

MINUTE ITEM

32. REPORTS TO LEGISLATIVE COMMITTEES ON PROPOSED LEGISLATION AFFECTING TIDE AND SUBMERGED LANDS - W.O. 4550.11 AND W.O. 4900.

On August 18, 1964 (Minute Item 29, page 10,420), the Commission authorized the Executive Officer to report to legislative committees these general and specific recommendations of the Commission for consideration as to implementation in legislative tideland grants:

"GENERAL":

1. Placement of a moratorium on the issuance of new grants until such time as the various studies being conducted by the executive and legislative branches of State government are completed and appropriate legislative control specifications have been adopted.
2. Amendment of existing granting statutes and statutes related to tide and submerged land development (and incorporation in future granting acts) of the requirement that the lands thereunder granted be developed in accordance with approved planning concepts, the former to be done where the lands so granted are not yet developed or where development has not proceeded beyond a critical point.
3. Assignment to the State Lands Commission of approval responsibility for programs for the development of granted lands.
4. Determination of priorities, on granted lands having a mineral reservation to the State, between mineral and surface development when the two are not in immediate conflict in point of space or time.
5. Determination of the criteria by which the State will share in revenues gained by grantees as a result of operations on lands granted without a mineral reservation to the State.

SPECIFIC:

1. Precise specification of the effective date of grants.
2. Specification of the State Lands Commission's responsibility to determine compliance of grantees with the terms of granting statutes.
3. Definition of the criteria for compliance with a granting statute.
4. Specification of guidelines for allowable expenditures of trust funds by a grantee."

These recommendations were reported to the Assembly Interim Committee on Natural Resources, Planning and Public Works at its hearing on September 17, 1964, to the San Francisco Bay Conservation Study Commission on September 29, 1964, and to the Joint Legislative Committee on Tidelands on December 21, 1964.

The report of the Assembly Committee on Natural Resources, Planning and Public Works recommends that no further grant of tide and submerged lands be made until a uniform and comprehensive tide and submerged lands policy is adopted pursuant to numerous studies currently under way. Additionally, the report of the San Francisco Bay Study Commission recommends that "no further grant of land in San Francisco Bay should be made by the State" without the prior approval of a Bay Conservation and Development Commission (BCDC) which is proposed to be established by Senate Bill 309 (McAteer). Similarly, the report of the Joint Legislative Committee on Tidelands recommends further study on existent tideland grants, which studies will be carried out pursuant to Senate Concurrent Resolution 27 (Resolution Chapter 31) for report to the Legislature at the 1967 Regular Session.

Three bills proposing to grant tide and submerged lands have been introduced during the current legislative session:

- A.B. 1024 (Bagley) - "An act to convey certain tide and submerged lands to the United States in furtherance of the Point Reyes National Seashore."
- S.B. 204 (Short) - "An act conveying in trust certain tidelands and submerged lands lying in the natural channel of the San Joaquin River to the City of Stockton in furtherance of navigation, commerce and fisheries upon certain trusts and conditions, and providing for the government, management, use and control thereof, and reserving rights to the state."
- S.B. 754 (Schrade) - "An act conveying in trust certain tidelands and submerged lands located in San Diego Bay to the City of Coronado in furtherance of navigation and commerce and the fisheries, and providing for the government, management and control thereof, and reserving certain rights to the state."

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE FOLLOWING RESOLUTION WAS ADOPTED:

THE COMMISSION AUTHORIZES THE EXECUTIVE OFFICER TO REPORT TO APPROPRIATE LEGISLATIVE COMMITTEES THE POSITION OF THE COMMISSION RELATIVE TO THE RESPECTIVE LEGISLATION AS FOLLOWS:

- A.B. 1024 (BAGLEY) - NO OBJECTION. (CONVEYANCE FOR A FEDERAL PROJECT).
- S.B. 204 (SHORT) - REPORT THE GENERAL AND SPECIFIC RECOMMENDATIONS
S.B. 754 (SCHRADER) ADOPTED BY THE COMMISSION ON AUGUST 18, 1964,
RELATIVE TO GRANTS OF TIDE AND SUBMERGED LANDS
TO POLITICAL SUBDIVISIONS.

A.B. 300 (Stevens) specifies conditions for approval of city oil and gas leases and provides that leases shall be deemed approved if no action is taken by the Commission within 60 days after submission.

An anomalous situation exists with respect to the development of petroleum resources from tide and submerged lands granted without a mineral reservation to the State.

The Cunningham-Shell Tidelands Act of 1955 and amendments thereto provide for the exclusion of certain scenic or highly developed residential and recreational coastal areas from oil and gas leasing unless threatened by drainage from wells drilled upon adjacent lands not owned by the State. Grantees of tide and submerged lands (without a mineral reservation to the State) lying within these excluded areas, notwithstanding the drainage provision, may lease their granted lands for the production of oil and gas upon complying with certain statutory requirements and safeguards.

