

26. FINDINGS AND AUTHORIZATIONS FOR EXCHANGE OF LANDS IN PETALUMA CREEK WITH CITY OF PETALUMA, SONOMA COUNTY, S.L.L. 44; EXECUTION OF AGREEMENT BETWEEN STATE LANDS COMMISSION ON BEHALF OF THE STATE, THE CITY OF PETALUMA, AND THE McNEAR CO.; EXECUTION OF PATENTS TO CITY OF PETALUMA; ACCEPTANCE OF CONVEYANCES FROM CITY OF PETALUMA; EXECUTION OF AMENDMENT OF PERMIT NO. P.R.C. 4048.9 WITH THE CITY OF PETALUMA; NECESSARY ACTIONS BY EXECUTIVE OFFICER AND ATTORNEY GENERAL TO IMPLEMENT THE EXCHANGE AGREEMENT - S-8350.

After consideration of Calendar Item 13 attached, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION:

1. FINDS THAT THE EXCHANGE OF LANDS SET FORTH IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2 BELOW IS IN THE BEST INTERESTS OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION, FLOOD CONTROL PROTECTION, AND TO ENHANCE THE CONFIGURATION OF THE SHORE LINE OF PETALUMA CREEK FOR THE IMPROVEMENT OF THE WATERS THEREOF AND OF THE UPLANDS, AND THAT THE LANDS TO BE EXCHANGED ARE OF EQUAL VALUE.
2. AUTHORIZES THE EXECUTION OF THE AGREEMENT BETWEEN THE STATE LANDS COMMISSION ON BEHALF OF THE STATE, THE CITY OF PETALUMA, AND THE McNEAR CO. WHICH IS ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF.
3. AUTHORIZES THE EXECUTION OF PATENTS TO SAID CITY WITHOUT THE RESERVATION OF MINERAL INTERESTS OF PARCELS "2A", AND "2B" DESCRIBED IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE, PURSUANT TO THE TERMS OF SAID AGREEMENT.
4. AUTHORIZES THE ACCEPTANCE OF CONVEYANCES FROM SAID CITY TO THE STATE OF PARCELS "1" AND "3" INCLUDING MINERAL RIGHTS DESCRIBED IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE, PURSUANT TO THE TERMS OF SAID AGREEMENT.
5. FINDS THAT UPON THE DELIVERY OF THE PATENTS TO THE CITY AS SET FORTH IN PARAGRAPHS 2 AND 3 ABOVE, PARCELS "2A" AND "2B" HAVE BEEN IMPROVED, FILLED, AND RECLAIMED AND HAVE THEREBY BEEN EXCLUDED FROM THE PUBLIC CHANNELS AND ARE NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING, AND ARE NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS AND THEREFORE SHALL THEN BE FREED FROM THE PUBLIC TRUST FOR NAVIGATION AND FISHING.
6. AUTHORIZES THE EXECUTION OF AN AMENDMENT OF PERMIT NO. P.R.C. 4048.9 WITH THE CITY TO INCLUDE ALL OF PARCEL "3" THEREIN FOR BOAT-LAUNCHING FACILITIES AND APPURTENANCES THERETO, FOR A TERM OF 30 YEARS, IN CONSIDERATION OF THE PUBLIC BENEFIT, AS MORE SPECIFICALLY PROVIDED IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE.
7. AUTHORIZES THE EXECUTIVE OFFICER AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL NECESSARY ACTIONS TO IMPLEMENT THE AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE, INCLUDING BUT NOT LIMITED TO LEGAL PROCEEDINGS TO APPROVE OR CONFIRM THIS EXCHANGE.

Attachment

Calendar Item 13 (3 pages)

13.

EXCHANGE OF LANDS IN PETALUMA CREEK WITH CITY OF PETALUMA,
SONOMA COUNTY, S.L.L. 44 - S-8350 (AND AMENDMENT OF PERMIT
NO. P.R.C. 4048.9)

Petaluma Creek, in the area affected by the subject transaction, which is located in the City of Petaluma, Sonoma County, was tidal and navigable in character at the time of the State's admission to the Union. In its natural state, the creek followed a tortuous course, but over the years has been straightened and realigned by the United States Army Corps of Engineers. In the course of this work certain portions of the creek were cut off and abandoned as a part of the waterway. In this instance, the original course of the creek (river) is shown on map designated as Exhibit "A" on file in the office of the Commission and incorporated herein by reference. The oxbows (or loops) through Parcels "2A", "2B" and "3" were cut off from the creek by the Corps of Engineers dredging the area shown as "cut-off D" on Exhibit "A", and present conditions are seen from an examination of the vicinity map in the lower left-hand corner of the exhibit. Due to the various positions of the creek and subsequent activities such as fill, there is considerable doubt, uncertainty, and dispute with abutting owners as to the nature and extent of the State's ownership in the abandoned portions of the creek bed.

