

17. DEFERMENT OF ACTION ON FINDINGS OF NONCOMPLIANCE WITH TERMS OF THE GRANT TO THE CITY OF RICHMOND BY CHAPTER 1336, STATUTES OF 1959, COVERING LAND IN SAN FRANCISCO BAY - Grant 2-4d.

Based on an oral report made by the Executive Officer, consideration on Calendar Item 4 attached was deferred pending the outcome of current legislation.

Assemblyman Knox has introduced Bill No. AB-461 in the current session of the Legislature, which would provide recognition of the fact that Chapter 1555 of the Statutes of 1970 required, for the first time, that trust grantees of the State submit master plans and environmental impact reports. AB-461 proposes to extend for two years the time in which grantees must comply with the terms of their grants.

Under those circumstances, it was deemed appropriate, in equity, to defer consideration of the subject grant on the basis of noncompliance with the terms of the grant until AB-461 has been disposed of by the Legislature.

If AB-461 is not successful and an extension is not granted, the subject matter is to be brought before the Commission again for filing findings in accordance with Chapter 1336, Statutes of 1959.

Attachment:

Calendar Item 4 (3 pages)

CALENDAR ITEM

2/71
Grant 2-4d
JS

4.

GRANT TO CITY OF RICHMOND
NONCOMPLIANCE WITH STATUTORY SUBSTANTIAL IMPROVEMENT CLAUSE
UNDER CHAPTER 1336, STATUTES OF 1959, SECTION 1(g)

GRANTEE: City of Richmond

LOCATION: Lands granted by Chapter 1336, Statutes of 1959 (map of grant on file in State Lands Commission, approved at the regular meeting of the State Lands Commission on July 28, 1961, Minute Item 32), lying in San Francisco Bay southeasterly of the City of Richmond and northeasterly of the City of Albany, comprising approximately 1500 acres+ including all right, title and interest of the State of California held by the State in the tide and submerged lands whether filled or unfilled, excluding minerals.

PURPOSE: To make a finding that the granted lands held by the City of Richmond under Section 1(g) of Chapter 1336, Statutes of 1959, have not been substantially improved within the terms and meaning of the statute. Under Section 1(g) of Chapter 1336, Statutes of 1959, the lands ". . . granted are held upon the express condition that within ten years from the effective date of this act said lands shall be substantially improved by the 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, all right, title and interest of said city in and to all lands granted by this act shall cease and said lands shall revert and rest in the state."

FACTS SUPPORTING FINDING:

In February 1970, the State Lands Commission authorized a study to determine whether the City of Richmond has complied with Section 1(g) of Chapter 1336, Statutes of 1959. The Commission authorized the State Lands Division to request from the City of Richmond such items as historical 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 thereof; 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 April 3, 1970, the Division notified the City Manager of the City of Richmond that the Commission had authorized the Division to determine whether substantial improvement under the terms of the grant had occurred, and that a report was due 90 days from

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receipt of the April 3 letter. On July 2, 1970, the City of Richmond forwarded a letter, with some attachments, which purported to be the information requested on April 3. Upon review of the material submitted, it was felt that the information contained therein was deficient in a number of areas, and on July 15, 1970, the Division again requested of the City of Richmond information along the lines of the original April 3 letter which was not supplied in the report of July 2, 1970. The information was requested by July 31, 1970. On August 10, 1970, the Division received from the City of Richmond what purported to be the supplemental information requested, in letter form dated August 7, 1970. From a review of the two submittals from the City of Richmond, including photographs of the granted area taken in July of 1959 and in April of 1968, there has been no significant improvement of the granted area. There has been normal harbor maintenance, including some dredging, but the harbor area itself has not been substantially improved in the ten-year period as required by law.

The City stated in its August 7 letter that the prime purpose of the City in acquiring the granted lands was to maintain the public portion of the bay in Richmond as an open area for the benefit of the citizens of Richmond and the surrounding area. While it is understood that open space is desirable in many cases for the public benefit, any such undertaking must be of State-wide benefit and not of merely local interest or advantage. Further, Chapter 1336 provides that:

" . . . said lands shall be used by said city and its successors only for the establishment, improvement and conduct of a harbor including . . . for the construction, maintenance and operation thereof of wharves, docks, piers, slips, keys and other utilities, structures, facilities and appliances necessary or convenient for the promotion and accommodation of commerce and navigation . . . for water and for public recreational purposes and for the establishment, improvement and conduct of utilities, facilities, structures, buildings, works and appliances necessary or convenient for the promotion and accommodation of public recreation . . ."

Legislative grants since the first grant in 1851 have been almost without exception for the establishment of harbor facilities and the construction of wharves and other commercial and navigational accommodations consistent with the trusts of commerce, navigation, and fisheries. Chapter 1336 clearly requires the Commission to determine whether the City has failed to improve the land within the terms of the statute. In the opinion of the Division, the land has not been substantially improved in the manner required by the statute.

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On December 1, 1970, the Executive Officer of the Division notified the City of Richmond that it is the opinion of the Division that the land has not been substantially improved and that:

"It is proposed that this matter will be presented to the State Lands Commission at its regular meeting on February 25, 1971. Under the existent circumstances the Division will have to report that substantial improvement, as defined and required by Chapter 1336, Statutes of 1959, has not occurred on the tide and submerged lands granted to the City of Richmond by that statute.

"If you disagree with the foregoing proposed Division report, you may present your views to the State Lands Commission at its regular February 25, 1971, meeting either verbally or in writing."

To date the City of Richmond has not responded to this letter.

IT IS RECOMMENDED THAT:

1. THE STATE LANDS COMMISSION FIND THAT THE CITY OF RICHMOND HAS FAILED TO SUBSTANTIALLY IMPROVE THE LAND GRANTED TO IT BY CHAPTER 1336, STATUTES OF 1959, AS REQUIRED BY SECTION 1(g) OF THAT STATUTE. SUCH FINDING UNDER THE TERMS OF SECTION 1(g) WOULD RESULT IN AN AUTOMATIC REVOCATION, BY OPERATION OF LAW, OF THE GRANT TO SAID CITY, AND ALL JURISDICTION THAT WAS FORMERLY VESTED IN THE CITY BY VIRTUE OF SAID STATUTE WOULD NOW REVERT TO THE STATE LANDS COMMISSION.
2. THE EXECUTIVE OFFICER OF THE STATE LANDS COMMISSION BE AUTHORIZED TO NOTIFY THE CHIEF CLERK OF THE ASSEMBLY, THE SECRETARY OF THE SENATE, AND THE CITY OF RICHMOND, ACTING THROUGH ITS CITY MANAGER, THAT THE COMMISSION HAS MADE AN INVESTIGATION OF SUBSTANTIAL IMPROVEMENT, AS REQUIRED BY THE GRANT STATUTE, AND FINDS THAT THE CITY OF RICHMOND HAS FAILED TO SUBSTANTIALLY IMPROVE THE LAND WITHIN THE TERMS OF SECTION 1(g), CHAPTER 1336, STATUTES OF 1959, AND THAT THE GRANT IS REVOKED BY SUCH FINDING.

IT IS RECOMMENDED FURTHER THAT, PURSUANT TO THIS REVOCATION OF THE GRANT, THE STATE LANDS DIVISION AUDIT THE ACCOUNTS, REVENUES, AND EXPENDITURES RELATING TO THE TIDELAND TRUST OF THE CITY OF RICHMOND 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 REVERTED TIDELANDS.