Thus, under existing statutes, these grantees may lease their granted tide and submerged lands for development of petroleum resources in areas where the Legislature has specifically withheld this authority from the State.

Sections 7058.5 to 7059, inclusive, of the Public Resources Code, govern the manner in which recipients of tide and submerged lands granted in trust without a reservation of minerals to the State may proceed with the development of petroleum resources upon such lands.

If A.B. 800 were enacted, leasing of granted tide and submerged lands by recipients could be automatically approved. This does not appear desirable. Recently, public sentiment has demonstrated a growing concern for the protection and preservation of the esthetic qualities of coastal tide and submerged lands. In consonance with this concern, the State Lands Commission has endeavored to require grantees proposing to develop petroleum resources within their granted areas to employ modern preventive regulations and technological measures which serve to assure operations consistent with minimizing undesirable effects on the coastal environment.

Often, the factors which dictate the number and type of safeguards required for complete protection of esthetic qualities are not quickly ascertainable. Considerable time (i.e., after a proposed resolution is filed for approval) is necessary to determine or estimate such requisite factors as:

1. Gravity of crude oil (determines feasibility of utilizing ocean floor completions).
2. Productive limits of petroleum reservoir.
3. Oceanography (i.e., water depth, sea-floor topography, wave and tide action, marine habitat, etc.)
4. Mechanics of providing power and fresh water.
5. Possible pipeline easement requirements.
6. Relationship of overall operation to existing traditional uses of the coast.

Since the provisions of the Public Resources Code (Div. 6, Pt. 2, Ch. 3) governing oil and gas leases issued by the State Lands Commission do not apply in total to public agencies, the Commission is morally obligated to require, in the public interest, that development operations under a grantee's lease be compatible with accepted standards.

Such an automatic approval (within 60 days) as proposed in A.B. 800 would seriously encumber the Commission's statutory duties.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE FOLLOWING RESOLUTION WAS ADOPTED:

THE COMMISSION AUTHORIZES THE EXECUTIVE OFFICER TO REPORT ITS OPPOSITION TO THIS BILL IN VIEW OF THE FACTORS OUTLINED IN THE FOREGOING.

A.B. 1239 (Bagley) would appropriate \$1,500,000 from the General Fund to the Commission for making grants to political subdivisions to cover 25% to 50% of the cost of reacquiring tidelands previously sold into private ownership.

Lands authorized to be sold under Chapter 543, Statutes of 1867-8, were limited to those areas within San Francisco lying between the ordinary high water mark and the line of 24 feet of water at low tide. It is presumed that the probable intent of the proponents of this bill is to acquire land authorized to have been sold under an amendment to Chapter 543, under Statutes 1869-70, Chapter 388, page 541, which authorized the Board of Tide Land Commissioners to take possession of all salt marsh and tidelands and lands lying under water out to 9 feet of water at extreme low tide within 5 statute miles of the exterior boundaries of the City and County of San Francisco.

The extension of the Board of Tide Land Commissioners' jurisdictional area embraced sovereign lands within portions of Marin, Contra Costa, Alameda and San Mateo Counties. This plan of subdivision of the state lands within 5 miles of San Francisco was the first bay area harbor development plan by the State for the area outside of San Francisco. Title to tidelands and submerged lands which were vested in the private purchasers from the State have been upheld as a part of an approved harbor development plan for this area. It appears apparent that the intent of the Board of Tide Land Commissioners and the Legislature in 1868 to 1875 was to put into private ownership all the area which could be properly developed in accordance with the approved plan.

Title to sovereign lands in the beds of all navigable waterways, including the tidelands under discussion, vests in the State, subject to the trusts for commerce, navigation and the fisheries. The granting of authority to the Board of Tide Land Commissioners and the State Board to subdivide and sell areas in the bay has been construed as a legislative abandonment of these three trusts for such areas as could be sold into private ownership. The plan of development included provision for streets, canals and basins reserved for the purposes of commerce and navigation. Persons purchasing from the State under such an approved plan would appear to have a vested property right to develop their private property in accordance with the approved plan. Should the Legislature wish to abrogate the Tide Land Commissioners' approved plan and thereby cloud the private titles, such a legislative declaration will constitute essentially an inverse condemnation. For any county, city or district to obtain

the private property for open spaces, conservation of scenic features and other uses specified in A.B. 1239, amounts to an usurpation of the legislative prerogative in establishing a plan of development for the sovereign lands for the area within 5 miles of San Francisco.

