

16. APPROVAL OF AN APPLICATION BY THE CITY OF EUREKA FOR TERMINATION OF EASEMENT FOR COMMERCE, NAVIGATION AND FISHERY; AND APPROVAL OF EXCHANGE OF LANDS; HUMBOLDT COUNTY - W 20698.2, W 503.714, BLA 147.

During consideration of Calendar Item 14 attached, Mr. James F. Trout, Manager, Land Operations, presented the Commission with a map clearly defining the settlement area involved. Mr. Trout gave an historical overview of the grant to the City of Eureka. He stated that a complicated title situation exists due to the entire waterfront being sold off in a series of complex transactions. In 1970, the Legislature subsequently authorized settlement of the title problems. However, it required that the settlements negotiated by Eureka be approved by the State Lands Commission. Mr. Trout explained that the Commission has been asked to review the consideration in the settlement and verify that the property from which the tidelands trust might be removed is actually above today's mean high tide line. The settlement agreement before the Commission involves the City of Eureka and the Louisiana Pacific Company. The Company contends that it owns certain specified tidelands, and the City contends that those lands are subject to the trust. Mr. Trout pointed out to the Commission the agreed-to boundary lines incorporated in the settlement.

With no opposition being voiced from the public or the Commission, the following resolution was adopted:

THE COMMISSION, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 1085, STATUTES OF 1970:

1. DETERMINES AND DECLARES, PURSUANT TO AND IN ACCORDANCE WITH SECTION 2(b) OF CHAPTER 1085, STATUTES OF 1970, THAT THOSE PORTIONS OF PARCEL 3, AS DESCRIBED IN EXHIBIT "A" OF CITY'S AGREEMENT, WHICH WERE BELOW THE LINE OF MEAN HIGH TIDE IN ITS LAST NATURAL POSITION, ARE LANDS WITHIN THE HUMBOLDT BAY AREA WHICH HAVE HERETOFORE BEEN IMPROVED IN CONNECTION WITH THE DEVELOPMENT OF THE HUMBOLDT BAY AREA, AND IN THE PROCESS OF SUCH DEVELOPMENT HAVE BEEN FILLED AND RECLAIMED; ARE NO LONGER SUBMERGED OR BELOW THE PRESENT LINE OF MEAN HIGH TIDE AND ARE NO LONGER NECESSARY OR USEFUL FOR COMMERCE, FISHERIES OR NAVIGATION.
2. APPROVES THE SETTLEMENT, CONVEYANCES AND AGREEMENTS BY THE CITY PROVIDED FOR IN THE CITY'S AGREEMENT, PURSUANT TO AND IN ACCORDANCE WITH SECTION 6 OF CHAPTER 1085, STATUTES OF 1970.
3. APPROVES OF THE ADEQUACY OF THE CONSIDERATION DETERMINED BY THE CITY WITH RESPECT TO THE SETTLEMENT, CONVEYANCES AND

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AGREEMENTS PROVIDED FOR IN THE CITY'S AGREEMENT, PURSUANT TO AND IN ACCORDANCE WITH SECTION 4 OF CHAPTER 1085, STATUTES OF 1970, PROVIDING, HOWEVER, THAT SUCH APPROVAL SHALL NOT BE DEEMED TO CONSTITUTE APPROVAL, EXPRESS OR IMPLIED, AS TO THE ADEQUACY OF THE CONSIDERATION TO BE PAID BY THE CITY FOR THE PURCHASE OF THE OPTION PARCELS (PARCELS 2, 4 AND 5) PURSUANT TO THE OPTION TO PURCHASE REAL PROPERTY REFERRED TO IN THE SUBJECT SETTLEMENT AGREEMENT.

