

MINUTE ITEM

This Calendar Item No. 19
was approved as Minute Item
No. 19 by the State Lands
Commission by a vote of 3
to 0 at its 3-25-76
meeting.

3/25/76
FDL

19. EXERCISE OF THE PUBLIC TRUST WITHIN A PORTION OF MORRO
BAY, SAN LUIS OBISPO COUNTY - W 21076.

During consideration of Calendar Item 19, Mr. William F. Northrop, Executive Officer, stated the Commission has received 17 letters in support of the Commission exercising the public trust over a portion of Morro Bay.

Mr. James F. Trout, Manager, Land Operations, presented slides showing the area under consideration.

Mr. Charles E. Ogle of the law firm of Ogle, Gallo & Merzon, representing the Morro Bay Land Company, appeared in opposition. On behalf of the owners and partners that claim to own the tidelands in question, he vehemently protested the imposition of the public trust upon these tidelands. One objection raised by Mr. Ogle was that the Commission action would confiscate valuable property. He stated if the State wishes to acquire the subject tidelands, they should be condemned and either a settlement can be negotiated or it could be adjudicated.

Mr. Ogle also stated the action was unnecessary because there are no ongoing pressures to develop the bay. He submitted a letter for the record dated March 22, 1976, from A. J. Zorbas, President, and James W. McBeth, Ph.D., Vice President of the American Shellfish Corporation to Mr. Charles E. Ogle; along with attachments of their resumes. (The letter is on file in the office of the State Lands Commission and by reference made a part hereof.) It deals with shellfish cultivation and contends that, should the public trust be imposed, a strong possibility exists that the tidelands would come under the jurisdiction of the Department of Parks and Recreation, thereby eliminating the lands as a potential food source.

Mr. N. Gregory Taylor, Assistant Attorney General, responded to Mr. Ogle's contentions. He stated the State is not seeking to "impose" the trust because the title was originally in the State. He explained the tidelands were conveyed subject to a retained right with which the Commission is presently dealing. Mr. Taylor further explained that the present proposal is for the Commission to formally exercise that right by putting the public on notice that the status quo should be maintained in the area. If further changes are anticipated, the Commission will be a part of those changes. Mr. Taylor stated that by failing to take this action, private parties could contend that since the State did not assert its interest, they could be free, absent the State's objections, to make any improvements. If that were to happen, the State would have to compensate for those improvements.

The Commission unanimously approved the following resolution:

MINUTE ITEM NO. 19. (CONTD)

THE COMMISSION:

1. ADOPTS THE RESOLUTION ATTACHED AS EXHIBIT B AND BY REFERENCE MADE A PART HEREOF.
2. DIRECTS THAT THE RESOLUTION BE RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAN LUIS OBISPO COUNTY.
3. AUTHORIZES THE STAFF AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL ACTION NECESSARY TO IMPLEMENT THE FOREGOING INCLUDING, BUT NOT LIMITED TO, LITIGATION.

Attachment:

Calendar Item 19 (6 pages)

EXERCISE OF THE PUBLIC TRUST WITHIN A PORTION
OF MORRO BAY, SAN LUIS OBISPO COUNTY

Fee title to the beds of all the waterways of the State below the Ordinary High Water Mark (except those previously validly granted to private parties by the Spanish or Mexican governments on the date of statehood) passed from the Federal government to the State of California at the time of statehood (September 9, 1850) by virtue of its sovereignty, on an equal footing with the original thirteen colonies, to be held by the State in trust for the benefit of the public. Under a series of general statutes beginning shortly after statehood, the Legislature authorized the sale of tidelands by patent. Sales of submerged lands below mean low tide were not authorized by these statutes. To the extent submerged lands were described in the State Patents, there was no valid conveyance, and the State remains the owner, holding title in trust for the public purposes of commerce, navigation, and fisheries.

Valid State patents of true tidelands between the mean high and low tide lines did not divest the public of its rights in the tidelands. The buyer of land under these statutes received the title to the soil, the *jus privatum*, subject to the public right of navigation, and in subordination to the right of the State to take possession and use and improve it for that purpose, as it may deem necessary, subject to payment for the taking of possession of improvements made in good faith. This was affirmed in the landmark case entitled *Marks v. Whitney*, 6 Cal. 3d 251 (1971); *People v. California Fish Co.*, 166 Cal. 576, 596 (1913).