Subject transaction will recognize the State's claims to the portions of the abandoned creek affected by this agreement, and will provide for the aggregation of the State's ownership in this area by exchanging the State's ownership, which is narrow, tortuous, and without public access, for a consolidated parcel of property with access on which the City has developed a public boating marina in contemplation of the State acquiring title to the lands now occupied by said marina. The lands affected by this exchange are shown as Parcels 1, 2A, 2B and 3 on Exhibit "A" attached hereto. The details of the transaction are more fully set forth in the agreement to be executed by the State, the City of Petaluma, and The McNear Co. Said agreement is on file in the office of the State Lands Commission and by reference is made a part hereof. The pertinent portions of said agreement are summarized below:

Parcel 1 lies wholly or substantially within the artificially cut waterway maintained by the United States Corps of Engineers. The contention has been made that it is not a part of the natural creek bed.

Within Parcels 2A and 2B is the former bed of Petaluma Creek that will be exchanged by the State. Said former creek channel has been substantially improved, filled, reclaimed, and cut from said creek. As a result, it has been excluded from the public channel and is no longer used or susceptible of being used for navigation and fisheries.

Parcel 3 consists of lands surrounding a cut-off oxbow of the creek as well as the oxbow itself. (This former portion of the creek has previously been leased by the City from the Commission, pursuant to permit No. P.R.C. 4048.9.)

CALENDAR ITEM 13. (CONTD.)

The State, by patent, will quitclaim to the City of Petaluma all of the portions of Petaluma Creek within Parcels 2A and 2B including mineral rights, in exchange for receiving Parcels 1 and 3 including mineral rights thereto from the City. In addition, the City will provide the State with a right-of-way for ingress and egress to Parcel 3.

As a part of this agreement and after the State receives title to all of Parcel 3, the present permit (P.R.C. 4048.9) of the Commission to the City will be amended to include all of Parcel 3 within the leased premises for boat-launching facilities and appurtenances thereto, in consideration of the public benefit, for a term of 30 years.

The City has obtained title to Parcel 3, with the exception of the former portion of the creek, and prior to the accomplishment of the exchange will obtain title to Parcel 1 from The McNear Co., present record owner thereof. The McNear Co. is the owner of Parcel 2B, with the exception of the former portion of the creek, and as a party to the agreement has consented to the State's conveyance to the City.

The exchange is to be accomplished pursuant to the provisions of Section 6307 of the Public Resources Code.

The lands being exchanged have been appraised by the Division, and it has been determined that Parcels 1 and 3 (exclusive of the State's existing claims to portions of Parcel 3) are of equal value to the portions of Parcels 2A and 2B claimed by the State.

This exchange will constitute an improvement and enhancement of the rights of navigation and fishing, and will not interfere with said rights.

For the reasons stated above, it is the opinion of the Division that this exchange is in the best interests of the parties, for the improvement of navigation, aid in reclamation, flood control protection, and for the enhancement of the configuration of the shore line for the improvement of the water and upland for public access and to make the boundaries certain.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE EXCHANGE OF LANDS SET FORTH IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2 BELOW IS IN THE BEST INTERESTS OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION, FLOOD CONTROL PROTECTION, AND TO ENHANCE THE CONFIGURATION OF THE SHORE LINE OF PETALUMA CREEK FOR THE IMPROVEMENT OF THE WATERS THEREOF AND OF THE UPLANDS, AND THAT THE LANDS TO BE EXCHANGED ARE OF EQUAL VALUE.
2. AUTHORIZE THE EXECUTION OF THE AGREEMENT BETWEEN THE STATE LANDS COMMISSION ON BEHALF OF THE STATE, THE CITY OF PETALUMA, AND THE McNEAR CO. WHICH IS ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF.

CALENDAR ITEM 13. (CONTD.)

3. AUTHORIZE THE EXECUTION OF PATENTS TO SAID CITY WITHOUT THE RESERVATION OF MINERAL INTERESTS OF PARCELS "2A", AND "2B" DESCRIBED IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE, PURSUANT TO THE TERMS OF SAID AGREEMENT.
4. AUTHORIZE THE ACCEPTANCE OF CONVEYANCES FROM SAID CITY TO THE STATE OF PARCELS "1" AND "3" INCLUDING MINERAL RIGHTS DESCRIBED IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE, PURSUANT TO THE TERMS OF SAID AGREEMENT.
5. FIND THAT UPON THE DELIVERY OF THE PATENTS TO THE CITY AS SET FORTH IN PARAGRAPHS 2 AND 3 ABOVE, PARCELS "2A" AND "2B" HAVE BEEN IMPROVED, FILLED, AND RECLAIMED AND HAVE THEREBY BEEN EXCLUDED FROM THE PUBLIC CHANNELS AND ARE NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING, AND ARE NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS AND THEREFORE SHALL THEN BE FREED FROM THE PUBLIC TRUST FOR NAVIGATION AND FISHING.
6. AUTHORIZE THE EXECUTION OF AN AMENDMENT OF PERMIT NO. P.R.C. 4048.9 WITH THE CITY TO INCLUDE ALL OF PARCEL "3" THEREIN FOR BOAT-LAUNCHING FACILITIES AND APPURTENANCES THERETO, FOR A TERM OF 30 YEARS, IN CONSIDERATION OF THE PUBLIC BENEFIT, AS MORE SPECIFICALLY PROVIDED IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE.
7. AUTHORIZE THE EXECUTIVE OFFICER AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL NECESSARY ACTIONS TO IMPLEMENT THE AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE, INCLUDING BUT NOT LIMITED TO LEGAL PROCEEDINGS TO APPROVE OR CONFIRM THIS EXCHANGE.