

24. CONSIDERATION OF SUBSTANTIAL IMPROVEMENT OF GRANTED TIDE AND SUBMERGED LANDS IN THE CITY OF ALBANY, AS REQUIRED BY CHAPTER 1763, STATUTES OF 1961 - Grant 1-2d.

During consideration of Calendar Item 22 attached, appearances were made by the following:

In Opposition to the Staff Recommendation

Senator John W. Holmdahl, Eighth Senatorial District  
Lawrence Saler, City Attorney, City of Albany  
James B. Turner, Administrator, City of Albany  
Richard W. Mansfield, Legislative Advocate-Business Representative,  
State Building and Construction Trades Council of California,  
AFL-CIO  
Dennis Monroe, President, Albany Jaycees

In Support of Staff Recommendation

Herbert Ruben, in pro per  
William E. Siri, President, Save San Francisco Bay Association  
Robert Twiss, in pro per

Mr. Dennis Monroe, President of the Albany Jaycees, read into the record a letter to the Commission, dated May 24, 1972, requesting that the Commission look favorably upon the continuation of development of the "Albany Isles Plan", which will benefit citizens throughout the State; and also a Resolution of the Albany Junior Chamber of Commerce, dated March 31, 1972, supporting the Albany City Council's Albany Isles Project, which are made a part of these minutes by reference to the files of the Commission.

After consideration of Calendar Item 22, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION:

1. FINDS THAT THE CITY OF ALBANY HAS FAILED TO IMPROVE SUBSTANTIALLY THE LAND GRANTED TO IT AS REQUIRED BY SECTION 1(g) OF CHAPTER 1763, STATUTES OF 1961. SUCH FINDING UNDER THE TERMS OF SECTION 1(g) WOULD RESULT IN AN AUTOMATIC REVOCATION, BY OPERATION OF THE STATUTE, OF THE AUTHORIZATION TO USE SAID LANDS FOR THE ADDITIONAL PURPOSES STATED THEREIN.
2. AUTHORIZES THE EXECUTIVE OFFICER TO NOTIFY THE CHIEF CLERK OF THE ASSEMBLY, THE SECRETARY OF THE SENATE, AND THE CITY OF ALBANY, THAT THE COMMISSION HAS MADE AN INVESTIGATION OF SUBSTANTIAL IMPROVEMENT, AS REQUIRED BY THE GRANT STATUTE, AND FINDS THAT THE CITY OF ALBANY HAS FAILED TO IMPROVE SUBSTANTIALLY THE LAND WITHIN THE TERMS OF SECTION 1(g), CHAPTER 1763, STATUTES OF 1961.

3. AUTHORIZES THE STATE LANDS DIVISION TO AUDIT THE ACCOUNTS, REVENUES, AND EXPENDITURES RELATING TO THE TIDELAND TRUST OF THE CITY OF ALBANY TO DETERMINE WHAT RIGHTS AND/OR OBLIGATIONS MAY EXIST WITH REGARD TO THE GRANTEE AND THIRD PARTIES SO AS TO ENABLE THE STATE LANDS COMMISSION TO DETERMINE ANY FUTURE COURSE OF ACTION WITH RESPECT TO THE TIDELANDS.

Attachment:

Calendar Item 22 (4 pages)

CONSIDERATION OF SUBSTANTIAL IMPROVEMENT OF  
GRANTED TIDE AND SUBMERGED LANDS IN THE CITY OF ALBANY  
AS REQUIRED BY CHAPTER 1763, STATUTES OF 1961

GRANTEE: City of Albany.

LOCATION: Lands granted by Chapter 211, Statutes of 1919, as amended by Chapter 1763, Statutes of 1961, as said lands are shown on a "Map of the Grant to the City of Albany" prepared and approved by the State Lands Commission and recorded in the office of the Recorder of Alameda County on July 24, 1963, as Serial No. AU 122379 in Map Book 43, page 12A.

