

**CALENDAR ITEM  
122**

A	Statewide	12/18/15
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S	Statewide	W. Crunk

**CONSIDER PROPOSED ADDITION OF ARTICLE 14 TO TITLE 2, DIVISION 3,  
CHAPTER 1 OF THE CALIFORNIA CODE OF REGULATIONS RELATING TO  
ADMINISTRATIVE HEARINGS AND PENALTIES FOR UNAUTHORIZED  
STRUCTURES ON STATE LAND**

**PROPOSAL:**

Commission staff proposes to add Article 14 to Chapter 1 of Division 3 of Title 2 of the California Code of Regulations. The new Article will add sections: 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, and 3016. Collectively, this rulemaking specifies the procedures for administrative hearings and administrative penalties for unauthorized structures on State Lands authorized under Public Resources Code sections 6224.3, 6224.4, and 6224.5.

**BACKGROUND:**

The Commission manages approximately 4.5 million acres of public land throughout the State, including navigable waterways, tidelands, submerged lands, and lands granted to the State by the U.S. Government to support public education (collectively "State Lands"). State Lands include some of the most valuable, scenic, and environmentally sensitive lands in the State. Some State Lands are remote and difficult to access, making it difficult to monitor or inspect these lands. As a result, there are many unauthorized structures on State Lands.

Unauthorized structures on State Lands create liability for the State. Without regulation and control over these structures, they may be constructed unsafely, may not be properly maintained, and may be abandoned in place at the end of their economic life. Abandoned structures become dilapidated and dangerous, and the Commission has no funds to remediate these hazards. By bringing structures under lease, the Commission obtains insurance coverage, indemnity from the lessee, and compensation for use of State Lands. More importantly, the Commission has records of who owns the structure and may periodically inspect the lease premises.

The Commission has recently increased the resources directed toward addressing unauthorized structures. Active management of State Lands will reduce the liabilities discussed above, and will protect public rights and interests in these State Lands. Unauthorized structures may impair public access and

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navigation, may impair authorized lessees' use of State Lands, and may cause environmental harm. Bringing unauthorized structures under lease encourages parity with currently authorized users of State Lands. The Bureau of State Audits recently encouraged the Commission to redouble its efforts to bring unauthorized structures under lease.

Before Public Resources Code sections 6224.3, 6224.4, and 6224.5 became law, the Commission had to retain the Attorney General's Office to file a trespass and ejectment action in State Superior Court to address unauthorized structures. These civil litigations are expensive and burdensome because the State almost certainly will not recover more than it spends litigating the case. In three recent trespass cases, involving four separate properties, the Attorney General incurred \$720,000 in fees and costs over four years. Commission staff expenses are believed to have doubled the Attorney General's expenses. The Commission collected approximately \$68,000 in settlement of the three cases. Neither the Commission nor the Attorney General's Office has the resources to address the hundreds of unauthorized structures throughout the State through civil litigation alone. The proposed rulemaking provides a more efficient and less burdensome alternative to civil litigation.

**NOTIFICATION AND RULEMAKING PROCESS:**

After the Legislature passed Assembly Bill 2082 (Chapter 247, Statutes of 2012) which enacted Public Resources Code, §§ 6224.3, 6224.4, and 6224.5, Commission staff began including references to the new law, effective January 1, 2013, in letters sent out to potential trespassers. In October 2014, the Office of the Attorney General reviewed draft regulations and provided input. The Executive Officer notified members of the public in the Executive Officer's Report that Commission staff were preparing regulations to implement Public Resources Code section 6224.3 at the Commission's February 20, 2015 meeting.

On February 24, 2015, the proposed rulemaking was published in the California Regulatory Notice Register. A link to all documents was posted on the home page of the Commission's website. A Notice of Proposed Rulemaking was mailed to all 4,988 physical addresses in the Commission's lease database, and distributed electronically to all 656 email addresses in the Commission's email distribution list.

Commission staff hosted a public comment hearing on June 8, 2015, at the Commission's Sacramento Office. Seventeen people signed the attendance sheet and 10 people made public comments. By the close of the initial 46-day comment period on June 9, 2015, the Commission received 15 written comments.

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Commission staff revised the proposed regulations in response to public comment. Notice of the revision was distributed to all prior commenters, any persons who requested to be notified of further action on this rulemaking, and any persons signing the attendance sheet for the public hearing. The revised regulations were circulated for a full 45-day comment period. Commission staff received four comments during this time. No further modifications were required.

**SUMMARY OF THE PROPOSED REGULATIONS:**

The proposed regulations interpret, make specific, and clarify Public Resources Code sections 6224.3, 6224.4, and 6224.5, as well as harmonize these sections with existing law. A complete copy of the regulations as currently proposed are included as **Exhibit A** to this calendar item.

The proposed regulations create two separate groups of Commission staff. The Enforcement Staff serves prosecutorial roles in the administrative process, including investigation, citation, and advocacy functions. The Advisory Staff serve quasi-judicial functions and provide legal and technical assistance to the Commissioners. The Commissioners or their alternates will serve as hearing officers in the hearings held at regularly noticed Commission meetings. The person alleged to have an unauthorized structure on State Land is known as the Respondent.

The Enforcement Staff may investigate a suspected violation and issue a Notice of Violation. The Notice of Violation was included in the rulemaking. The Notice contains an explanation of the violation and the administrative process. The Notice will include a basic explanation of the suspected violation, will describe the evidence cited and how the Respondent may obtain copies, will include a copy of the governing regulations, and will include the Statement of Defense form. Personal service is complete on delivery. Alternately, the Notice of Violation may be posted on the structures in question and mailed to the Respondent. Service is complete 10 days after mailing. The Respondent has 21 days from the date service is complete to respond to Enforcement Staff if the Respondent disputes the allegations. If the Respondent does not contact Commission staff within the given time, the Notice of Violation specifies the enforcement hearing date. If the Respondent fails to appear at the hearing, the Commission may issue an order by default.

