

66. COMMISSION PARTICIPATION IN CASE OF DIETZ v. KING, SAN FRANCISCO CASE NO. 22703, STATE SUPREME COURT, AND GION v. CITY OF SANTA CRUZ, SAN FRANCISCO CASE NO. 22560, STATE SUPREME COURT, TO PROTECT PUBLIC INTEREST IN BEACH ACCESS - W-503.613.

During consideration of Calendar Item No. 64 attached, the Executive Officer pointed out that long public use of a road leading to public beaches constituted an implied right-of-way to the public for walking, driving vehicles, etc., and that an attempt was being made to deny these rights to the public.

Assistant Attorney General Jay L. Shavelson reported that there are contrary precedents based on previous cases involving the issue. The Attorney General feels that this is a matter of State-wide public interest, as under the State Constitution, no person may bar access to public waters. The Attorney General is filing Amicus Curiae Briefs in both cases. In the Dietz case, the right-of-way has been used for possibly over a hundred years for access to the public beach. In 1965 the current owners hired a contractor to make the road unusable, and to make the beach inaccessible, although an irrevocable implied right of public use and an ancillary right of parking may have been created. In the Gion case, efforts have been made by the City of Santa Cruz to preserve public access to a conveyed right-of-way which leads to beach area. The Trial Court ruled in favor of the City, and said there was an implied right (contrary to the finding in the Dietz case).

Upon motion duly made and carried,

THE COMMISSION AUTHORIZED AND REQUESTED THE ATTORNEY GENERAL TO REPRESENT THE INTEREST OF THE PUBLIC UNDER JURISDICTION OF THE COMMISSION WITH RESPECT TO THE AMICUS CURIAE BRIEFS AND SUCH OTHER LEGAL ACTION OR PROCEDURES AS MAY BE APPROPRIATE AND NECESSARY TO PROTECT THE PUBLIC INTEREST IN THE CASES OF DIETZ v. KING, SAN FRANCISCO CASE NO. 22703, IN THE STATE SUPREME COURT, AND GION v. CITY OF SANTA CRUZ, SAN FRANCISCO CASE NO. 22560, IN THE STATE SUPREME COURT.

Attachment

Calendar Item 64 (1 page)

64.

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The California Supreme Court has granted a hearing in the case of Dietz v. King, San Francisco Case No. 22703. Although the State is not a party, the case involves a public right-of-way for ingress and egress to the State-owned tidelands and submerged lands in the Pacific Ocean at Navarro Beach near the mouth of the Navarro River, Mendocino County.

The Supreme Court also has granted a hearing in the case of Gion v. City of Santa Cruz, San Francisco Case No. 22560, which involves similar issues relating to customary public access to tidelands and submerged lands in Santa Cruz County.

The Attorney General's Office is making every effort to file an Amicus Curiae brief in each of these cases on behalf of itself, and, if requested, on behalf of the State Lands Commission. The cases appear to affect the State's interest in lands under Commission jurisdiction; therefore, the Division is of the view that the Attorney General should be requested to represent the Commission in these cases.

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE AND REQUEST THE ATTORNEY GENERAL TO REPRESENT THE INTEREST OF THE PUBLIC UNDER JURISDICTION OF THE COMMISSION WITH RESPECT TO THE AMICUS CURIAE BRIEFS AND SUCH OTHER LEGAL ACTION OR PROCEDURES AS MAY BE APPROPRIATE AND NECESSARY TO PROTECT THE PUBLIC INTEREST IN THE CASES OF DIETZ v. KING, SAN FRANCISCO CASE NO. 22703, IN THE STATE SUPREME COURT, AND GION v. CITY OF SANTA CRUZ, SAN FRANCISCO CASE NO. 22560, IN THE STATE SUPREME COURT.