4. AUTHORIZES THE EXECUTIVE OFFICER TO EXECUTE AND DELIVER INTO ESCROW FOR RECORDATION IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF HUMBOLDT, PURSUANT TO AND IN ACCORDANCE WITH SECTIONS 2(b) AND 5 OF CHAPTER 1085, STATUTES OF 1970, A CERTIFICATE THAT THE LANDS WITHIN PARCEL 3 AS DESCRIBED IN EXHIBIT "A" OF CITY'S AGREEMENT ARE LANDS ABOVE THE PRESENT LINE OF MEAN HIGH TIDE AND HAVE BEEN FOUND TO BE NO LONGER NECESSARY OR USEFUL FOR COMMERCE, FISHERIES, OR NAVIGATION; UPON THE RECORDATION OF WHICH CERTIFICATE AND THE OTHER INSTRUMENTS PROVIDED FOR IN THE CITY'S AGREEMENT, THE LANDS WITHIN SAID PARCELS SHALL BE FREED OF THE PUBLIC USE AND TRUST FOR COMMERCE, FISHERY, AND NAVIGATION, AND FROM SUCH USES, TRUSTS, CONDITIONS AND RESTRICTIONS AS ARE OR HAVE BEEN IMPOSED BY CHAPTER 187, STATUTES OF 1927; CHAPTER 225, STATUTES OF 1945; AND CHAPTER 1086, STATUTES OF 1970; AS SUBSEQUENTLY AMENDED AND MODIFIED.
5. AUTHORIZES THE OFFICE OF THE ATTORNEY GENERAL TO FILE, IN ANY ACTION TO QUIET TITLE BROUGHT BY THE RECORD OWNERS PURSUANT TO SECTION 4.5 OF THE SETTLEMENT AGREEMENT, A DISCLAIMER BY THE STATE OF CALIFORNIA ON BEHALF OF THE STATE LANDS COMMISSION OF ANY RIGHT, TITLE OR INTEREST IN OR TO THOSE CERTAIN LANDS DESCRIBED AS PARCELS 2, 3, 4 AND 5 IN EXHIBIT "A" OF CITY'S AGREEMENT.
6. AUTHORIZES THE EXECUTIVE OFFICER OR HIS DESIGNEE AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS WHICH THEY DEEM NECESSARY OR APPROPRIATE TO EFFECTUATE THE SETTLEMENT AGREEMENT.

Attachment:

Calendar Item 14 (4 pages)

CALENDAR ITEM

2/75

RCH

14.

W 20698.2

W 503.714

BLA 147

APPROVAL OF AN APPLICATION BY THE CITY OF EUREKA
FOR TERMINATION OF EASEMENT FOR COMMERCE, NAVIGATION AND FISHERY;
AND APPROVAL OF EXCHANGE OF LANDS

Pursuant to Chapter 1085, Statutes of 1970, the City of Eureka (hereinafter referred to as "City") is required to submit an application to the State Lands Commission for approval of any settlement of any dispute as to rights, title, or interest in or to tide and submerged lands located within the City. This application by the City, involving about 57 acres of land, is the second of what is expected to be a series of applications for settlement of waterfront title matters. In this application, the Commission is requested to approve an exchange between the City and Louisiana Pacific Corporation, a Delaware Corporation (hereinafter referred to as "the Corporation").

The Corporation claims title to the settlement area through three State tideland survey patents. The Corporation contends that these patents conveyed all of the State's right, title and interest in and to all the lands within the settlement area, free of the public trust for commerce, navigation and fishery, and any other public rights.

Since the settlement area is within the perimeter of tide and submerged lands previously granted in trust to the City by the Legislature, the City is the successor in interest to any sovereign rights remaining in the settlement area. The City contends that the portion of the settlement area which is within the three tideland surveys is subject to the tideland easement, and claims ownership in fee of all lands lying bayward of the last natural position of the line of mean low water.

A dispute thus exists between the City and the Corporation as to the nature and extent of the respective parties' rights, title and interests in or to the settlement area. In an attempt to resolve this dispute, the City filed a lawsuit. However, after evaluating the legal and factual issues, in conjunction with the law firm retained as special counsel, the City determined that litigation of this magnitude would be extremely costly and time consuming--during which time all of the settlement area would remain unavailable to the public.

In addition, the City concluded that even if it was completely successful in its suit, the configuration and location of the lands found to be owned by the City would probably limit the utility of such lands for public purposes. Consequently, the City undertook to resolve its dispute with the Corporation through an exchange and settlement under the authority granted to the City by Chapter 1085, Statutes of 1970. The City, after lengthy studies and negotiations with the Corporation over the past three years, entered into a compromise and settlement of the title dispute, resulting in an agreement entitled "Agreement and Escrow Instructions for the Settlement of a Dispute Relating to Lands Within the Humboldt Bay Area" (hereinafter referred to as the "City's Agreement"). The Agreement is on file in the office of the State Lands Commission and by reference made a part hereof.