If a Respondent disputes the allegations, the original hearing date is vacated. Enforcement Staff will prepare a Statement of Position, which is a more extensive and detailed legal and factual analysis than that provided with the Notice of Violation. Once the Enforcement Staff mails its Statement of Position, the Respondent has 45 days to complete the Statement of Defense form. The Statement of Defense is included with the rulemaking and will be served with the

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Notice of Violation to allow the Respondent to begin immediately working on their defense. Once each side submits their position papers, no further evidence or argument is allowed absent a showing of good cause and lack of prejudice to the other side. The Enforcement Staff has an exception to this evidentiary cutoff for evidence or argument submitted with the Enforcement Staff's response to the Respondent's Statement of Defense, provided such evidence or argument responds to evidence or arguments raised in the Statement of Defense. The purpose for this evidentiary cutoff is to avoid trial by surprise for either side and to reduce the length and complexity of the hearings.

The Advisory Staff reviews all submitted evidence and prepare a recommended decision and order for the Commission's consideration. The Advisory Staff will provide the recommended decision and order to the Commission, the Respondent, and the Enforcement Staff at least 30 days prior to the hearing. The recommended decision and order will specify the hearing date and general area of the hearing although the specific address may not be set until 10 days prior to the hearing.

The administrative hearings occur at a regularly scheduled, properly noticed, public Commission meeting. The acting chairperson will serve as the presiding officer. The hearings will include a short summary of each side's position with a focus on issues in controversy. The Commissioners may ask questions of either side. Members of the public may also testify if the Commissioners, in their discretion, believe such testimony would be helpful. At the close of the hearing, the Commission may adopt the proposed decision, modify the proposed decision, or direct Advisory Staff to prepare a new decision on terms dictated by the Commission.

If the Commission determines a penalty is appropriate, the proposed regulations specify a base penalty of \$500 per day for the first 120 days, and \$1,000 per day starting the 121<sup>st</sup> day. This base penalty may be adjusted by the factors in Public Resources Code section 6224.3, subdivision (c). The penalty may be tolled while the Respondent removes the structure or while Commission staff processes a completed application. The penalty will terminate when the violation is remedied. The Commission may, in its discretion, waive some or all of the penalty when the violation is remedied.

The proposed regulations also include definitions necessary for clarity. The regulations provide a mechanism to change hearing dates or locations, or to continue hearings to a subsequent meeting. Although *ex parte*<sup>1</sup> communications

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<sup>1</sup> Ex parte communications are any direct or indirect communication with a person serving in a judicial role without notice to the opposing side and opportunity for the other side to participate in the

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are prohibited by other laws, the regulations identify the prohibition and provide the mechanism to remedy any conflicts created. The regulations provide standards of conduct for the hearings, set the standard for admissibility of evidence, specify the content of the enforcement record, and allow the Commission to designate certain decisions as precedent.

**PUBLIC COMMENT:**

Although there were relatively few public comments received, staff received some thoughtful and well-prepared comments. Some of the comments exceeded 30 pages in length and included a detailed commentary on virtually every aspect of the regulatory package. These comments resulted in significant and beneficial modifications to the proposed regulations. Some of the major modifications include clearer separation of functions between judicial and advocacy functions, more time for the Respondent to prepare their defense, and increased access to the Commission's records.

Some commenters objected to administrative hearings for trespass issues, objected to the Commission presiding over the administrative hearings, or objected to the Commission deciding whether unauthorized structures were on State Lands in an administrative hearing. Public Resources Code sections 6224.3 and following specifically authorize these administrative hearings and require the Commission to serve as the Presiding Officer. Accordingly, these objections were outside the scope of the proposed rulemaking and did not propose a better way to implement the authorizing statute.

A few commenters expressed concern that the Commission might order removal of structures up to and including homes and shoreline protective structures in the context of an administrative hearing. The proposed regulations state that not every violation can be remedied by submitting an application because there is no guarantee that every structure in every location would be appropriate under the common law Public Trust Doctrine, in the best interest of the state, and otherwise qualify for a lease. However, the Commission has a long history of working with applicants to resolve issues, particularly where removal of preexisting structures is not the most equitable solution. Staff construed these comments as suggestions to exclude entire categories of structures or geographic regions from the proposed administrative process. Staff rejected these broad limitations in favor of case-by-case handling of each violation. The Commission retains discretion to determine whether administrative penalties are appropriate, and latitude to fashion a remedy that reaches a just result, in the best interest of the state.

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communication. In this case, it means communications with the Commissioners, their alternates, or the Advisory Staff from either the Enforcement Staff or the Respondent.

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Other comments focused on the penalties. Some commenters felt the penalties were too high, others felt that the penalty should be a flat amount per violation. A few comments suggested the penalties should not be imposed immediately following the hearing so that the Respondent can consider whether to remove the structure or seek review in court without being fined. A number of commenters suggested various ways to increase the tolling period of penalties.

As background, Commission staff makes considerable efforts to resolve violations informally. This typically takes the form of letters to the violator, but may also include meetings, site visits, surveys, and general public outreach. Although administrative actions are more efficient than civil actions, administrative actions still require considerable staff resources. It is, therefore, highly unlikely that a Respondent will be brought to a hearing without some informal efforts to resolve a violation. Once a Notice of Violation is issued, a Respondent may resolve a violation before the hearing, minimizing or avoiding any penalties. Staff anticipates that many violations can be remedied by bringing the structures under lease. Even where a person disputes the Commission's jurisdiction, or requires significant time to remove a structure, the Commission may issue conditional authorizations during pending litigation or temporary authorizations for the removal period. In addition, the proposed regulations have multiple provisions to reduce or toll penalties and even allow the Commission to waive penalties once a violation is remedied. With all of these alternatives, it is anticipated that only the most egregious or uncooperative violators that will be fined to the full extent possible. While Commission staff understands the public's concerns, the penalties did not appear inappropriate or excessive in the context of how the administrative process will be used.

Many other comments were submitted, including a large number of technical or procedural issues. All comments, and the responses thereto, will be set forth in the Commission's Final Statement of Reasons. The Final Statement of Reasons will be submitted to the Office of Administrative Law along with the final regulatory package.

**STATUTORY AUTHORITY:**

The proposed regulatory rulemaking is authorized by Public Resources Code sections 6224.3, 6224.4, and 6224.5.

