

**CALENDAR ITEM
C01**

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03/04/08

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**ACTION IN RESPONSE TO A PEREMPTORY WRIT OF MANDATE ORDERING
THE CALIFORNIA STATE LANDS COMMISSION TO VACATE AND SET ASIDE
THE QUEENSWAY EXCHANGE APPROVED BY THE COMMISSION ON
SEPTEMBER 17, 2001**

The City of Long Beach holds certain sovereign public trust tide and submerged lands, filled and unfilled, as trustee, pursuant to Chapter 676, Statutes of 1911, as amended. On September 17, 2001, the California State Lands Commission (Commission) approved Minute Item #89, the Queensway Bay Land Exchange Agreement (Queensway Bay exchange) with the City of Long Beach, pursuant to Public Resources Code (PRC) Section 6307. The Commission's action terminated the common law and statutory public trust on five parcels within the Queensway Bay Development Plan (since renamed "The Pike at Rainbow Harbor") and exchanged those parcels for certain other parcels along the Los Angeles River on which it imposed the public trust.

On October 31, 2001, the California Earth Corps (CEC) filed a petition for writ of mandate (*California Earth Corps. v. City of Long Beach, California State Lands Commission and the Developers Diversified Realty Corporation, as a Real Party in Interest*, Sacramento Superior Court No. 01SC01556) challenging the Commission's approval of the Queensway Bay exchange. The CEC contested, among other things, the validity of the exchange under PRC Section 6307. The Sacramento Superior Court ruled in favor of the Commission, holding, in part, that the land exchange was valid under PRC Section 6307. CEC appealed the Superior Court's decision, and on April 21, 2005, the Court of Appeal for the Third Appellate District held that the exchange violated PRC Section 6307 and granted the petition for writ of mandate. The California Supreme Court granted review on August 24, 2005. Following the Supreme Court's decision to grant review, the California Legislature, on October 6, 2005, clarified the intent of PRC 6307 by repealing PRC 6307 and replacing it with Chapter 585, Statutes of 2005 (SB 365), also designated PRC 6307. The Supreme Court subsequently dismissed review on January 4, 2006, because of the passage of SB 365. The Court of Appeal then issued its remittitur on January 17, 2006, sending the case back to the Sacramento Superior Court.

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On June 9, 2006, the Sacramento Superior Court, as directed by the Court of Appeal, issued a peremptory writ of mandate ordering the Commission to “vacate and set aside the exchange approved by the Commission on September 17, 2001 and its termination of the public trust of the parcels that were part of the Exchange Agreement.”

In July 2006, Developers Diversified Realty Corp. (DDR) filed an appeal. In September 2007, the Court of Appeal for the Third Appellate District affirmed the Superior Court’s judgment granting the peremptory writ of mandate. On November 6, 2007 the remittitur was reissued. The Commission has until March 4, 2008 in which to comply with the Court’s writ of mandate to vacate and set aside the exchange.

The consequence of setting aside the exchange and restoring the public trust status to the Queensway Bay parcels is that there will be uses not related to the public trust, such as the Cinemark Theatres, Gameworks and Borders Bookstore, located on public trust lands. CSLC staff and City staff have been in discussions regarding options available to resolve the conflict over the uses of the Queensway Bay parcels. Staff will report back to the Commission on the progress of those discussions.

EXHIBITS:

1. COPY OF THE WRIT OF MANDATE
2. MINUTE ITEM #89, CSLC MEETING OF SEPTEMBER 17, 2001

RECOMMENDATION:

IT IS RECOMMENDED THAT THE COMMISSION:

VACATE AND SET ASIDE THE QUEENSWAY EXCHANGE APPROVED ON SEPTEMBER 17, 2001 AND ITS TERMINATION OF THE PUBLIC TRUST ON THE PARCELS THAT ARE PART OF THE EXCHANGE AGREEMENT, IN COMPLIANCE WITH THE PEREMEPTORY WRIT OF MANDATE ISSUED BY THE SACRAMENTO COUNTY SUPERIOR COURT.