PURPOSE: To determine whether the granted lands held by the City of Albany under Section 1(g) of Chapter 1763, Statutes of 1961, have been substantially improved within the terms and meaning of the statute. Section 1(g) of said statute states that:

"that within 10 years from the effective date of the amendment of this section made at the 1961 Regular Session of the Legislature said lands shall be substantially improved by said city without expense to the State, and if the State Lands Commission determines that the city has failed to improve said lands as herein required, the authorization to use said lands for such additional purposes shall automatically terminate and lapse."

REPORT OF INVESTIGATION:

On January 19, 1972, the Executive Officer authorized a study to determine if the above-mentioned granted lands have been substantially improved, as required by the grant statute. On January 31, 1972, the State Lands Division requested from the City such items as photographs, maps, and other graphic materials showing the extent of any improvements made within the ten-year period; a comprehensive detailed statement listing all expenditures and revenues for each of the ten years of the substantial improvement period; a general description of the City's method of accounting for trust funds and disbursements; a list of capital projects showing costs, dates, etc.; a narrative statement outlining any specific problems encountered in the development of the grant and reasons why the City feels the statute has been complied with; and any other pertinent or helpful material. On March 17, 1972, the City submitted a report generally supplying the requested information. The City has been cooperative and supplied additional information for consideration on March 28, 1972.

Because of wide spread public interest and the desire of citizens and organizations to enter statements, the Commission, at the

CALENDAR ITEM NO. 22. (CONTD)

regular February meeting, authorized the holding of a public hearing to gather information relative to substantial improvements. This meeting was conducted on the evening of March 23, 1972. Over one hundred people attended and 17 people submitted information.

On-site investigations of the granted lands were made by the Division on March 16, 23 and April 13, 1972.

As a result of the public meeting, and citizen interest, about 75 letters were received by May 1, all objecting to the activities of the City of Albany on the granted tide and submerged lands.

These letters, along with all other information submitted by the City and others regarding this investigation, have been filed with the State Lands Division.

**FACTS SUPPORTING DETERMINATION:**

Because of the confusion among citizens, as evidenced by much of the input into this investigation, it must be made clear that the merits of an Albany Waterfront Plan, as adopted by the City, are not being considered here. The sole objective of this investigation has been to ascertain whether the City of Albany, during the past ten years, has substantially improved the granted lands for purposes in which there is a general statewide interest, and which are within the terms of the law.

Section 1(a) of the subject grant statute requires that said lands shall be used for purposes of general statewide interest. This rules out, by implication, any uses which are merely of local interest or advantage. Further, the section provides in part that:

" . . . said lands shall be used by said city and its successors . . . for the establishment, improvement and conduct of a harbor, . . . for the construction, reconstruction, repair, maintenance and operation of wharves, docks, piers, slips, quays and all other works, buildings, facilities, utilities, structures, and appliances incidental or convenient for the promotion and accommodation of commerce and navigation . . . for the establishment, improvement, and conduct of an airport and heliport . . . and all other works . . . necessary or convenient for the promotion and accommodation of air commerce . . . for the construction, reconstruction, repair, maintenance and operation of public buildings, . . . parks, playgrounds . . . bathing facilities . . . for the establishment, improvement, and conduct of small boat harbors, marinas, aquatic playgrounds and similar recreational facilities."

CALENDAR ITEM NO. 22. (CONTD)

It must be noted that the 1919 grant limited use of the tidelands to that of "establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other . . . appliances necessary for the promotion and accommodation of commerce and navigation", whereas the 1961 amendment enlarged the conditions to include such uses as heliports, marinas, public buildings, aquatic playgrounds, convention centers, and other recreational and civic uses.

At the time of this investigation, the actual changes on the granted lands resulting from City activities during the past ten years consist of land fill which, according to the official "Albany Waterfront Plan", could at some future date become an Island.

This land fill is being carried on by an agreement between the City and the Albany Land Fill Corporation and allows for placement of rubbish and demolition debris. According to the City, the land fill presently occupying granted tidelands is a combination of demolition debris, and on "Signal Hill", where no structure is planned, "refuse and compactible objects" have been placed.