**OTHER PERTINENT INFORMATION:**

1. The proposed regulations interpret, implement, and make specific the provisions of Public Resources Code sections 6224.3, 6224.4, and 6224.5. These statutes reiterate existing common law and statutory prohibitions against unauthorized structures on State Land, and provided

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the Commission an administrative forum to impose fines on persons who refuse to remedy the violation.

2. The proposed regulations create a procedural framework for these administrative hearings within existing law. As such, the proposed regulations do not create new or significant impacts or obligations.
3. The staff recommends that the Commission find that the subject adoption of amendments to regulations does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3) and 15378.

**EXHIBIT:**

- A. Modified text of the proposed regulations, including Exhibit A to the proposed regulations (Notice of Violation) and Exhibit B to the proposed regulations (Statement of Defense)

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that the subject adoption of amendments to regulations is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

**AUTHORIZATION:**

1. Find that the proposed amendments will not affect small businesses as defined in Government Code section 11342.610.
2. Find that the proposed amendments will not have a significant impact on the creation or elimination of jobs or new or existing businesses within California, nor will they have an adverse economic impact on business, including the ability of California businesses to compete with businesses in other states.
3. Find that no alternatives would be more effective in carrying out the purposes for which the amendments are proposed or would be as

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effective as and less burdensome to the affected private persons that the proposed regulations.

4. Adopt the proposed Article 14 of Chapter 1 of Division 3 of Title 2 of the California Code of Regulations, including sections: 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, and 3016.
5. Authorize the Commission staff to make modifications to the proposed amendments in response to recommendations by the Office of Administrative Law.
6. Direct the Commission staff to take whatever action is necessary and appropriate to comply with provisions of the Government Code regarding adoption of regulations and to ensure that the regulations become effective.
7. Direct Commission staff to take whatever action is necessary and appropriate to implement the amendments to the regulation when they become effective.

# EXHIBIT A

## Proposed Text of Regulations

### Title 2, California Code of Regulations, Division 3, Chapter 1

[Explanation: The proposed rulemaking would add all of the following language to the California Code of Regulations. Commission staff has altered some provisions in response to public comments and in an effort to improve the resulting process. This version has removed all tracked changes in order to enhance readability.]

#### Article 14: Administrative Hearings

##### §3000. Authority and Purpose

These regulations are promulgated pursuant to Section 6224.5(d) of the Public Resources Code to provide the Commission with procedures for orderly hearings and just administration of penalties under Sections 6224.3 and following for unauthorized Structures on State Lands. The procedures established by these regulations shall not apply to the Commission's Abandoned Vessels program authorized by Public Resources Code Sections 6302.1 and following.

NOTE: Authority Cited: Section 6224.5, Public Resources Code. Reference: Sections 6108, 6224.3, 6302.1 et seq., Public Resources Code.

##### § 3001. Definitions

- (a) As used in these regulations, words in the singular shall include the plural and words in the plural shall include the singular, unless the context otherwise requires. The following words, terms and phrases, when used in this Article, shall have the following meanings, unless the context clearly indicates otherwise:
- (1) "Advisory Staff" means the Commission's Executive Officer and his or her designees. The Advisory Staff provides legal and technical advice to the Commission related to an enforcement matter under this Article.
  - (2) "Commission" means the California State Lands Commission.
  - (3) "Commissioner" means a California State Lands Commissioner specified in Section 6101 of the Public Resources Code, or a designated alternate under Section 7.6 of the Government Code.
  - (4) "Commission Authorization" means a currently valid and unexpired, written and executed authorization to occupy State Lands, issued by the Commission.
  - (5) "Commission Meeting" means a regularly-noticed public meeting of the Commission.
  - (6) "Day" means calendar day. If a deadline falls on a weekend or state holiday, then the deadline will be deemed to be the next business day.

- (7) "Enforcement Staff" means the Chief or Assistant Chief of the Commission's Land Management Division and his or her designees. The Enforcement Staff is responsible for issuing the Notice of Violation and representing Commission staff before the Commission.
- (8) "Mail" means to send documents via the United States Postal Service, or reputable private carrier. The Respondent and Enforcement Staff may, and are encouraged to agree to service by electronic means including electronic mail or facsimile. Where such an agreement exists, "Mail" will include the agreed to method of electronic transmission. As between the Enforcement Staff, Advisory Staff, and/or the Commission, "Mail" includes any means reasonably calculated to ensure the documents arrive at their destination including hand delivery or courier.
- (9) "Notice of Violation" means the Notice of Violation substantially complying with the content set out in Appendix A.
- (10) "Presiding Officer" means the Commissioner designated to conduct the hearings under this Article.
- (11) "Respondent" shall mean a person or entity suspected of violating Section 6224.3 of the Public Resources Code.
- (12) "State Lands" means land under Commission jurisdiction, held in fee by the state of California. "State Lands" excludes those lands legislatively granted in trust to local jurisdictions, and lands where the underlying fee is not held by the state, but a public trust easement exists.
- (13) "Structure" means any human construction, including but not limited to: buildings, boat houses, docks, piers, buoys, revetments, fill, pilings, pipelines, groins, jetties, seawalls, breakwaters, bulkheads; along with all similar constructions.

NOTE: Authority Cited: Section 7.6, Government Code; Sections 6101, 6224.5, 6301, Public Resources Code. Reference: Sections 6102, 6216, 6301, 8705, Public Resources Code.

### **§ 3002. Prohibited Conduct**

- (a) Unless otherwise exempted, all Structures on State Lands require Commission Authorization. If the Commission Authorization prohibits transfer or assignment, subsequent owners or assignees must be approved by the Commission, or its designee.
- (b) Structures constructed, placed, maintained, owned, used, or possessed without Commission Authorization; Structures for which Commission Authorization has expired or been terminated; or Structures which vary from or exceed Commission Authorization are prohibited and shall constitute grounds for imposition of penalties and/or an injunction by the Commission.

- (c) Submission of an application for the use of State Lands will not, by itself, remedy a violation. The Commission retains sole and absolute discretion to approve or deny applications submitted for the use of State Lands.

NOTE: Authority Cited: Sections, 6216.1, 6224.3, 6301, Public Resources Code. Reference: 6303.1 Public Resources Code.

