

MINUTE ITEM

70

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S 2

06/14/99

G 04-02

L. Fiack

J. Frey

Regular Calendar Item 70: Member Connell moved that staff be given authority to try and work out a lease agreement with City of Eureka. Alternate Member Porini seconded the motion. Staff was directed to proceed as authorized.

Item attached

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MINUTE ITEM
This Calendar Item No. 70
was approved as Minute Item
No. 70 by the State Lands
Commission by a vote of 3
to 0 at its 6-14-99
meeting.

CALENDAR ITEM
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**CONSIDERATION OF COMMISSION STAFF RECOMMENDATION
FOR DENIAL OF THE CITY OF EUREKA,
A MUNICIPAL CORPORATION'S APPLICATION FOR APPROVAL
OF A LEASE BETWEEN THE CITY AND BAYSIDE DEVELOPERS, LLC,
PURSUANT TO PUBLIC RESOURCES CODE SECTION 6701 ET. SEQ.**

APPLICANT (GRANTEE):

City of Eureka, A Municipal Corporation
531 K Street
Eureka, California 95501-1165

PROPOSED LESSEE:

Bayside Developers, LLC
939 Koster Street
Eureka, California 95503

AREA, LAND TYPE, AND LOCATION:

2.8 acres, more or less, of granted filled lands in Humboldt Bay, 700 Waterfront Drive, (APN 003-062-19) Eureka, Humboldt County.

PROPOSED ACTION:

The City of Eureka, acting as Trustee of the lands granted to the City under Chapter 1086, Statutes of 1970, as amended, and pursuant to Public Resources Code Section 6701, et. seq., has submitted an application requesting that the Commission approve a lease of granted lands to Bayside Developers, LLC for a produce warehouse and chandlery.

Section 3 of Chapter 1095, Statutes of 1978 requires the City to obtain the prior approval of the State Lands Commission for all leases in excess of one year. Under the statute the Commission must act within 60 days of receiving all requested documents or the lease is deemed approved.

The City submitted an application on May 26, 1999. Staff review showed that it did not contain all of the documentation and information required for processing

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and consideration by the Commission. By letter dated June 2, 1999, the City was advised of the deficiencies and further documentation was requested. The City supplied additional information on June 7, 1999. Another review in light of this found the application is still incomplete (see Exhibit B). Further, a legal review of the proposed lease indicated some of its terms were inconsistent with the legislative grant and other principles of law.

PROPOSED USE:

The project, for which the City is proposing to issue a 49-year lease to Bayside Developers, LLC, involves relocating an existing produce warehouse operation from its present location to the subject site. It also involves the expansion of use to include chandlery services.

BACKGROUND AND GRANT REQUIREMENTS:

The Legislature has granted the City of Eureka, beginning in 1857, various portions of the Eureka tidelands for waterfront development, industrial and commercial uses, transportation facilities, public recreation and aquatic activities, and the protection of wildlife habitat. The last grant was expressed in Chapter 1086, Statutes of 1970. Under it, the City is authorized to develop lands "provided that they comply with the terms of the trust and are matters of statewide, as distinguished from local or purely private, interest and benefit." (Section 4) Chapter 1086 provides for the "construction . . . and operation of wharves, docks, piers . . . and all other works, buildings, facilities, utilities, structures and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation." (Section 4(a)) The Act also permits "the construction . . . and maintenance of commercial and industrial buildings, plants and facilities." (Section 4(b)).

Chapter 1095, Statutes of 1978, created the Humboldt Bay Fund for deposit by the City of all monies received directly or indirectly from activities conducted on lands granted to the City.

The City has requested the Commission to approve the Lease pursuant to Public Resources Code Section 6701 et. seq. These Sections provide that no future amendment, modification or revocation, in whole or in part, of any tide or submerged lands heretofore made or that may be hereafter made by the Legislature shall impair or affect the rights or obligations of third parties, including lessees, lenders for value . . ." provided that the State Lands Commission finds that the following conditions have been met.

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1. The proposed lease is in accordance with the terms of the grant under which title to the tide or submerged lands in question is held.
2. The proceeds of the lease are deposited in the designated appropriate fund expendable only for statewide purposes authorized by a legislative grant.
3. The proposed lease is in the best interests of the State.

In determining what is in the "best interests of the State", the Commission is guided by the following regulations from Section 2802, Title 2, California Code of Regulations:

1. The project is consistent with the current policies, practices and procedures used by the State Lands Commission in administering lands under its jurisdiction.
2. The project is economically viable, necessary, and desirable.
3. The project is appropriate for the developmental mix.
4. The project is conducive to public access.
5. The project is consistent with environmental preservation.
6. The project is otherwise in the best interests of the State.

