitted if it is relevant and reasonably trustworthy. This standard of admissibility favors common sense over legal formalities in order to help Respondents present evidence at the hearing. Section 3011 specifies that the Commissioners may issue a ruling and impose a penalty if Respondents or witnesses fail to attend a properly noticed hearing after being served. Under the Administrative Procedures Act ("APA"), Respondents have a right to an opportunity to be heard and may waive this right by failing to attend. Section 3012 sets forth the enforcement hearing procedure. Section 3013 details how the Presiding Officer's decision and order is produced and adopted by the Commission as final. Section 3014 describes how the penalty will be calculated, when it will be imposed, and under what conditions a penalty may be tolled or waived. Section 3015 specifies the content of the enforcement record. Section 3016 allows the Commission to designate a decision as precedential if it addresses a significant question that is likely to recur.

### **COMPATIBILITY WITH OTHER LAWS**

The Commission conducted an evaluation for regulations in this area. The proposed regulations are the only regulations to implement administrative hearings under the Trespass Statute. Therefore, these regulations are neither inconsistent nor incompatible with existing state regulations. The Commission carefully reviewed Government Code Title 2, Division 3, Part 1, Chapter 4.5, as this chapter addresses administrative hearings. Article 6 (beginning with section 11425.10) includes basic requirements for all administrative hearings. The proposed regulations comply with all the requirements of this Article. The remainder of Chapter 4.5 provides some guidance as to informal agency adjudication. The proposed regulations meet or exceed all requirements of Chapter 4.5. Chapter 5 (commencing with section 11500) of Title 2, Division 3, Part 1 of the Government Code is not applicable to the proposed regulations.

### **POLICY STATEMENT**

The proposed regulations will benefit members of the public by specifying and clarifying the administrative hearing process. The Commission is aware of many structures on State Lands that currently exist without authorization. Disputes over the Commission's jurisdiction or authority to require a lease are costly and time consuming for both the state and private parties when the only available forum is civil courts. The Trespass Statute provides a forum where evidence will be considered and evaluated in an informal setting. Disputes can be settled in as little as 45 days, at a fraction of the cost to both the state and private parties.

The proposed regulations clarify the process, and set forth a number of important procedural safeguards. The proposed regulations provide a person accused of maintaining unauthorized structures on State Lands with a clear statement of the relevant law and facts at least forty-five (45) days prior to the hearing. Documents relied on by Commission staff will be made available to Respondents. At least ten (10) days prior to the hearing, Respondents will receive a proposed written decision which states the Commission's position with analysis of any information the Respondents have timely submitted to the Commission in their defense. Finally, the proposed regulations allow for a public hearing on the matter where Respondents may present evidence and argument in their defense. At the conclusion of this hearing a written decision will be available which Respondents may appeal to the civil court system if they so desire.

The proposed process reduces the Commission's position to a clear statement of law and fact, allows Respondents to address the allegations, and provides a decision on the matter in an informal setting with minimal cost and delay. The overall objective is to resolve whether a lease is required and achieve compliance in an efficient manner. Even where a penalty has been imposed, there are many provisions in the proposed regulations that allow the Commission to toll, modify, or waive some or all of the penalty if Respondents diligently work to remedy the violation.

#### **DISCLOSURES REGARDING THE PROPOSED ACTION**

*The Commission has made the following initial determinations:*

Mandate on Local Agencies and School Districts: None.

Cost or Savings to Any State Agency: The proposed regulations will not inflict any new costs on state agencies or school districts. The proposed regulations simply specify the procedure for hearings under the Trespass Statute. The administrative hearing and some of the procedural requirements were already set forth in the Trespass Statute. The proposed regulations further specify how the enforcement actions shall proceed. The initial cost and benefit analysis of holding the administrative hearings was assessed in the Trespass Statute. The proposed regulations will not create any additional fiscal impacts on state agencies.

Cost to Any Local Agency or School District Which Must be Reimbursed in Accordance with Government Code Sections 17500 Through 17630: None.

Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

Cost or Savings in Federal Funding to the State: None.

Cost Impacts on a Representative Private Person or Businesses: The proposed regulations specify the administrative hearing process. No additional burden is created. The proposed regulations contain multiple provisions to reduce or eliminate penalties that would otherwise be imposed under the Trespass Statute by complying with existing law. Staff anticipates completing a hearing in a single meeting, so Respondents may only be required to attend a single day.

Results of the Economic Impact Assessment/Analysis: The Commission concludes that the proposed rulemaking: (1) does not create or eliminate California jobs; (2) does not create or eliminate California businesses; (3) has no effect on the expansion of existing California businesses.

Benefits of the Proposed Action: The primary benefits of the proposed action are clarity and transparency in the administrative process. The proposed regulations specify how notice may be served, how Respondents may access the Commission's records, what information is included in the Notice of Violation, and how the written decision is produced. Additionally, the proposed regulations include multiple provisions to mitigate, toll, or waive penalties on prompt compliance with already existing law.

Significant, Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States: None.

Significant Effect on Housing Costs: None.

Small Business Determination: The Commission has determined that the proposed regulations do not affect small businesses. The proposed regulations will not have a significant, statewide, adverse economic impact on California businesses. The regulations only implement the Trespass Statute, thereby providing efficient means to enforce already existing California law. The proposed regulations provide options to toll, reduce, or waive penalties where Respondents promptly remedy violations.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to the affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. The Commission invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## **CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Warren Crunk, Staff Attorney  
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100 Howe Ave., Suite 100-South  
Sacramento, CA 95825-8202  
Telephone: (916) 574-1935  
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The backup contact person for these inquiries is:

Nicholas Lavoie, Public Land Manager  
California State Lands Commission  
100 Howe Ave., Suite 100-South  
Sacramento, CA 95825-8202  
Telephone: (916) 574-0452

Copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based will be available on the Commission's website at [www.slc.ca.gov](http://www.slc.ca.gov). You may also contact Warren Crunk at the above address to obtain copies.

#### **AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

The Commission will have the entire rulemaking file available for inspection and photocopying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice of Register, the rulemaking file consists of this notice, the proposed text of the regulations including two exhibits, and the Initial Statement of Reasons. Copies may be obtained on the Commission's website at [www.slc.ca.gov](http://www.slc.ca.gov). You may also contact Warren Crunk at the above address to obtain copies.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Commission may adopt the proposed regulations substantially as described in this notice. If the Commission makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) days before the Commission adopts the regulations as revised. Copies of any modified regulations may be obtained on the Commission's website at [www.slc.ca.gov](http://www.slc.ca.gov). You may also contact Warren Crunk at the above address to obtain copies. The Commission will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained on the Commission's website at [www.slc.ca.gov](http://www.slc.ca.gov). You may also contact Warren Crunk at the above address to obtain copies.

#### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Commission's website at [www.slc.ca.gov](http://www.slc.ca.gov).

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