

MEMORANDUM OF UNDERSTANDING
BETWEEN STAFF OF THE CALIFORNIA COASTAL COMMISSION AND STAFF OF
THE CALIFORNIA STATE LANDS COMMISSION TO ENHANCE COORDINATION

I. INTRODUCTION

This Memorandum of Understanding (MOU) is between staff of the California Coastal Commission (CCC) and staff of the California State Lands Commission (CSLC) (collectively referred to as Parties, and each individually as a Party). Past experience has demonstrated that early consultation between the CCC staff and the CSLC staff is mutually beneficial, increasing the quality of the agencies' work, providing process certainty to the public, stakeholders, applicants and decisionmakers, and strengthening approvals made under the Parties' respective authorities.

The CSLC manages 4 million acres of sovereign tide and submerged lands, the beds of natural, navigable waterways including lakes and rivers, and school lands. The mission of CSLC is to provide the people of California with effective stewardship of the lands, waterways, and resources entrusted to its care through preservation, restoration, enhancement, responsible economic development, and the promotion of public access. CSLC issues leases for the use, preservation, protection and development of state lands and resources, provides public access, resolves boundaries between public and private lands, and implements regulatory programs to protect state waters from oil spills and invasive species introductions. In addition, CSLC has broad oversight authority over sovereign lands granted to local jurisdictions by the state legislature. The management, protection, and enhancement of sovereign lands and natural resources is guided by the common law Public Trust Doctrine, the California Constitution, various laws and regulations specific to the CSLC, and statutory trust grants.

The California Coastal Act of 1976 established the CCC to protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations. The CCC reviews applications for development on and adjacent to tidelands, submerged lands and Public Trust lands and must consider public interests in trust resources such as coastal access, habitats, and scenic values. The CCC, in partnership with coastal counties and cities, also plans and regulates land use and development in the California coastal zone (which excludes San Francisco Bay). In addition, the CCC must certify Port Master Plans and updates as consistent with the policies of the Coastal Act to allow ports the authority to issue permits for projects on those granted lands.

Pursuant to Coastal Act regulatory requirements, project proponents who apply to the CCC for permits to develop projects located on, or in close proximity to, California's filled and unfilled tidelands, submerged lands, or the beds of navigable waters must demonstrate adequate legal interest in all the property upon which development work would be performed. This requirement occasionally leads the CCC to request or

require project proponents to obtain a determination from the CSLC regarding whether the proposed project will be located on land subject to a sovereign title interest or public easement interest.

II. PARTIES

The following officials are executing this MOU as representatives of their respective agencies:

- A. John Ainsworth, Executive Director, California Coastal Commission
- B. Jennifer Lucchesi, Executive Officer, California State Lands Commission

III. PURPOSE

The purpose of this MOU is to encourage and facilitate the coordination and exchange of information between and among staffs of the CCC and CSLC for project proposals requiring an approval by the CCC which may also implicate the CSLC's leasing jurisdiction, granted lands oversight responsibilities, or trustee interests under the Public Trust Doctrine. While the Parties recognize that land ownership issues should be clarified at an early stage in permit proceedings, an effective procedure for ensuring that coordination occurs early and often at all levels, both within and between the two agencies, has not yet been established. When staff is unaware that the Parties have overlapping and/or concurrent interests, it can result in delays, duplicative efforts and other unintended consequences.

As global climate changes and sea levels rise, it has never been more critical than it is now for the Parties to coordinate early and often, share expertise, and combine efforts; the Parties recognize there is no shortage of opportunities for collaboration. The grants that have been awarded by the CCC and Ocean Protection Council to local coastal communities for updating their Local Coastal Programs (LCP) to include sea level rise considerations provide just one of many examples in which the CCC staff and CSLC staff could benefit from early and ongoing consultation. Such coordination would also help to fulfill the requirements of Assembly Bill 691 (Muratsuchi), Chapter 592, Statutes of 2013, which called for local trustees of granted Public Trust lands with annual gross Public Trust revenues exceeding \$250,000 to prepare and submit to the CSLC assessments of their sea level rise vulnerabilities and adaptation strategies by July 1, 2019. Other important examples of opportunities for collaboration include work on CDPs, LCPs, coastal armoring and sea level rise issues, Port Master Plans, energy development, and statewide policy advancement.

IV. PRINCIPLES OF AGREEMENT

The Parties mutually agree to:

- A. Work together to clarify or determine ownership, leasing, or other jurisdiction issues as early as possible in the CCC's permit proceedings, and, if possible, prior to acceptance of an application as "complete" by the CCC.
- B. Maintain regular, direct, and open communication between the Parties regarding existing lease compliance issues or lease applications received by the CSLC, and regarding permit compliance issues or permit applications received by the CCC.
- C. Cooperate to the highest degree practical to streamline review and land interest determination pursuant to this agreement. In so doing, the Parties agree to share information and respond to inquiries promptly.
- D. Cooperate to the highest degree practical to ensure proposed LCPs and LCP amendments consider the CSLC's interests and obligations related to its sovereign land ownership and the common law Public Trust Doctrine.
- E. Work together to understand expected sea level rise impacts on Public Trust resources, and ensure protection and restoration of, and mitigation for impacts on, those resources.