Commission staff has reviewed the proposed lease and other documentation submitted by the City in light of the above referenced statutes and regulations. For reasons stated below staff does not believe that the City has submitted the complete information necessary to make a finding under all of the referenced statutes and secondly that some of the provisions of the draft lease are inconsistent with the legislative grant, the public trust doctrine and other principles of law.

The staff has not received a final executed copy of the lease for review. The City has submitted a draft lease. With regard to the draft lease, staff has several concerns. One covenant anticipates the sale of the lease lands and the lifting of the public trust. Staff views this as inconsistent with the public trust. Secondly, rent provisions providing very low rents and no rent reviews or provisions for rent increases are viewed as inconsistent with the public trust, and violative of the constitutional clause against the gift of public funds and property. The draft lease also contains indemnification clauses calling for the City to make the lessee whole if it should lose money because of the public trust. A fourth major issue is whether the project is water-oriented. Finally, from its present description it appears that the project has marginal connection with Humboldt Bay, and therefore is not in compliance with the grant.

CALENDAR ITEM NO. 70 (CONT'D)

Overall, the staff has not received detailed information that can allow it to make a recommendation of the water dependent aspect of the project including but not limited to the type of chandlery services and export/import services and their dates of commencement. There is a usable City-owned dock in existence, near the proposed lease parcel, but there is no information on when it will be refurbished and made available for use. The staff is also seeking further information on how the project is consistent with the Local Coastal Plan, local zoning ordinances, the Eureka General Plan, the 1991 Humboldt Bay Development Plan, and the 1993 Westside Industrial Area Study. A copy of the signed and recorded Notice of Determination has been requested to indicate that the environmental review process has been successfully completed.

OTHER PERTINENT INFORMATION:

1. The City of Eureka has entered into several leases with third parties on waterfront parcels impressed with the trust, such as the subject parcel. The leases, listed below, were found to authorize uses consistent with the granting statute and were approved by the State Lands Commission pursuant to Public Resources Code Section 6701, et. seq. and Section 2802, Title 2, California Code of Regulations.
 1. Caito Seafoods, Inc.
 2. R.E. Davenport, Inc.
 3. Marine Supply of Eureka, Inc.
 4. Eureka Redevelopment Agency
(same site as proposed project)
 5. California Shellfish, Inc.
 6. California Coastal Conservancy/California Department of
General Services (two leases)
 7. Chevron U.S.A., Inc.
 8. Oregon Coast Towing
2. The Commission has received information and correspondence from interested parties expressing differing views as to what the use of the project lands, and immediately surrounding lands, should be. Some views propose the project lands be developed for port-related uses and believe that the project will impede access to other nearby lands desirable for port use. However, others are supportive of commercial development of the area, including the possibility of a "big box" store on a nearby parcel.

CALENDAR ITEM NO. 70 (CONT'D)

3. In addition to the current proposal, the City has requested that the Commission consider lifting the Public Trust from the project lands. Preliminary review and discussions of this request, at this time, have lead staff to inform the City that it would recommend denial of that request to the Commission.
4. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, section 15378.

EXHIBITS:

- A. Site and Location Map
- B. List of Incomplete Application Items

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

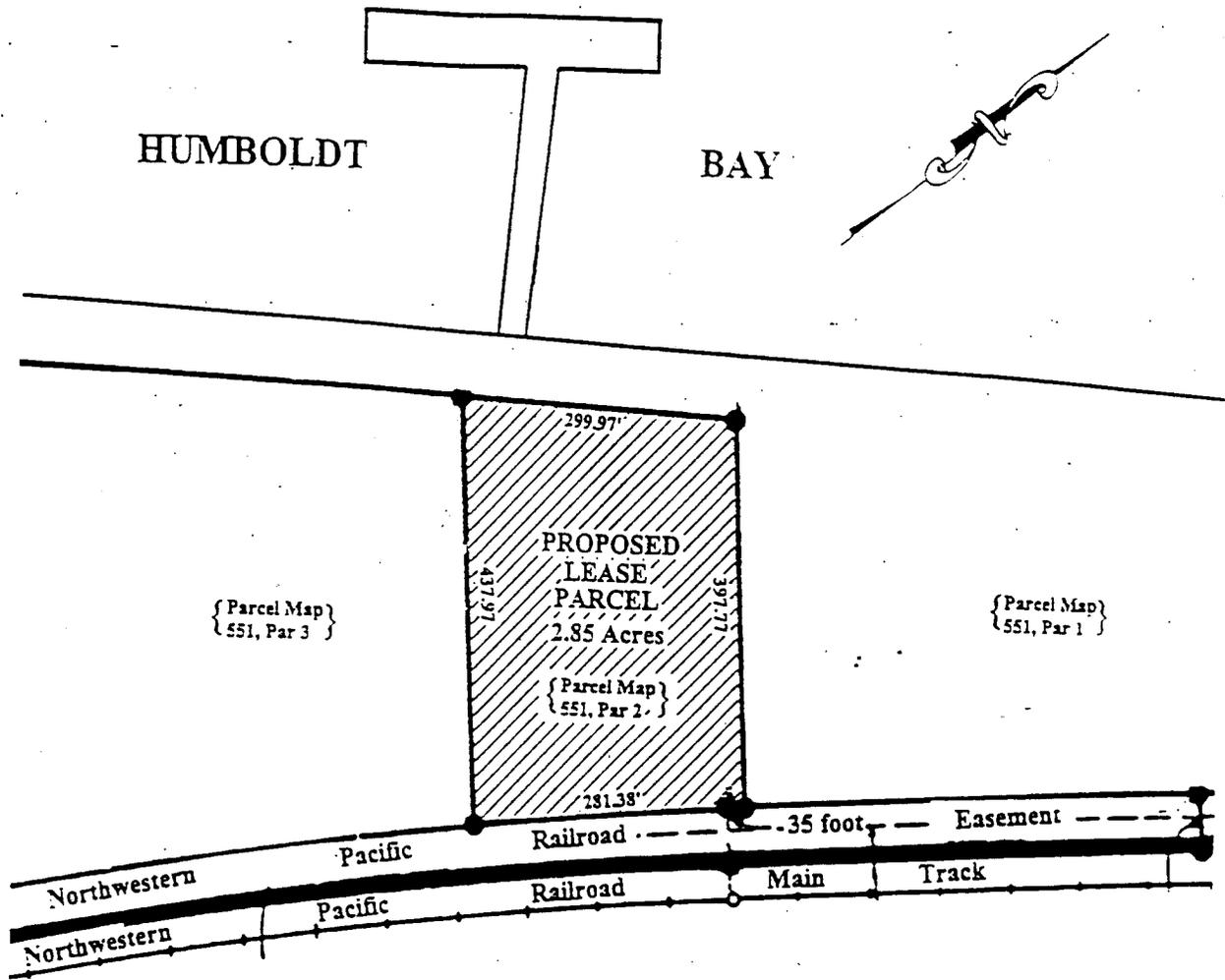
CEQA FINDINGS:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.
2. FIND THAT AS THE ADMINISTRATOR OF LANDS GRANTED IN TRUST TO THE CITY OF EUREKA, PURSUANT TO CHAPTER 1086, STATUTES OF 1970 AS AMENDED, THE CITY IS AUTHORIZED TO ENTER LEASES WHICH CONFORM WITH THE TERMS OF THE GRANT.

CALENDAR ITEM NO. 70 (CONT'D)

3. FIND THAT THE CITY OF EUREKA HAS REQUESTED THE STATE LANDS COMMISSION FIND THAT THE LEASE BETWEEN THE CITY OF EUREKA, A MUNICIPAL CORPORATION AND BAYSIDE DEVELOPERS, LLC, MEETS THE REQUIREMENTS OF CHAPTER 1086, STATUTES OF 1970 AND PUBLIC RESOURCES CODE SECTION 6702.
4. FIND THAT THE CITY OF EUREKA HAS FILED WITH THE STATE LANDS COMMISSION AN INCOMPLETE APPLICATION FOR CONSIDERATION OF THE PROPOSED LEASE.
5. DETERMINE, PURSUANT TO CHAPTER 1086, STATUTES OF 1970 AND PUBLIC RESOURCES CODE SECTION 6702, THAT THE LEASE BETWEEN THE CITY OF EUREKA, A MUNICIPAL CORPORATION AND BAYSIDE DEVELOPERS, LLC, IS NOT IN ACCORDANCE WITH THE PUBLIC TRUST AND THE GRANT UNDER WHICH TITLE TO THE TIDE AND SUBMERGED LANDS IS HELD.
6. DETERMINE THAT SUFFICIENT INFORMATION HAS NOT BEEN RECEIVED TO DETERMINE THE LEASE IS IN THE BEST INTERESTS OF THE STATE PURSUANT TO SECTION 6702 (b)(3) OF THE PUBLIC RESOURCES CODE AND TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 2802.
7. BASED ON THE FINDINGS SET FORTH ABOVE, AT THIS TIME DENY APPROVAL OF THE LEASE WITHOUT PREJUDICE, AS PROPOSED BY THE CITY OF EUREKA, A MUNICIPAL CORPORATION IN ITS APPLICATION.