**§ 3003. Investigation and Discovery**

- (a) Commission staff may investigate a suspected violation of Section 6224.3 of the Public Resources Code.
- (b) Commission staff may survey the land and/or Structures in question pursuant to Civil Code section 846.5.
- (c) The Enforcement Staff may issue a Notice of Violation if the facts so warrant in their judgment.

NOTE: Authority Cited: Section 846.5, Civil Code; Section 6224.5, Public Resources Code; Section 11180 Government Code; Section 8774 Business and Professions Code.

**§ 3004. Notice of Violation Procedure; Uncontested Violations**

- (a) The Notice of Violation shall describe the alleged violation and shall reference the documents on which Commission staff relies to provide a prima facie case. The Respondent may request any or all documents relied on by staff, which shall be provided within five (5) business days of the request and upon payment of the copying costs. The Respondent may request the documents to be sent by Mail, or may appear at the Commission's Sacramento office to inspect and copy the relevant records. The Commission may also make records available electronically or on its website.
- (b) The Notice of Violation shall specify that the Respondent must reply within 21 Days if they dispute the matters set forth in the Notice of Violation. The Notice of Violation shall include notice of the date, time, and location of the enforcement hearing where the matter will be heard if the Respondent fails to reply or does not dispute the allegations. The date of this hearing shall be not less than forty-five (45) Days from the date service is complete. If logistical considerations prevent specifying the precise starting time and/or address of the Commission Meeting, the Notice of Violation may state the date and city or general location provided the Respondent is provided notice at least ten (10) Days prior to the hearing of the precise location and start time.
- (c) The Notice of Violation shall be accompanied by a Statement of Defense form that substantially conforms to the content set out in Appendix B.

- (d) Personal service on a business entity may be completed in any manner that would satisfy the requirements of sections 416.10 or 416.20 of the Code of Civil Procedure. Personal service is deemed complete at the time of delivery.
- (e) In conjunction with being posted on the violating Structure, the Notice of Violation may be served by Mail that includes delivery verification. The usual mailing address, normal place of business, or the address on record where the Respondent's property tax bill is sent shall be presumed to be the correct address. Any competent member of the household may sign the delivery verification. Service by Mail is deemed complete 10 Days after mailing.
- (f) If a common Respondent or Respondents maintain multiple Structures in the same area, the Notice of Violation may be posted on a single Structure.
- (g) If an employee, agent, or person acting on behalf of the Commission attempts to post a Notice of Violation on a Structure and is prevented from doing so, or if posting the Notice of Violation on the Structure would place the employee or agent in danger, the employee or agent shall post the Notice of Violation in a visible location as close to the Structure as reasonably possible.

NOTE: Authority Cited: Sections 6224.4(a)(4), 6224.5, Public Resources Code. Reference: Sections 415.20, 416.10, 416.20, and 416.90, Code of Civil Procedure; Sections 11415.40 and 11440.20, Government Code.

**§ 3005. Stipulation of Fact; Resolution of Matter Without Hearing**

- (a) A Respondent or the Enforcement Staff may stipulate to any fact in issue. The stipulation must be in writing or made by oral statement on the record.
- (b) The Commission may resolve a matter with a stipulation, agreed settlement, or consent order, with the agreement of the Respondent, in lieu of holding a hearing. Such a resolution must be in writing or made by oral statement on the record.
- (c) The Advisory Staff may dismiss an individual Respondent or terminate an entire pending enforcement matter prior to the enforcement hearing upon discovering clear evidence that the Respondent is not liable for a violation of Public Resources Code section 6224.3.
- (d) Respondents are encouraged to contact the Enforcement Staff to determine whether a potential violation can be resolved without an enforcement hearing.

NOTE: Authority Cited: Section 6224.5, Public Resources Code; Section 11415.60, Government Code.

**§ 3006. Public Notification; Change of Date or Venue**

- (a) The Commission Meeting agenda shall include notice of the enforcement hearing.
- (b) If the date, time, or location of the Commission Meeting during which the enforcement matter will be heard changes, Commission staff shall Mail notice of the new date, time, and

place of the enforcement hearing to all Respondents at their last known address at least thirty (30) days prior to the new meeting date. If logistical considerations prevent specifying the precise starting time and/or address of the Commission Meeting, the notice may state the date and city or general location provided the Respondent is notified at least ten (10) Days prior to the hearing of the precise location and start time.

- (c) If a subsequent enforcement hearing is necessary, notice of the subsequent hearing may be given by either announcing the date, time, and place of the subsequent hearing on the record at the close of the enforcement hearing, or by Mail to all Respondents at least thirty (30) Days prior to the further enforcement hearing. If logistical considerations prevent specifying the precise starting time and/or address of the Commission Meeting, the notice may state the date and city or general location provided the Respondent is notified at least ten (10) Days prior to the hearing of the precise location and start time. Notice of a subsequent hearing will also be provided in the Commission Meeting agenda.
- (d) The Advisory Staff may postpone the enforcement hearing date for good cause provided the Respondent is notified at least forty-eight (48) hours prior to the original enforcement hearing date and receives notice of the new hearing date as required in subparagraph (b) above.

NOTE: Authority Cited: Section 6224.5, Public Resources Code. Reference: Section 11125, Government Code.

**§ 3007. Ex Parte Communication**

- (a) There shall be no communication, direct or indirect, regarding any issue in the proceeding, with the Commissioners, their alternates, the Commissioners' personal staff, or the Advisory Staff from a party or an interested person, without notice and opportunity for all parties to participate in the communication. For the purposes of this section:
  - (1) The Commissioners' personal staff includes staff of: the Office of the Lieutenant Governor, the California State Controller's Office, and the Department of Finance.
  - (2) A party includes the Respondent, their agents or representatives, and the Enforcement Staff.
- (b) Communication between Commission staff and the Commissioners or their alternates shall comply with Government Code sections 11430.10 et seq.
- (c) Communications in violation of this section shall be remedied according to Government Code sections 11430.40 and 11430.50.
- (d) Communications between the Respondent and Commission enforcement staff concerning the pending enforcement matter are not prohibited.