V. GENERAL PROVISIONS

- A. The following procedures are proposed for establishing early and frequent coordination between the Parties:
 - a. Create and maintain a shared system to track lease applications and coastal development permit applications associated with proposed projects, to be reviewed periodically by each agency for overlap. At a minimum, quarterly, each agency will review the pending applications in areas of shared jurisdiction using the Tidelands Parcel Viewer.
 - b. Create and maintain lists of in-house capabilities and specialties at each agency to be shared for the purposes of making the most of each agency's unique expertise and resources.
 - c. Establish a staff contact at CCC who will be responsible for LCP review coordination with CSLC, who will also establish a contact person.
 - d. Establish a staff contact list at each agency to identify staff responsible for leasing and permitting in each geographic area of the coastal zone.
 - e. Establish a schedule for regular meetings (can be in-person or by conference call) between agencies (e.g. quarterly or biannually) to discuss and provide consultation on overlapping projects or other concerns of mutual interest.

f. Hold case-by-case meetings between agencies for significant projects of mutual interest.

g. Each quarter, or at least biannually, CSLC will update the shared tracking system with pending boundary determination and other related requests located in CCC jurisdiction, and CCC will provide relevant available information (e.g., pending applications, project or planning proposals, etc.) related to each request or item.

h. For those projects that may be located on Public Trust lands, CCC will require the applicant to obtain a jurisdictional determination from the CSLC. As resources and capacity allow, CSLC will use its best efforts to complete its review and issue a jurisdictional determination within 90 days of receipt of the required information.

i. In addition to requiring applicants to seek jurisdictional determinations from the CSLC, the Parties will establish a protocol for ongoing consultation for these proposed projects.

j. Ensure that all relevant staff is trained in and understands the importance of the above procedures.

k. Coordinate review of requests for transfer of permit jurisdiction on certain Public Trust lands, pursuant to Attachment A.

B. During its preliminary review of permit applications, CCC will generally not accept as complete applications for development on or adjacent to Public Trust lands, sovereign lands or tidelands unless the application indicates the status of the CSLC's sovereign interest, unless otherwise agreed to by the Parties.

C. Following receipt of a notification or request for review and interest status determination, CSLC staff will evaluate and determine whether all or any portion of the project encroaches onto sovereign lands and/or areas subject to a Public Trust easement, or indicate, in cases where there is not enough information to make such a determination, what other information or investigations are needed in order to make a determination. (See also section V.A.h.)

D. Nothing in this MOU is intended to or shall be construed to limit or affect in any way the authority, jurisdiction or legal responsibilities of CCC or CSLC. Specifically, nothing in this MOU shall imply that any signatory is in any way abrogating or ceding any responsibility or authority inherent in its control or trusteeship over land or natural resources. The Parties' approval authority or discretion over any proposal or development shall not be limited by this MOU.

- E. Nothing in this MOU binds CCC or CSLC to perform beyond their respective authorities.
- F. Nothing in this MOU requires CCC or CSLC to assume or expend any funds in excess of available appropriations authorized by law.
- G. The mission requirements, funding, personnel, and other priorities of CCC or CSLC may affect their respective abilities to fully implement all the provisions identified in this MOU.
- H. Nothing in this MOU is intended to or shall be construed to restrict CCC or CSLC from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- I. Any information furnished between the Parties under this MOU is potentially subject to the California Public Records Act, Gov. Code §6250, *et seq.* (CPRA). The Parties agree to consult one another prior to releasing potentially privileged or exempt documents and to cooperate in good faith to assert all such privileges and exemptions permitted by CPRA.
- J. Each and every provision in this MOU is subject to the laws of the State of California, the laws of the United States of America, and to the delegated authority assigned in each instance.
- K. All cooperative work under the provisions of the MOU will be carried out in accordance with all applicable laws of the United States and the State of California, including anti-discrimination laws.
- L. Amendments or supplements to the MOU may be proposed by any Party to this MOU and shall become effective upon written approval of both Parties.
- M. This MOU shall become effective upon signature by the Parties. This MOU may be executed in one or more counterparts, each of which will be considered an original document. The effective date shall be the date of the last signature as shown below, excepting subsequent amendments and addition of counterparts.
- N. This MOU shall be in effect from the date of execution until terminated by one or both Parties. If one of the Parties terminates the agreement, that Party shall give the other Party at least 30 days advance written notice of termination. In the event either Party withdraws from the MOU, such withdrawal will result in termination of the agreement.
- O. This MOU is intended to facilitate cooperation among the Parties. It is not a contract for acquisition of supplies or services; it is not legally enforceable; and it

does not create any legal obligation of or between any of the Parties or create any private right or cause of action for or by any person or entity.

P. Nothing in this MOU may be the basis of any third party challenges or appeals. Nothing in this MOU creates any rights or causes of action in persons not parties to this agreement.

