

50. TOWN OF EMERYVILLE VS. STATE OF CALIFORNIA - SACRAMENTO COUNTY SUPERIOR COURT CASE NO. 160926 - W.O. 503.479.

During consideration of Calendar Item 49 attached, Mr. James R. McCall, Special Counsel for the Town of Emeryville, contended that the finding of the Commission's staff was incorrect, and would result in litigation. He claimed that only through residential development of 49 acres of the area in question could the Town of Emeryville develop the proposed plan, and submitted that there is a general Statewide interest in the entire project; that without the residential interest, there could be no project. He also indicated the town's desire to continue discussions with Commission staff leading perhaps to further amendment of the plan.

Deputy Attorney General Paul M. Joseph briefly reviewed the circumstances leading to the Attorney General's request for an expression by the State Lands Commission on Emeryville's proposed development plan. He further stated that if the plan is amended, any finding made at this time by the State Lands Commission would not apply to the amended plan. Mr. Joseph saw no reason why the Town of Emeryville could not present some other plan.

The Chairman urged the staff to be prepared to enter into any further discussions necessary on any amended plan which the Town of Emeryville wishes to submit.

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

1. THE COMMISSION FINDS THAT THE PROPOSED PLAN OF DEVELOPMENT BY THE TOWN OF EMERYVILLE FOR APPROXIMATELY 300 ACRES OF GRANTED SUBMERGED LANDS IN SAN FRANCISCO BAY MEETS NEITHER THE TRUST REQUIREMENTS FOR COMMERCE AND NAVIGATION NOR, IN ALL INSTANCES, THE TEST OF "GENERAL STATEWIDE INTEREST" AS SET FORTH IN CHAPTER 515, STATS. 1919, AS AMENDED BY CHAPTER 921, STATS. 1959.
2. THE EXECUTIVE OFFICER IS DIRECTED TO FORWARD THE COMMISSION FINDING TO THE OFFICE OF THE STATE ATTORNEY GENERAL.

Attachment

Supplemental Calendar Item 49 (2 pages)

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In 1965 the Town of Emeryville filed an action against the State of California for declaratory relief, thereby seeking to obtain a judicial determination that its proposed plan of development for approximately 300 acres of granted submerged lands in San Francisco Bay was consistent with the grant in trust under which the subject lands are held.

On May 31, 1966, the Town filed an Amended Supplemental and Amended Complaint in this action. The Office of the Attorney General is preparing an answer, and has requested the State Lands Commission to make a finding as to whether or not the proposed plan of development is consistent with the basic trusts for commerce and navigation and with the enabling Statute, i.e., Chapter 515, Statutes of 1919, as amended by Chapter 921, Statutes of 1959.

In part, said Statute, as amended, provides as follows:

"That said (granted) lands shall be used by said city and its successors, only for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operations thereon of wharves, docks, piers, ships, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation... and may lease said lands or any part thereof for limited periods... which franchises and leases shall be for purposes consistent with the trusts upon which said lands are held by the State of California, and with the requirements of commerce or navigation at said harbor, including, but not limited to, recreational, educational, industrial, commercial, and residential purposes in which there is a general statewide interest." (Emphasis added)

Various proposals of the Town of Emeryville have been under study by staff.

The essential features of the most recent proposal, as set out in the Amended Complaint and attached hereto as Exhibit "A", include:

1. A land fill of 144.5 acres, or slightly over 48% of the 300 acres included in the total grant area.
2. Creation of large-scale small-boat harbors and marina facilities servicing a water area of 155.5 acres, i.e., the balance of the total grant area.

It is proposed to develop the 144.5 acres of land fill in the following manner:

1. Residential
 - a. High Density (12- to 20-story apartment buildings) 14.0 acres
 - b. Medium Density (1½-, 2-, and 2½-story garden apartments) 25.0 acres
 - c. Low Density (3-story, single-family town-houses) 10.0 acres

12,930

SUPPLEMENTAL CALENDAR ITEM 49. (CONTD.)

2. Educational (Junior College Site) or Recreational (Park)	50.0 acres
3. General Commercial	5.0 acres
4. Yacht Harbor Commercial	3.0 acres
5. Public Parks	12.0 acres
6. Public Beaches	3.5 acres
7. Thoroughfares	12.0 acres
8. Lagoon	<u>10.0 acres</u>
Total	144.5 acres

It is the conclusion of staff, based upon its study, that the plan of development as proposed by the Town of Emeryville does not meet the trust requirements for commerce and navigation or the test of "general statewide interest" set out in the above-quoted Statute in all instances; and, therefore,

IT IS RECOMMENDED THAT:

1. THE COMMISSION FIND THAT THE PROPOSED PLAN OF DEVELOPMENT BY THE TOWN OF EMERYVILLE FOR APPROXIMATELY 300 ACRES OF GRANTED SUBMERGED LANDS IN SAN FRANCISCO BAY MEETS NEITHER THE TRUST REQUIREMENTS FOR COMMERCE AND NAVIGATION NOR, IN ALL INSTANCES, THE TEST OF "GENERAL STATEWIDE INTEREST" AS SET FORTH IN CHAPTER 515, STATS. 1919, AS AMENDED BY CHAPTER 921, STATS. 1959.
2. THE EXECUTIVE OFFICER BE DIRECTED TO FORWARD THE COMMISSION FINDING TO THE OFFICE OF THE STATE ATTORNEY GENERAL.