NOTE: Authority Cited: Section 6224.5, Public Resources Code, Sections 11430.10 et seq. Government Code.

**§ 3008. Conduct of Persons at Hearings**

- (a) The following conduct is prohibited during or near the place of an enforcement hearing:
  - (1) Refusing to take an oath or affirmation as a witness or thereafter refusing to be examined;or

- (2) disorderly or boisterous conduct; or
- (3) obstructing or interrupting the proceeding or interfering with the participants.
- (b) The Presiding Officer may exclude any persons from the hearing or premises for a violation of this section. If the person violating this section is a witness, the Presiding Officer may exclude further testimony by such person. If the person violating this section is the Respondent, the Respondent may be excluded and denied any further opportunity to present evidence.

NOTE: Authority Cited: Section 6224.5 Public Resources Code.

**§ 3009. Procedure for Contested Matters**

- (a) In the event that a Respondent responds within the 21 Day period specified in section 3004(b) above, the initial hearing date will be vacated and the following procedures apply.
- (b) The Enforcement Staff shall prepare a statement of position and Mail a copy to the Respondent and the Advisory Staff. The statement of position will set forth the evidence and argument suggesting the Respondent has violated section 6224.3 of the Public Resources Code. The Enforcement Staff's statement of position shall be Mailed to the Respondent at least thirty (30) Days after service of the Notice of Violation. Except evidence submitted with its response, all evidence and argument the Enforcement Staff wishes the Commission to consider must be submitted with the Enforcement Staff's statement of position.
- (c) The Respondent shall complete the Statement of Defense form and provide any other documents, evidence, or arguments the Respondent wishes the Commission to consider within forty-five (45) Days of the Enforcement Staff submitting its statement of position. The Enforcement Staff's statement of position will specify this deadline.
- (d) The Enforcement Staff may prepare a response to the Respondent's Statement of Defense or other evidence and arguments. The Enforcement Staff's response shall be Mailed to the Advisory Staff and Respondent at least forty-five (45) Days prior to the enforcement hearing date.
- (e) It is the policy of the Commission to avoid surprise testimony and exhibits. The Enforcement Staff and Respondent must each submit in advance of the hearing all evidence the party would like the Commission to consider. Absent a showing of good cause and lack of prejudice to the parties, the Presiding Officer may exclude material that is not submitted in accordance with these regulations. Excluded material will not be considered by the Commission.
- (f) On or before the deadlines specified above, the Enforcement Staff and Respondent shall submit:
  - (1) All evidence the party would like the Commission to consider. Evidence already in the Commission's files may be submitted by reference as long as the location of the evidence is clearly identified.
  - (2) All legal and technical arguments or analysis.
  - (3) The name of each witness (including Commission staff) whom the party intends to call at the hearing, the subject(s) that will be covered by each witness, and the estimated

time required by each witness to present their testimony. Witness testimony at the hearing may not exceed the scope of previously-submitted written material.

- (4) The qualifications of each expert witness, if any.
- (5) The Enforcement Staff may submit evidence of any type stated above with the Enforcement Staff's response if such evidence responds to arguments or evidence raised in the Respondent's arguments or evidence.
- (g) The Advisory Staff shall review the timely submitted evidence and argument and prepare a recommended decision and order. The recommended decision and order shall be in writing and shall include:
  - (1) a copy of the timely submitted arguments and evidence;
  - (2) a brief summary of (A) any background to the alleged violation, (B) the allegations made by the Enforcement Staff, (C) a list of all allegations either admitted or not contested by the Respondent, (D) any timely submitted defenses and mitigating factors asserted by Respondent, and (E) any argument or evidence in rebuttal to matters raised by the Respondent;
  - (3) a summary and analysis of all unresolved issues;
  - (4) a recommended finding of fact;
  - (5) the amount of any recommended civil penalty, along with any subsequent increase in the amount;
  - (6) the name of the Respondent required to pay the civil penalty;
  - (7) the date on which the civil penalty begins;
  - (8) the recommended text of any Commission orders appropriate under the circumstances, including an injunction to cease and desist conduct, an order to surrender possession of State Land, an order to remove Structures, or an order to restore State Lands.
  - (9) The date and location of the Commission meeting whereat the Respondent may appear and be heard. If logistical considerations prevent specifying the precise starting time and/or address of the Commission Meeting, the recommended decision may state the date and city or general location provided the Respondent is notified at least ten (10) Days prior to the hearing of the precise location and start time.
- (h) At least thirty (30) Days prior to the enforcement hearing, the Advisory shall Mail the recommended enforcement order to the Respondent, the Presiding Officer, and other members of the Commission.

NOTE: Authority Cited: Sections 6224.5 Public Resources Code.

**§ 3010. Admissibility of Evidence**

- (a) Enforcement hearings will be conducted in accordance with the provisions and rules of evidence set forth in Government Code section 11513. Hearsay evidence is admissible subject to the provisions of Government Code section 11513.
- (b) The Presiding Officer may exclude unduly repetitious or irrelevant evidence.

NOTE: Authority Cited: Section 11513, Government Code; Section 6224.5, Public Resources Code.

**§ 3011. Failure of Respondent or Witness to Appear at Enforcement Hearing**

- (a) Failure of a Respondent or witness to attend the properly noticed enforcement hearing constitutes a waiver of the opportunity to be heard at such hearing.
- (b) If the Respondent fails to appear after being served, the Commission may issue a decision and order, and the Commission may impose a fine.

NOTE: Authority Cited: Sections 6224.4(c), 6224.5 Public Resources Code; Section 11415.40 Government Code. Reference: Section 11506, Government Code.