The public tidelands trust easements are traditionally defined in terms of navigation, commerce, and fisheries. The public uses to which tidelands are subject are sufficiently flexible to encompass changing needs. In administering the trust, the State is not burdened with an outmoded classification favoring one mode of utilization over another. There is growing recognition that one of the most important uses of the tidelands-- a use encompassed within the tidelands trust--is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area. The California Supreme Court discussed this evolving concept in *Marks v. Whitney*, 6 Cal. 3d 251, 259 (1971).

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Division 6 of the Public Resources Code, with particular reference to Section 6301, constitutes a delegation to the State Lands Commission of authority over the retained public trust easement over patented tidelands and over submerged lands of the State, with the resultant Commission responsibility for preservation and protection of the public's property rights.

State Lands Division title studies have shown the existence of the public sovereign trust on certain tidelands and submerged lands within Morro Bay. These lands are described in Exhibit A attached hereto and made a part hereof by this reference. Morro Bay is one of the least disturbed coastal wetlands along the coast of California and provides habitat for numerous and varied fish and wildlife species rarely exceeded in other parts of the State. (See the Natural Resources of Morro Bay, State Department of Fish and Game, August 1974, pp. 37-52 and appendices A through H, a copy of which is on file in the office of the State Lands Commission and incorporated herein by this reference). Probably the greatest threat to the natural resources of Morro Bay is the ongoing pressure for continued development of the bay and its environs.

As a result of public interest in preserving the natural resources of Morro Bay, the Resources Agency, by Senate Resolution No. 176 (1966 1st Extraordinary Session) was requested to conduct a study of Morro Bay and prepare a comprehensive area plan for Morro Bay. (Copies of the Resources Agency report and said Senate resolution are on file with the office of the State Lands Commission and incorporated herein by this reference).

Subsequently, the Morro Bay Task Force, consisting of local, State and Federal agencies, was formed and is in the process of developing such a plan. (See Patri and Ingmire, 1975, Intergovernmental Comprehensive Morro Bay Watershed Study, a copy of which is on file with the office of the State Lands Commission and incorporated herein by this reference).

A formal exercise of the trust by the Commission is suggested for Commission consideration as an appropriate means of protection and preservation of the public property rights in accordance with the public interest in preserving the natural resources of Morro Bay.

Studies by the State Lands Division indicate that the portion of Morro Bay described in Exhibit A consists of patented tidelands and State owned submerged lands, both being subject to the public trust. While the State patents covering this

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portion of the bay included both tidelands and submerged lands in the described areas, they were effective to pass private title only to the included tidelands, with the submerged lands remaining in State ownership. At present, title to the major portion of the patented tidelands is vested in the Morro Bay and Land Company, a partnership, and in the State of California, Department of Parks and Recreation, as to the smaller portion. The documents listed below and filed with the office of the State Lands Commission demonstrate the need for the Commission to assert its jurisdiction over the land by exercising the public trust without a full opportunity for the Commission to later consider whether such change may be in derogation of the public trust titles. A suggested form of resolution is attached as Exhibit B.

1. Department of Fish and Game, 1974. The Natural Resources of Morro Bay.
2. Senate Resolution No. 176 (1966 1st Extraordinary Session).
3. Resources Agency, 1966. Report on the Natural Resources of Morro Bay and Proposal for Comprehensive Area Plan.
4. Patri, Tito 1975. A Coastal Watershed Environmental Management System, Morro Bay, California.
5. Copies of Tideland Patents Nos. 131 and 220, and applications, plats, field notes, certificates of purchase and surveys relative to said patents.

Exhibits: A. Land description
B. Suggested form of Resolution
C. Site map

IT IS RECOMMENDED THAT THE COMMISSION:

1. ADOPT THE RESOLUTION ATTACHED AS EXHIBIT B AND BY REFERENCE MADE A PART HEREOF.
2. DIRECT THAT THE RESOLUTION BE RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAN LUIS OBISPO COUNTY.
3. AUTHORIZE THE STAFF AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL ACTION NECESSARY TO IMPLEMENT THE FOREGOING INCLUDING, BUT NOT LIMITED TO, LITIGATION.