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The major provisions of the settlement and exchange are as follows:

1. The City will receive all of the Corporation's right, title and interest in and to all of the portions of the settlement area located bayward of the present line of mean high tide, amounting to approximately 21½ acres. (Those portions of Parcel One located bayward of the present line of mean high tide are shown on attached Exhibit "B".)
2. The City will receive all right, title and interest of Louisiana Pacific Corporation in and to about eight acres of dry land located above the present line of mean high tide. (Those portions of Parcel One upland of the present line of mean high tide are shown on attached Exhibit "B".)
3. All improvements currently located upon the areas to be quitclaimed to the City will be conveyed to the City. The improvements include 127,800 cubic yards of good fill upon the dry land areas and a dock, wharf and bulkheading valued by the City's consulting engineer at approximately \$450,000.
4. Confirmation in the Corporation free of the public trust for commerce, navigation and fisheries of just over 22 acres of dry land located above the present line of mean high tide. (Parcel Three on attached Exhibit "B")
5. A grant to the City of an option to purchase three additional parcels within one year. (Parcels Two, Four and Five on attached Exhibit "B")

The major benefits flowing to the City from the settlement agreement include the following:

1. Approximately one-half of the upland frontage within the settlement area will be owned by and accessible to the public. (None of the area is presently accessible to the public.)
2. Room for the expansion of the existing municipal boat basin.
3. Boat docking facilities will be available for immediate use at the existing pier.
4. Sites will be made available for the location of facilities serving commercial shipping and fishery enterprises.

The Executive Officer of the State Lands Commission, by letter dated February 19, 1975, has advised the City that the staff of the Division has not reviewed the adequacy of the consideration to be paid by the City for the purchase of the option parcels (Parcels Two, Four and Five), and therefore has no opinion as to the adequacy of the consideration. In addition the letter, a copy of which is on file with the State Lands Division and by reference made a part hereof, expressly states that it is the Division's recommendation in the event that the Commission approves this transaction, such approval shall not be deemed to constitute approval of the adequacy of the consideration set forth in the option to purchase real property.

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(Pursuant to the provisions of the settlement agreement, the State Lands Commission is not requested or required to approve the adequacy of the consideration set forth in the option to purchase real property.)

The City's present descriptions are recordable but do not include a legally recordable map. In order to fulfill both the Division's standards and title company mapping requirements, the City was requested to prepare a survey adequate for recording purposes, including monumenting the described parcels.

The City contracted with a private surveying firm to prepare this survey, and the Division having only just received the survey has not had sufficient time to review the descriptions contained therein. It is expected that there may be minor, technical, unsubstantive differences between this survey and the present descriptions contained in the City's Agreement. In this event, the City would in the near future ask the Commission to substitute the new descriptions in place of those contained in Exhibit "A" of the City's Agreement and to substitute the parcel map for that contained in Exhibit "B".

The City, by Resolution No. 6539, approved the settlement agreement and authorized the City Attorney to submit it to the State Lands Commission for approval.

The law firm of Nossaman, Waters, Krueger, Marsh & Riordan has been retained by the City as special counsel in resolving its waterfront disputes. This firm has concluded that this settlement agreement is in the best interest of the City and the State, and is in accordance with the provisions of Chapter 1085, Statutes of 1970. The Division has independently reviewed this settlement agreement and concurs with this recommendation. This settlement agreement has been reviewed and approved by the Office of the Attorney General.

EXHIBITS: A. Location Map. B. Parcel Map.

IT IS RECOMMENDED THAT THE COMMISSION, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 1085, STATUTES OF 1970:

1. DETERMINE AND DECLARE, PURSUANT TO AND IN ACCORDANCE WITH SECTION 2(b) OF CHAPTER 1085, STATUTES OF 1970, THAT THOSE PORTIONS OF PARCEL 3, AS DESCRIBED IN EXHIBIT "A" OF CITY'S AGREEMENT, WHICH WERE BELOW THE LINE OF MEAN HIGH TIDE IN ITS LAST NATURAL POSITION, ARE LANDS WITHIN THE HUMBOLDT BAY AREA WHICH HAVE HERETOFORE BEEN IMPROVED IN CONNECTION WITH THE DEVELOPMENT OF THE HUMBOLDT BAY AREA, AND IN THE PROCESS OF SUCH DEVELOPMENT HAVE BEEN FILLED AND RECLAIMED; ARE NO LONGER SUBMERGED OR BELOW THE PRESENT LINE OF MEAN HIGH TIDE AND ARE NO LONGER NECESSARY OR USEFUL FOR COMMERCE, FISHERIES OR NAVIGATION.
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