**§ 3012. Enforcement Hearing Procedure**

Enforcement hearings shall proceed in the following manner:

- (a) The Commission Chairperson or acting Chairperson shall serve as the Presiding Officer. The Presiding Officer shall announce the matter and ask all Respondents and/or their authorized agents present to identify themselves for the record.
- (b) The Presiding Officer may impose time limits for presentations by the Enforcement Staff, the Respondent, and the public at the hearing. The Presiding Officer may administer oaths to all witnesses.
- (c) The Enforcement Staff shall summarize the law, facts, and evidence supporting staff's position. The Enforcement Staff may present their position on the recommended enforcement order.
- (d) Each Respondent shall summarize its positions on the matters relevant to the alleged violation or recommended decision and order with particular attention to those issues where an actual controversy exists between the staff and the Respondents.
- (e) Other speakers may speak concerning the matter.
- (f) The Presiding Officer and Commissioners may ask questions at any time during the hearing or deliberations.
- (g) The Commission may postpone or continue an enforcement hearing if, in the Commission's sole and absolute discretion, circumstances or fairness so dictate.
- (h) The Presiding Officer shall close the public hearing after the Enforcement Staff, the Respondent, and any additional speakers have completed their presentations.

NOTE: Authority Cited: Section 6224.5, Public Resources Code.

**§ 3013. Written Decision and Order**

- (a) After the enforcement hearing has concluded, the Commission shall render a decision as to whether or not the Respondent is liable for a violation of Section 6224.3 of the Public Resources Code, the appropriate penalty, and any further orders appropriate under the circumstances.

- (b) The Commission may:
  - (1) Adopt the recommended decision and order;
  - (2) Modify the recommended decision and order; or
  - (3) Direct the Advisory Staff to draft a decision and order on terms dictated by the Commission.
- (c) Once adopted by vote, the Commission's decision is final. The Commission may adopt a decision by majority vote, pursuant to the Commission's usual voting procedures. The decision and final order shall include notice that the Respondent may file a petition for writ of mandate with the superior court for review of the order pursuant to section 1094.5 of the Code of Civil Procedure within sixty (60) Days after the decision has become final.
- (d) The Respondent shall be provided a copy of the decision and order. The decision and order may be provided to the Respondent in person at the conclusion of the hearing or by Mail.

NOTE: Authority Cited: Sections 6224.3, 6224.4, and 6224.5, Public Resources Code; Section 11425.50, Government Code.

**§ 3014. Penalty**

- (a) The civil penalty imposed will be based on the per diem method of 6224.3(b) rather than the formula based on the market rate rental of the property unless the maximum penalty of \$1,000 a Day would represent a discount in rent. If the market rate rental of the property exceeds \$365,000 annually, the Commission may impose a monthly penalty of up to 13.33% of the annual rent, which represents one twelfth (1/12) of one hundred sixty percent (160%) of the normal rent, rounded down.
- (b) For properties where the market rental rate is below \$365,000 annually, the fine imposed shall be:
  - (1) Five hundred dollars (\$500) per Day for the first one hundred twenty (120) Days.
  - (2) One thousand dollars (\$1,000) per Day starting on the one hundred twenty-first (121<sup>st</sup>) Day.
- (c) The Commission shall consider the factors specified in Section 6224.3(c) of the Public Resources Code before imposing the penalties specified above, and may modify the penalties based on such factors.
- (d) A penalty under this Article shall be imposed from the first Day after the decision becomes final as defined in regulation 3013, subdivision (c) and shall continue until the violation is remedied. The Commission may modify the penalty to a reduced amount for a set period of time.
- (e) A penalty under this Article may be tolled for a reasonable time while Commission staff process an application for Commission Authorization. The penalty may be tolled from the date Commission staff receives a completed application and all processing fees until a valid Commission Authorization exists, or as otherwise provided in the decision and order. If a civil penalty is tolled under this subparagraph, then the following conditions will apply:

- (1) The Respondent must diligently work toward completion of the application process and execute a Commission Authorization.
  - (2) The Commission may impose a limit on how long the penalty may be tolled. The limit shall be based on the circumstances of the case. The Advisory Staff may extend the tolling on request if it finds that a longer period is appropriate. Such circumstances include unforeseen complexities in the lease, environmental review, significant delays caused by Commission staff, or unavoidable circumstances. A penalty authorized by this Article may authorize the Advisory Staff to make such findings.
  - (3) If a penalty has been tolled, and the Respondent fails to diligently complete the application process, or does not execute a valid Commission Authorization for the Structures specified in the decision and order within the tolling period, or any extensions thereto, the penalty will resume as if it had not been tolled, including any penalties that would have accrued during the tolling period.
- (f) A penalty under this Article may be tolled for a reasonable time for the Respondent to remove all Structures from State Land. The maximum duration the penalty may be tolled shall be determined by the Commission based on the circumstances of the case. If the Respondent fails to diligently pursue removal, or fails to remove the Structures in the allotted period, the penalty will resume as if it had not been tolled, including any penalties that would have accrued during the tolling period.
- (g) A penalty under this Article shall terminate when:
- (1) the Structure(s) specified in the decision and order are removed from State Lands, and all remnants or debris therefrom have been removed; or
  - (2) the Respondent obtains Commission Authorization for all Structures specified in the decision and order.
- (h) The Commission may, in its sole and absolute discretion, waive some or all of the penalties imposed under this Article on the Respondent's remedy of the violation.

NOTE: Authority Cited: Sections 6224.3, 6224.4, and 6224.5, Public Resources Code.

### **§ 3015. Enforcement Record**

The record of an enforcement hearing shall consist of the following unless they do not exist:

- (a) the Notice of Violation and the Enforcement Staff's statement of position including all documents referred to in the documents;
- (b) the Advisory Staff's recommended decision and order, including all documents referred to therein;
- (c) the Respondent's Statement of Defense form and other timely submitted evidence and argument;

- (d) Evidence and argument submitted by the Respondent but excluded from the record, along with the reasons why such evidence was excluded;
- (e) minutes of all Commission enforcement hearings on the matter or a transcript of the proceedings;
- (f) evidence submitted by the Respondent, or presented by Commission staff at the enforcement hearing if admitted by the Presiding Officer and not already included above;
- (g) the final decision and order approved by the Commission;
- (h) any statutes, regulations, or other legal authorities or precedents relied on by the Commission or the Respondent; and
- (i) any other information or documents considered or relied on by the Commission in the matter.

NOTE: Authority Cited: Section 6224.5 Public Resources Code.

**§ 3016. Precedent Decisions.**

The Commission may designate a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur as a precedent decision.

NOTE: Authority Cited: Sections 6108 and 6224.5 Public Resources Code, Section 11425.60, Government Code.