Attachments: Exhibits "A" and "B"

EXHIBIT "A"

W 21076

All those tidelands and submerged lands in the Bay of Morro Bay, San Luis Obispo County California, within the areas of land described in those patents from the State of California to August Vollmer dated November 15, 1900, recorded November 19, 1900 in Book "G" of Patents at Page 348, and dated August 16, 1902, recorded November 20, 1902 in Book "G" of Patents at Page 433, San Luis Obispo County Recorders Office, said lands being within the areas described in Tideland Location No. 131 and No. 220 respectively.

END OF DESCRIPTION

EXHIBIT 'A'

EXHIBIT "B"

STATE OF CALIFORNIA
STATE LANDS COMMISSION

RESOLUTION

Calendar Item No. 19, for the exercise of the public trust within a portion of Morro Bay duly coming on for public hearing before the State Lands Commission of the State of California, at its regular public meeting at 10:00 a.m., on March 25, 1976, in the Capitol Building, Sacramento, California, and all persons requesting an opportunity to be heard and to present evidence having been fully heard; and upon due deliberation, and after the Commission having fully considered the said Calendar Item and all matters referred to therein; the testimony and evidence of all persons requesting to be heard; the statements of the staff of the State Lands Division, and of the office of the Attorney General; and all evidence having been filed with the Commission; and the Commission having further fully considered matters of common knowledge to which judicial notice may be taken; and the Commission being fully advised,
NOW FINDS:

1. WHEREAS, the real property in the County of San Luis Obispo, State of California, described in said Calendar Item as Exhibit "F" attached hereto and made a part hereof by this reference constitutes a part of the tidelands and submerged lands of Morro Bay, is subject to the public trust for the benefit of the public, for the purposes of commerce, navigation, and fisheries, and for other purposes as defined in the case of Marks v. Whitney, 6 Cal. 3d 251 (1971); and
2. WHEREAS, it is in the interest of the public that the said parcels be preserved by continued maintenance of the status quo, as hereinafter set forth; and
3. WHEREAS, the said parcels can best be preserved by formal exercise of the public trust property rights as hereinafter set forth:

NOW, THEREFORE, upon motion duly made and unanimously approved, the Commission hereby RESOLVES:

1. The said public trust is hereby formally exercised on and upon a portion of Morro Bay described in said Exhibit "a" to require the maintenance of the status quo thereon for the preservation of said parcels in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area, and that no changes be made in any activities, improvements, or facilities on the said parcels, and which are incompatible with the foregoing.

2. Activities and improvements on said parcels, which are hereby deemed to be, and to have been heretofore, compatible with the foregoing trust, include the following:
 - a. Public navigation, fishing, hunting and access;
 - b. Clamming and harvesting of other mollusks;
 - c. Scientific and educational use;
 - d. Birdwatching and nature study; and
 - e. Continued use and maintenance of existing structures, facilities, or improvements, if any, which, prior to February 1, 1976 have lawfully been placed on the said parcels in good faith by the patentee or his successors in interest, the within trust exercise not requiring or contemplating the taking of possession thereof in any manner.
3. The jurisdiction of the Commission is continuing, and nothing herein contained shall in any manner limit, prohibit or restrict the Commission on its own motion, or upon the request of lawful owners of any underlying fee interest, or other parties, and after further public hearings, from amending or revoking this resolution in the future; from establishing different criteria of trust exercise, from taking possession of improvements on said parcels pursuant to law; from requiring permits or licenses or charges for activities, improvements or other use of the said parcels whatever; nor from taking any action whatever which may later be deemed necessary or appropriate in the interest of the public and consistent with the public's property rights.
4. It is the intent of the Commission to fully and completely carry out its responsibilities as guardian of the public titles, while recognizing the reasonable requirements of any parties which may be the lawful owners of an underlying fee interest, to the extent such requirements do not substantially interfere with the public rights.
5. An Environmental Impact Report is not required for the action taken by this resolution by reason of the categorical exemptions under the provisions of PRC 21085; 14 Cal. Adm. Code 15100, et seq., and 2 Cal. Adm. Code 2907.
6. The State Lands Division is directed to record this resolution in the office of the San Luis Obispo County Recorder.

Attachment: Exhibit "A"

WILLIAM F. NORTHROP
Executive Officer