VI. AUTHORITY TO ENTER INTO THIS MEMORANDUM OF UNDERSTANDING

- A. Coastal Commission: California Public Resources Code sections 30330, 30335, 30336, 30519, 30600;
- B. State Lands Commission: Public Resources Code sections 6005, 6106, 6301, et. seq.

VII. CONTACTS

The primary points of contact for carrying out of the provisions of this MOU are:

- A. California Coastal Commission: Madeline Cavalieri, Statewide Planning Manager
- B. California State Lands Commission: Jennifer Mattox, Science Policy Advisor

VIII. APPROVALS



John Ainsworth
Executive Director
California Coastal Commission



Jennifer Lucchesi
Executive Officer
California State Lands Commission

Date: 9-19-2019

Date: 9-19-2019

ATTACHMENT A
Consultation with California State Lands Commission regarding Coastal Act
Section 30613 transfer of California Coastal Commission retained permit
jurisdiction

Section 30613 of the Coastal Act allows the California Coastal Commission (CCC) to delegate its original permit authority in areas subject to the public trust to local governments under some circumstances. Section 30613 states in applicable part:

(a) The provisions of subdivision (b) of Section 30519, subdivision (b) of Section 30600, and subdivision (b) of Section 30610.5, which apply to lands subject to the public trust shall not apply to any lands which may be subject to the public trust but which the commission, after consultation with the State Lands Commission, determines are (1) filled and developed and are (2) located within an area which is committed to urban uses.

Although 30613 does not expressly dictate when a local government may request a transfer of permitting authority, the existence of a fully-certified local coastal program (LCP) facilitates the ability to make a determination whether a site is “located within an area committed to urban uses” per 30613(a), *vis a vis* the land use and zoning designations. Also, jurisdictions generally do not obtain the authority to issue coastal development permits until they have a fully certified LCP, so there is little use in transferring permitting authority under 30613 until an LCP is fully certified. For these reasons, the CCC has generally not reviewed and acted on jurisdictions’ 30613 requests prior to certification of the jurisdictions’ LCP – and more specifically, prior to adoption of the post LCP certification map(s). CCC staff recommends that local governments refrain from submitting 30613 requests until after adoption and CCC approval of their LCPs and post LCP certification maps.

To facilitate the CCC staff’s ability to evaluate a 30613 request, CCC staff recommends that a local government initiating the Section 30613 process make a formal written request to the appropriate CCC District Office:

- 1) Defining which areas of the CCC’s original/retained jurisdiction within the local government’s geographic limits the local government wants transferred for local permitting;
- 2) Explaining how these areas meet the statutory criteria;
- 3) Including a map, preferably based on the post LCP certification map, specifically delineating the areas for which the local government is requesting transfer; and
- 4) Identifying whether the area that is the subject of the 30613 request is granted (from the State Lands Commission to the local government in trust) or ungranted tide and submerged lands, and whether/how this area is accounted for within the certified LCP.

In all instances, the CCC will interpret 30613 and evaluate specific 30613 requests by local governments on an *ad hoc*, case-by-case basis after consulting with the California State Lands Commission (CSLC) on the request per 30613(a).

Consultation with California State Lands Commission

Consultation with the CSLC will generally include the following steps:

- 1) CCC staff provides CSLC with 'Statement of Facts' for the requested transfer areas.

CCC staff provides the CSLC with copies of the formal written request for transfer in addition to application materials. Application materials would include a description of the proposed transfer areas, discussion of how these areas meet the statutory requirements, maps of the proposed transfer areas, and information regarding the status of the public trust (if known) on the proposed transfer areas.

- 2) CSLC staff determines the extent and status of the public trust.

CSLC makes a determination for each of the proposed areas as to whether the land is impressed with the Public Trust, filled and developed, and within areas committed to urban uses. CSLC determines the extent and status of sovereign tide and submerged lands granted by the Legislature (if applicable) held in trust for the people of California and used for Public Trust purposes.

- 3) CSLC staff provides CCC staff with a written analysis and summary of staff conclusions and supplemental information regarding extent and location of granted tidelands.

CSLC provides general input regarding its interpretation of the key terms of 30613 discussed above as to whether the proposed transfer area is impressed with the Public Trust, filled and developed, and within areas committed to urban uses.

In past actions, the CCC and CSLC staff have considered the following non-exclusive factors when determining whether a specific site/area is "developed": (1) whether the land at issue is subdivided, improved with structures, and served by existing public service infrastructure (e.g., roads, utility lines); (2) agricultural lands, lands devoted to open space, beaches, and protected habitat areas may not qualify as "developed," absent contrary evidence provided by the local government; (3) extent of commercial and industrial uses located within the proposed retained permit transfer area; and (4) extent of the built-out development and the services located within the boundaries of the proposed transfer area, such as existing buildings or parking facilities, as well as the attributes and uses of the surrounding area.

- 4) CCC staff considers the CSLC staff recommendation and folds relevant discussion into staff recommendation; agencies coordinate as appropriate.