On the shoreward end of Buchanan Street, as extended, there is a building used by the dumpkeeper and collector of fees. The dump closes at 4:00 p.m. on operating days.

This situation restricts public access to anyone not interested in dumping either land fill or rubbish, and is purely of limited local advantage. There is nothing to promote or accommodate any of the above-mentioned trust purposes which are express conditions of the grant. It is understood that this is a construction phase, and that sometime in the future the "Albany Waterfront Plan" may be operational. However, the grant statute limits this investigation to the accomplishments of the past ten years and does not provide for consideration of any future prospects.

In the above-mentioned "Albany Waterfront Plan", on page 25, there are:

". . . a number of recommended immediate actions that can be taken to improve the appearance, environment and "dump image" of the area. This would include:

- a. Removal of tideland tires, oyster bed fencing, wood pilings and shoreline debris;
- b. Construction of an 8 x 12 foot information sign at the disposal site indicating hours of operation, fee schedules, directions to sites for unloading different materials, types of refuse material permitted;

CALENDAR ITEM NO. 22. (CONTD)

- c. Drawing of the plan showing purpose of reclamation and future land use activities;
- d. Significant landscaping in accordance with short- and long-term objectives;
- e. Construction and maintenance of an attractive entrance structure (job shack);
- f. Early development of "public perches" for those who may wish to fish or bird watch from a riprap embankment."

According to the City report, \$69,493.79 has been spent in connection with the waterfront. After examining this statement, it appears that most of this was spent on the preparation of the Albany Waterfront Plan, a ramp feasibility study, soils reports, and for the extension of Buchanan Street out to the granted lands. The State Lands Commission charged the City \$2,305.38 to survey and monument the grant, as required by statute. This charge is included in the total waterfront expenditure but does not contribute towards any substantial improvement for trust purposes. The only City expenditure directly related to the granted lands appears to have been \$11,442.67 labeled as "Engineering and Administration expenses by the City, directly chargeable to the tidelands grant area." This expenditure on the granted lands was negligible, about \$1,000 per year, and did not result in any enhancement of the public uses in which there is a general statewide interest.

EXHIBITS: A. Site Map.

B. Map of Granted Area Showing Fill.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE CITY OF ALBANY HAS FAILED TO IMPROVE SUBSTANTIALLY THE LAND GRANTED TO IT AS REQUIRED BY SECTION 1(g) OF CHAPTER 1763, STATUTES OF 1961. SUCH FINDING UNDER THE TERMS OF SECTION 1(g) WOULD RESULT IN AN AUTOMATIC REVOCATION, BY OPERATION OF THE STATUTE, OF THE AUTHORIZATION TO USE SAID LANDS FOR THE ADDITIONAL PURPOSES STATED THEREIN.
2. AUTHORIZE THE EXECUTIVE OFFICER TO NOTIFY THE CHIEF CLERK OF THE ASSEMBLY, THE SECRETARY OF THE SENATE, AND THE CITY OF ALBANY, THAT THE COMMISSION HAS MADE AN INVESTIGATION OF SUBSTANTIAL IMPROVEMENT, AS REQUIRED BY THE GRANT STATUTE, AND FINDS THAT THE CITY OF ALBANY HAS FAILED TO IMPROVE SUBSTANTIALLY THE LAND WITHIN THE TERMS OF SECTION 1(g), CHAPTER 1763, STATUTES OF 1961.
3. AUTHORIZE THE STATE LANDS DIVISION TO AUDIT THE ACCOUNTS, REVENUES, AND EXPENDITURES RELATING TO THE TIDELAND TRUST OF THE CITY OF ALBANY TO DETERMINE WHAT RIGHTS AND/OR OBLIGATIONS MAY EXIST WITH REGARD TO THE GRANTEE AND THIRD PARTIES SO AS TO ENABLE THE STATE LANDS COMMISSION TO DETERMINE ANY FUTURE COURSE OF ACTION WITH RESPECT TO THE TIDELANDS.