EXHIBIT A

NOTICE OF VIOLATION

# NOTICE OF VIOLATION

The California State Lands Commission will hold an enforcement hearing to determine whether to impose administrative civil penalties and whether to issue an order for removal of structures

against

[Respondent's Name]

[general description of location and structures]

The enforcement hearing has been scheduled before the California State Lands Commission on:

[Date] at [City]

**If you dispute the allegations, you must respond to this notice by [date].** The hearing date above will be postponed and you will be given an opportunity to present evidence in your defense.

**If you do not respond to this notice,** the California State Lands Commission may issue a civil penalty and/or order to remove structures from state land without your having an opportunity to contest the charges or to introduce evidence in your defense.

To minimize or avoid future penalties you should immediately contact the staff identified below to bring your structures into compliance.

## Purpose of Hearing

The California State Lands Commission (Commission) is issuing this Notice of Violation (Notice), along with the enclosed Statement of Defense form because Commission staff believes you may be responsible for maintaining a structure on land owned by the state and under Commission jurisdiction without appropriate authorization in violation of California Public Resources Code (PRC) § 6224.3.

At the enforcement hearing, the Commission will consider the evidence and determine: 1) whether you are liable for maintaining unauthorized structures on state land; 2) whether a civil penalty and/or order for removal is appropriate; and 3) the amount and conditions of the civil penalty.

## Civil Penalty

The Commission may impose a civil penalty of up to one thousand dollars (\$1,000.00) per day, or 160% of the market rent where the rental value of the property would exceed \$360,000 per year, while the violation continues. (Public Resources Code, § 6224.3(b)). The

# NOTICE OF VIOLATION

Commission may also issue an injunction against your continued unauthorized occupation of state land or order the removal of the violating structures. **The Commission may rule on the evidence before it and impose a civil penalty and order even if you fail to respond to this Notice or appear at the enforcement hearing.** You may reduce or avoid penalties by promptly removing any unauthorized structures from state land and submitting proof of restoring state land to Commission staff, or by bringing all structures under lease. The Commission reserves sole and absolute discretion whether to authorize any proposed use of state land.

## Hearing Process

The enforcement hearing is an informal administrative hearing before the Commission. The Commissioners are the Lieutenant Governor, the State Controller, and the Director of the Department of Finance. The Commissioners or their designated alternates preside over the hearings as the hearing officers. A copy of the regulations governing Commission enforcement hearings is included with this Notice for your reference.

**If you do not respond to this Notice by the deadline specified above,** the scheduled meeting will proceed. If the exact address and start time of the enforcement hearing is not specified above, you will be notified at least ten (10) days prior to the meeting. The Commission Enforcement Staff will present its case to the Commissioners. If the Commissioners find the evidence supports a ruling against you, the Commissioners may adopt a ruling, impose a penalty, and issue an order against you. You will be provided with a written copy of the decision.

**You may resolve this matter informally without the need for a hearing and the associated penalties.** If you respond to the contact person identified below before the deadline and state that you wish to resolve the matter, Commission staff may be able to postpone or dismiss this entire action. If you act promptly to either bring the structure under lease or remove it, you will minimize any potential fines and may have the entire proceeding dismissed. You are encouraged to discuss your options with Commission staff.

**If you dispute the allegations, contact the Commission Enforcement Staff identified below before [date].** The hearing date above will be postponed so that you can submit information in your defense. The Commission Enforcement Staff will prepare a statement of position which is a more detailed analysis of the information enclosed with this Notice. You will receive the statement of position between 30 and 180 days of receiving this Notice.

**Once you receive the statement of position from the Enforcement Staff, you have forty-five (45) days to respond.** The statement of position will specify the exact deadline. You may submit any evidence or argument that disproves the allegations, relates to whether you are liable for maintaining unauthorized structures on state land, or might reduce the penalties associated therewith. The enclosed Statement of Defense form is designed to help you focus your evidence and arguments toward the relevant issues. You may use a separate paper and enclose any other evidence, but you are strongly advised to respond to each section in the

# NOTICE OF VIOLATION

Statement of Defense form. The summary of allegations in this Notice is designed to help you begin preparing your defense. **You must submit all evidence and argument in your defense by the date your Statement of Defense is due. Evidence submitted after the deadline may be excluded from consideration.**

The Commission Enforcement Staff may prepare a response to your submitted argument and evidence. This response document is optional. If the Enforcement Staff prepares a response, the response may include new information or evidence limited in scope to responding to your arguments and evidence. Otherwise, the Enforcement Staff is limited to evidence presented with its statement of position. The Enforcement Staff must submit their response at least forty-five (45) days before the enforcement hearing. You will be provided with this document if it produced.

At least thirty (30) days prior to the enforcement hearing, the Advisory Staff will prepare a proposed decision and order. This document will summarize and analyze the argument and evidence submitted by both sides. The proposed decision and order functions like a tentative ruling in a court case by making proposed findings of fact and recommending a specific penalty and any associated orders. This document will also specify the date and location of your hearing.

Your hearing will occur at a regularly scheduled public Commission meeting. Although the date and general city of the Commission's meetings are available in advance, the Commission's meetings can vary greatly in length and the number of persons attending. Accordingly, the specific venue and start time may be adjusted. If the exact address and start time of the Commission's meeting is not specified in the recommended decision and order, you will be notified at least ten (10) days prior to the meeting. You should be prepared for a 9:00 a.m. start time, and set aside the entire day for the hearing. The Commission may address other business before your enforcement hearing, so you should be prepared to wait until your matter is called.

At the hearing, each side will be limited to presenting the argument and evidence already submitted. Your presentation should focus on the law or facts in controversy. Once each side has concluded their presentations, the Commissioners may ask questions and issue a ruling. The ruling may adopt or modify the proposed decision and order. Once the Commission issues a decision and votes to adopt it, the ruling is final. You may appeal this decision to a civil court of competent jurisdiction within sixty (60) days pursuant to Public Resources Code section 6224(e).

