



# BOARDWALK ONE AND LUCKY DRIVE FREQUENTLY ASKED QUESTIONS

## **What is the State Lands Commission?**

The California State Lands Commission (Commission) was created by the California Legislature in 1938 as an independent body composed of three members – the Lieutenant Governor, the State Controller and the Director of Finance. While the Commission has some regulatory functions, principally it is a land and resource management agency, not a regulatory agency. The Commission and its staff manage the State's sovereign public trust lands, which are lands that became state property when California joined the Union on September 9, 1850 and are held by the State in trust for the people. The Commission and its staff manage these lands consistent with the Public Trust Doctrine and in the best interest of the state. The Public Trust Doctrine is a common law doctrine that ensures the State's sovereign lands are used for trust-consistent uses such as water-related commerce, navigation, fisheries, recreation, and open space, as well as public access to these lands and resources. Commission staff negotiates leases and contracts for the Commission to consider involving the use of the State's property and resources.

## **What is the Commission's Jurisdiction?**

The Commission's jurisdiction includes approximately 120 rivers and sloughs, 40 lakes, and tide and submerged lands along more than 1000 miles of coastline underlying the Pacific Ocean out 3 nautical miles. Tidelands are those sovereign lands between the ordinary high water mark and the ordinary low water mark, prior to any fill or artificial accretion. Submerged lands are sovereign lands below the ordinary low water mark. Altogether, the Commission's jurisdiction encompasses approximately 4 million acres.

## **Who owns Corte Madera Creek?**

In general, the State's sovereign ownership interest in the bed of Corte Madera Creek (Creek) is waterward of the ordinary high water mark which, prior to any fill or accretion, is the current Mean High Tide Line (MHTL). Some portions of the Creek are, however, subject to actions affecting this ownership, including a land exchange agreement, court judgements, and the sale of Board of Tide Land Commissioners Lots (BTLC Lots). Portions of the north side of the Creek were sold as BTLC Lots and sovereign ownership interest extends to the southerly line of these sold BTLC Lots. Some portions of the Boardwalk One area are subject to AD 111, which is a judgement establishing the boundary between state-owned lands and uplands pursuant to *People v. Copeland* – Case No. 14851 of Superior Court in and for the County of Marin. Some of the westerly portion of the Lucky Drive area is subject to SLL 24, which is a land exchange agreement between Schultz Construction Company and the State.

## **Why is the Commission asking me to enter into a lease?**

The California Constitution and state law require the Commission to charge rent for any private recreational or commercial use of its property, whether that use or occupancy is on the land, under the land, or over the land. Any extended occupancy or use of sovereign land requires authorization from the Commission. Public and private entities may apply to the Commission to lease State lands. The Commission typically issues 10-year leases for docks, buoys, and landings that extend out, into, or over the State lands and do not interfere with Public Trust needs.

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**Why am I being asked to enter into a lease now?**

Under state law, all docks, decks, and other improvements on or over State land should already be under lease. Commission staff is engaged in ongoing efforts to identify structures built on or over the approximately 4 million acres of sovereign tide and submerged lands under its jurisdiction throughout the State. Commission staff verifies the State's ownership, locates the owners of the structures, and works with the owners of the structures to bring them under lease throughout the State. Some of the improvements at Boardwalk One and Lucky Drive have been under lease with the Commission since the 1980's.

**Why are structures at Boardwalk One and Lucky Drive subject to annual rent?**

Prior to January 1, 2012, Public Resources Code section 6503.5 allowed rent-free use of sovereign land by certain private parties for recreational docks. Effective January 1, 2012, Chapter 585, Statutes of 2011 (SB 152, Pavley) repealed and replaced section 6503.5. The new section 6503.5 states that the Commission "shall charge rent for a private recreational pier constructed on state lands." The law allows an exception for rent-free leases in effect prior to July 1, 2011 for the term of that lease. In those cases, no rent shall be charged until the lease expires or is otherwise terminated. There is no rent free provision for residential uses such as decks and other non-water dependent uses. Therefore, rent must be charged for a new lease.

**How is rent calculated?**

Section 6503.5 requires that rent be "based on local conditions and local fair annual rental values." Rents for docks, decks, and residential structures in the Corte Madera Creek area are based on benchmark rental rates. Rent for docks may include an impact area and is based on a recreational benchmark for San Francisco Bay, which is currently set at \$0.198 per square foot. Rent for decks and other non-water dependent uses will be based on a different (Category 2) benchmark currently set at \$1.35 per square foot. The benchmark associated with enclosed residential structures is currently \$5.40 per square foot.

**May the Commission waive rent?**

The Commission cannot waive rent, as that would violate section 6503.5. Waiving rent would also constitute a gift of public funds, in violation of article XVI, section 6 of the California Constitution.

**How is the size of lease area determined?**

In 2017, Commission staff commissioned an aerial survey to locate the MHTL as of the date of the survey. Using this survey, Commission staff was able to delineate the areas of encroachment onto on the State's land below the MHTL. The lease area covers the area of encroachment and the impact area if applicable.

**What if I don't want to enter into a lease with the Commission?**

The Commission understands that some homeowners may have been unaware that their structures encroach onto sovereign land owned by the State and that they are required to enter into a lease and compensate the State for their occupation of that land. The Commission has been trying to increase public awareness of the laws relating to the leasing of the State's lands, including the development of these frequently asked questions and by providing additional resources on the Commission's website [www.slc.ca.gov](http://www.slc.ca.gov). If a lease is not obtained, the encroaching structure is in trespass. While the Commission has on occasion been forced to take action to evict trespassers or lessees who are delinquent on their rent payments, it does so only after all other approaches to resolve the trespass cooperatively have failed. An alternative to coming under lease with the Commission is that owners can remove those portions of their structures extending out over the State's sovereign land. A lease and rental payment would not be required if the structures are removed.

**If you have any questions, please contact Vicki Caldwell at (916) 574-1894 or by email at [vicki.caldwell@slc.ca.gov](mailto:vicki.caldwell@slc.ca.gov).**