SITE MAP



NO SCALE

LOCATION MAP

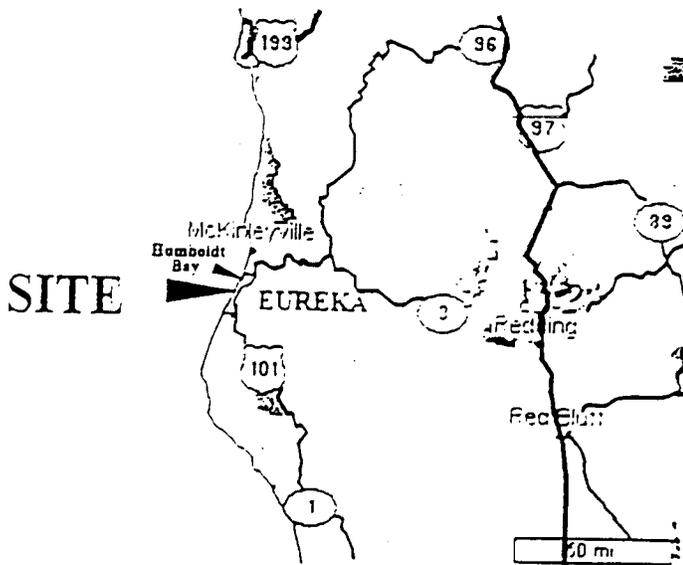
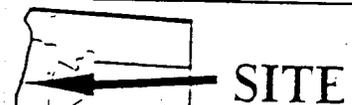


Exhibit A
G 04-02.10

APN 003-062-19

Bayside Developers LLC
Humboldt Bay

Vicinity of Eureka, CA.
HUMBOLDT COUNTY



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This Exhibit is solely for purposes of generally defining the lease premises, and is not intended to be, nor shall it be construed as, a waiver of limitation of any state interest in

EXHIBIT B

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City of Eureka, A Municipal Corporation/Bayside Developers, LLC

INCOMPLETE ITEMS

1. An executed or final draft of the lease. The Commission cannot consider a draft document. The lease staff has been provided is seriously inadequate for review and consideration.
2. Items from the Grantee's Report:
 - *Clarification whether the "all fees" referred to in Ordinance 100.07 includes rents from tenants of tidelands.
 - *A description of the City's and region's master plans and uses for the subject area, including elaboration on how the proposed development will be integrated with or diverge from these plans. Also, information is needed as to what developmental mix the City is striving for in the project area.
 - *Clarification on how all aspects and phases of the project are consistent with the adopted Local Coastal Program, the Local Coastal Permit issued by the City and the Eureka Municipal Code policies, procedures and development standards.
3. A drawing of the project area showing where the public access referred to in the application is located.
4. A copy of the SIGNED and RECORDED Notice of Determination is needed.
5. A description of the time frames for commencement of construction of Phase II and whether it will be coordinated with the refurbishment of Dock B.
6. A copy of the signed and dated LLC Operating Agreement. Clarification and documentation pertaining to whether the produce operation, etc. will be a sublease of the LLC.
7. The development of uses and facilities in connection with Dock B are unclear. It is staff's opinion that the water-oriented elements of the project most strongly support the application as being consistent with the public trust and the legislative grant. We have not been provided with details directly addressing the water-oriented elements of the proposal and relating them to the time frame for and reconstruction of Dock B or some other facility which would provide the water-oriented connection. Staff is concerned that without some indication of actual wharf development adjacent to the project site, the

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water-oriented services will not be provided. Hence the loss of the consistency of the project with the grant. Therefore, the applicant is requested to address this concern in detail and also describe whether it is believed that the project is consistent with the grant absent the usability of Dock B or some other facility?

8. Detailed information is needed as to what products are currently exported or imported using the Schneider Dock or other current facility? What products would be considered for import or export in the future? What is the present dollar and percentage amount of the company's business dedicated to this aspect of the enterprise? What is the anticipated future percentage? When will products be shipped from the project site parcel and Dock B as opposed to the Schneider Dock? Will any other permits, including a LCP be required or environmental documents have to be prepared in order to conduct this future export/import business? Also, the location of the Schneider Dock and Pacific Affiliates on a location map is requested.
9. Specification of the commencement date for the provision of the chandlery services is needed. Also, a description is needed as to whether the proposed lessee currently provides chandlery services from the Schneider Dock and, if so, what is the dollar and percentage amount of these services in the overall business?