Acquisition of the Board of Tide Land Commissioners' lots, embracing either tidelands or submerged lands or both, for the purposes of conservation and public recreation, or for the express purpose of preserving such areas from filling or development thereof, in accordance with the plan approved under Chapter 543 and its 1870 amendment (Chapter 388) would create a situation whereby a new waterfront is produced, thus increasing the value of the lands which front upon the water areas acquired under this bill. It is well recognized that "waterfront property" generally has a higher value than nonriparian lands in the immediate neighborhood. Except, possibly, for certain waterfront properties within the City of San Francisco, the creation of a new waterfront and the sale of most of the tide and submerged lands parcels by the Board of Tide Land Commissioners in the years 1869 through 1875 did not necessarily diminish the value of such littoral lands. Instead, land values were enhanced by reason of a unified plan of development. Over the years, development of lands along the shore of San Francisco Bay has caused an increase in the value of the underwater lots with special value assignable to those lots fronting upon the areas reserved for canals, streets or basins. Accordingly, it may be contemplated that a high value must be allowed at this time for the re-acquisition of any of these under-water lots, filled or unfilled, which front upon the reserved streets, canals or basins. Under this bill, the public re-acquisition of the privately owned tide and submerged lands, for the uses specified in the bill, will result in the creation of new "waterfront" and the present owners of such property fronting upon the acquired area will suddenly find the values of such "waterfront property" to be greatly increased.

The proposed appropriation of \$1,500,000 is for the purpose of carrying out the provisions of this bill, but no provision is made for the expenses of the State Lands Commission in administering the approval of the grants to applicants. It would appear mandatory upon the State Lands Commission to review acquisition costs by the applicants, possibly conduct review appraisals and otherwise protect the State's expenditure in order to avoid any semblance of making a gift of State property or moneys in violation of the gift provision of the Constitution (Article 4, Section 31).

A further feature inherent in this bill, which does not appear to allow the State to retain any title in the acquired land in exchange for the State's contribution, is that of making the grant outright to a county, city or district in which the title for the land will vest. Presumably, the city, county or district could in all sincerity acquire the land for the purposes specified in the bill and, at a later time, for perfectly good reasons, change their plan of development for the area, such as to declare the area no longer needed for the original purpose, and dispose of such property into private ownership again in a manner similar to what has already been done in other tide and submerged land areas (e.g., certain areas of granted tide and submerged lands developed by cities are declared to be no longer required for the purposes for which the original grant was made and the cities have been allowed to sell such developed areas of original State sovereign lands into private ownership with all funds accruing to the city).

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE FOLLOWING RESOLUTION WAS ADOPTED:

WITHOUT ANY REFERENCE TO THE DESIRABILITY OR FEASIBILITY OF A GENERAL FUND APPROPRIATION OF \$1,500,000.00, THE COMMISSION AUTHORIZES THE EXECUTIVE OFFICER TO REPORT TO THE AUTHOR OF THIS BILL THE NEED FOR THE FOLLOWING AMENDMENTS TO PERMIT EFFECTIVE ADMINISTRATION:

- PROVIDE FOR:
- (1) REFERENCE TO AMENDMENT TO CHAPTER 543, STATUTES OF 1867-8;
 - (2) ADMINISTRATIVE COSTS OF REVIEWING APPLICATIONS FOR GRANTS;
 - (3) STATE RETENTION OF AN INTEREST IN TITLE TO THE LAND;
 - (4) ASSURANCE THAT ACQUISITION FOR THE USES SPECIFIED IS MORE IN THE PUBLIC BENEFIT THAN ANY OTHER PLANNED USE;
 - (5) RETURN TO THE STATE OF ITS ORIGINAL EXPENDITURE IF THE APPLICANT SELLS THE LAND OR USES IT FOR A PURPOSE OTHER THAN AS SPECIFIED IN THE BILL (AS AN ALTERNATIVE TO ITEM 3).

Senate Bill 309 (McAteer) - (Coauthor: Petris) creates the San Francisco Bay Conservation and Development Commission and prescribes its membership, powers and duties.

The purpose of the bill is to officially acknowledge that the Bay Area is a single regional entity sufficiently unique to have its further development occur along relatively predetermined planning guides. There appears to be no doubt that the development of the Bay Area should proceed against a backdrop of unified planning and to have an intermediate agency with sufficient powers to enforce the planning programs adopted. The creation of a San Francisco Bay Conservation and Development Commission (BCDC) as proposed by this bill has, however, certain implications which could prove harmful to the interests of the State. Stated separately, these are:

- (1) The State would be relinquishing control of its sovereign lands to an intermediate body. The State Lands Commission currently has exclusive jurisdiction over the sovereign lands of the State (Public Resources Code, Division 6, Section 6301). The present legislation, however, would give the BCDC power to regulate filling in the Bay and to control extraction of submerged materials from the Bay. These activities are presently under the control of the State Lands Commission. It is, at a minimum, questionable whether the State should relinquish its authority. (If such is the intent of the Legislature; i.e., to convey jurisdiction to the BCDC, then the language of the bill should explicitly grant the lands to the BCDC.) Secondary to this is that without a direct legislative grant of the entire sovereign land area of the Bay, it is quite probable that a problem of jurisdiction could arise between the BCDC and the State Lands Commission.