## Obtaining Documents and Evidence

The evidence this Notice refers to is available at the Commission's Sacramento office. You can arrange to review these materials at the Commission's Sacramento office, have copies made at your expense, or both by contacting then Enforcement Staff specified below. Documents shall be provided within five (5) days of your request and upon paying all copying

# NOTICE OF VIOLATION

costs. Alternately, you may enquire whether the documents are available electronically, including the location on the Commission's website.

**Any documents served after this Notice will be delivered by U.S. mail or similar commercial carrier to the location where your property tax bill is sent unless you specify otherwise.** When you respond to this Notice, you may specify the mailing address and/or provide information for electronic delivery of documents via electronic mail or other means. You are strongly encouraged to provide an electronic mail address as this avoids postal delays and ensures you have more time to respond to the allegations.

## Separation of Function

The Commissioners serve as the decision makers in this matter. The Advisory Staff assists the Commissioners and is composed of the Executive Officer and his or her designees. The Enforcement Staff represents Commission staff before the Commission and is composed of the Chief of the Commission's Land Management Division and his or designees.

**In order to maintain separation of functions, the Enforcement Staff and the Respondent (you) are prohibited from communicating with the Commission, the Commissioner's alternates, or the Advisory Staff regarding any substantive matter in this proceeding.** See section 3007 of the enclosed regulations for more information.

## Contact Information

Enforcement Staff

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone Number \_\_\_\_\_

Email \_\_\_\_\_

# NOTICE OF VIOLATION

## Nature of the Violation

1. Person or persons believed responsible for violation:

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2. Location of State Land and basis for Commission Jurisdiction over the land in question:

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3. Basis for determining the boundary of State Land:

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4. Description of specific structure(s) in violation:

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5. Duration of the violation (if pertinent and known):

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6. Dates of previous attempts by Commission staff to contact persons believed to be responsible for violation (if pertinent and known):

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# NOTICE OF VIOLATION

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7. Summary of pertinent information and documentation currently known to Commission staff with reference to supporting evidence contained in the enforcement file. (You may contact the Commission staff member listed above to arrange review of the file maintained at the Commission's Sacramento office):

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8. If Commission staff is proposing a modification to the penalty described in Title 2, California Code of Regulations, Section 3014 based on the factors described in Public Resources Code § 6224.3(c), then the facts cited and factors relied on are:

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9. Any other statement or information that Commission staff believes is either pertinent to the alleged violation or important to a full understanding of the alleged violation:

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EXHIBIT B

STATEMENT OF DEFENSE

# STATEMENT OF DEFENSE

ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY BE INITIATED AGAINST YOU. IF THAT OCCURS, YOUR STATEMENTS TO COMMISSION STAFF AND YOUR RESPONSES ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU. YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT COMMISSION STAFF.

This form is enclosed with a Notice of Violation (Notice). The Notice indicates that you may be liable for an unauthorized structure or structures on state-owned land under Commission jurisdiction. The Notice summarizes the alleged offense, the evidence supporting the allegation, and other pertinent information concerning the possible violation.

If you have responded by the deadline on the enclosed Notice and wish to dispute the allegations, you should complete this form. **This form, along with any evidence you wish the Commission to consider, is due forty-five (45) days after the Enforcement Staff submits its statement of position.** The statement of position will specify the applicable deadline. You must submit any response to the alleged facts contained in the Notice, raise any defenses that you believe apply, request any cross-examination that you believe necessary, and inform Commission staff of all facts that you believe may exonerate you of any legal responsibility for the possible violation or may mitigate any civil penalties imposed on or before the deadline provided on the statement of position. **Evidence not timely submitted may not be considered by the Commission.**

The completed Statement of Defense form requires you to enclose copies of all written documents (such as letters, photographs, maps, drawings, etc.) and written declarations under penalty of perjury that you want the Commission to consider as part of the enforcement hearing.

If you want to cross-examine any person on whose testimony Commission staff has relied in the violation report, you must complete paragraph seven (7) of this Statement of Defense form. This paragraph requires you to set out: (1) the name(s) of the person(s) you want to cross-examine, (2) the area of knowledge about which you want to cross-examine the person(s), including a specific reference to the fact or information you dispute, (3) references to any documents about which you want to cross-examine the person(s), (4) the information that you believe can be elicited by cross-examination, and (5) the reason why you believe this information cannot be presented by declaration or other document.

Instructions: In order to decide whether you are liable for a violation of Public Resources Code 6224.3, the Commission will consider: (1) whether the structure in question is on state-owned land under Commission jurisdiction; (2) whether you installed, maintain, or use the structure in question; (3) whether you have authorization from the Commission for the structure in question; and (4) whether an exemption applies. The most effective defense will address these four

# STATEMENT OF DEFENSE

elements. Use the paragraphs below to organize your responses. You may use additional paper, but please number the responses according to the paragraphs below.

If you have any questions, please contact as soon as possible \_\_\_\_\_ of the Commission Enforcement Staff at telephone number (916) 574-1900. Return the completed form with any additional pages to:

California State Lands Commission  
Attn: Enforcement Staff  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

1. Facts or allegations contained in the Notice of Violation that you admit with specific reference to the paragraph number in the Notice of Violation.

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2. Facts or allegations contained in the Notice of Violation that you deny with specific reference to paragraph number in the Notice of Violation.

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3. Facts or allegations contained in the Notice of Violation of which you have no personal knowledge with specific reference to the paragraph number in the Notice of Violation.

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4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation. Be as specific as you can. If you know of any documents, photographs, maps, letters, or other evidence that you believe are relevant, please identify it by name, date, type, and any other identifying information and provide the original or a copy if you can.

# STATEMENT OF DEFENSE

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5. Any other information, statement, etc. that you want to make.

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6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this statement to support your answers or that you want to be made part of the administrative record for this enforcement proceeding. Please list in chronological order by date, author, and title and enclose a copy with this completed form.

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7. The name of any person(s) whose declaration under penalty of perjury was listed in the Notice of Violation as being part of Commission staff's evidence who you want to cross-examine, all documents about which you want to cross-examine the person(s), a description of the area of knowledge about which you want to cross-examine the person(s) including specific reference to the facts or information you dispute, the information that the you hope to elicit in cross-examination, and the reason(s) why some other method of providing this information is unsatisfactory.

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