Before conveying the land, however, a third consideration should be taken up. It is now becoming clear that modern conditions of population, economics, etc., are pressing toward a new political structural alignment which favors the establishment of regional entities for the

solution of problems which lie beyond the efforts and abilities of local government units as they currently exist. In establishing regional authorities, care must be exercised as to what powers the State is willing to relinquish in order to effect a desired end.

In any event, and for the present time at least, it would seem better to have the State Lands Commission act on matters of fill and extraction involving sovereign lands, such actions being based upon recommendations made by the BCDC. If an agency subsequent to the BCDC is to be given full police powers over the entire area of the Bay, including all sovereign lands, then guarantees of the State's interests could be worked out within such a body.

(2) State representation on the BCDC.

Approximately 70% of the Bay area is in undisputed ownership of the State. That 70% ownership is not reflected in terms of representation on the proposed Commission. In fact, the State representation is a minority of the total membership. It is difficult to see how the interests of the State could be protected on a Commission dominated by local representatives.

(3) BCDC area of authority which defines the marshlands as land lying between mean high tide and five feet above mean sea level. The implication is that the boundary would be located at a constant level around the Bay. This might be true if the mean sea level and the mean high tide line were constants. Unfortunately, they are not, as the following chart shows with respect to known areas of the Bay.

<u>Tide Station</u>	<u>Mean Sea Level-1929</u>	<u>Mean High Tide</u>	<u>5' Above Sea Level</u>	<u>MHT to 5' Above Sea Level</u>
1. Presidio	3.05'	5.09'	8.05'	2.96'
2. Oakland Municipal Airport	3.27'	5.90'	8.27'	2.37'
3. Point San Bruno	3.56'	6.60'	8.56'	1.96'
4. Selby	2.85'	5.50'	7.85'	2.35'
5. Port Chicago	1.97'	4.80'	6.97'	2.17'

As columns two and three show, the elevations of mean sea level and mean high tide are not constants. Applying the bill definition for marshlands, we get the figures shown in column five. As is seen, the elevations range from 1.96' to 2.96', a full foot difference in elevation which can mean extensive differences in horizontal measurements.

Second and more important with reference to the marshlands is that they are almost totally in private ownership, as a result of sales by

the Board of Tide Land Commissioners under authority of 1868 legislation. Sales were made for the specific purpose of reclaiming the marshlands. No right of public easement was retained by the State. By placing marshlands under the authority of the BCDC in the matter of fill control, it could be said that the State is nullifying a positive right of private ownership. Such a condition could subject the State to litigation on charges of inverse condemnation.

(4) Control of structures - the bill proposes to give the BCDC control over any structures placed in the Bay, including any structures placed on pilings. This means that even the smallest pier could not be placed in the Bay without BCDC approval. Such authority might be considered excessive as a means to protect the tidal prism of the Bay.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE FOLLOWING RESOLUTION WAS ADOPTED:

THE STATE LANDS COMMISSION RECOGNIZES THE VITAL DEVELOPMENTAL ISSUES RAISED IN THE SAN FRANCISCO BAY AREA, AND IS IN COMPLETE ACCORD WITH THE INTENT AND PURPOSE OF SENATE BILL 309 TO RESOLVE THESE ISSUES IN A MANNER THAT WILL BE BENEFICIAL NOT ONLY TO THE LOCAL COMMUNITIES INVOLVED BUT TO THE STATE-WIDE INTEREST AS WELL.

THIS CONCURRENCE IS WITH THE UNDERSTANDING THAT THE ESTABLISHMENT OF THE STUDY COMMISSION WILL NOT RESULT IN ANY RELINQUISHMENT OF THE BASIC LAND-MANAGEMENT AUTHORITY OF THE STATE LANDS COMMISSION.

FURTHER, IT IS RECOMMENDED THAT A FORMULA BE SOUGHT AND IMPLEMENTED THAT WILL PERMIT THE WORK OF THE STUDY COMMISSION TO GO FORWARD IN FULL RECOGNITION OF THE SOVEREIGN INTEREST OF THE STATE IN THE TIDE AND SUBMERGED LANDS OF THE BAY.

THE EXECUTIVE OFFICER IS DIRECTED TO REPORT THIS RESOLUTION TO THE APPROPRIATE LEGISLATIVE COMMITTEE.