

STAFF REPORT

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06/28/19

G 04-01

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R. Boggiano

S. Scheiber

CONSIDER FINDINGS FOR LAND WITHIN THE STATE'S GRANT TO THE CITY OF ARCATA AND THE AUTHORIZATION TO FILE A CERTIFICATE THAT WOULD TEMPORARILY LIFT THE USE RESTRICTIONS OF THE PUBLIC TRUST ON THOSE LANDS AS PROVIDED UNDER CHAPTER 1040, STATUTES OF 1976

PARTIES:

City of Arcata

LOCATION:

Granted tide and submerged lands located in the city of Arcata, Humboldt County.

BACKGROUND:

The city of Arcata (City) is trustee of sovereign tide and submerged lands granted by the Legislature under Chapter 1238, Statutes of 1989. The City holds these lands in trust on behalf of the people of the state and subject to its legislative granting statute and the common law Public Trust Doctrine. In 1976, the Legislature authorized the Commission to record a certificate to free certain lands within the City's grant from the Public Trust use restrictions provided the Commission makes specific findings (Chapter 1040, Statutes of 1976).

The City has a wastewater treatment facility and corporation yard located on filled land adjacent to Humboldt Bay and within the lands granted to the City. The City will be completing renovations and improvements to the wastewater treatment facility. To facilitate these improvements, pursuant to City Council action taken April 3, 2019, on May 9, 2019, the City requested that the Commission consider the findings in Chapter 1040 for the land underlying the City's primary treatment facility, as depicted and described in Exhibit A and B.

The City's wastewater treatment facility was first constructed in 1949, as noted on Exhibit A. As the City developed and expanded its wastewater treatment facility, operational efficiencies resulted in co-locating other City activities and facilities necessary to directly maintain the wastewater treatment facility and marshes at the filled site. Eventually, the filled site shown in Exhibit A came to house the City's corporation yard, however, the wastewater treatment facility continues to be the

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primary use of the property. After treatment at the treatment facility, wastewater is piped into adjoining oxidation ponds and subsequently into treatment marshes, which were built in the late 50's and mid-80's. The marshes are an essential component the facility's wastewater treatment.

The oxidation ponds and marshes provide wildlife habitat. Located along the Pacific Flyway, the marsh is home to hundreds of species of birds and abundant wildlife. Multiple trails and paths meander throughout the area and the site contains an interpretive center with exhibits about the treatment facility and the importance of the marsh and the animals that inhabit the ponds. Under Chapter 1040, no lands that are subject to tidal action or permanently covered by water shall be conveyed or freed of the trust and conditions imposed by the Public Trust. The wetland marshes and oxidation pond will remain in the grant, subject to the Public Trust.

STAFF ANALYSIS:

Public Trust lands are held in trust for all citizens of California and they must be used to serve statewide, as opposed to purely local, public purposes. The wastewater treatment facility and other City activities conducted at the site are local municipal uses and are not consistent with the Public Trust. Structures built on Public Trust lands should have as their main purpose the furtherance of a Public Trust use. The facility provides incidental benefits to the Public Trust through the wildlife habitat and water related recreational areas created in association with the facility's marsh and oxidation ponds. Although these areas are water dependent and benefit the statewide public, because the primary purpose of the facility is for a municipal nontrust use, the treatment facility and its ancillary municipal uses are not consistent with the Public Trust.

Chapter 1040 requires the Commission, at the request and approval of the City, to determine which lands within the City have been filled, improved, and reclaimed in connection with the development of such areas, are no longer in fact tidelands or submerged lands, and are no longer available, useful, or necessary for public commerce, navigation, and fishing.

According to the City, the land under the wastewater treatment facility was filled, improved, and reclaimed when constructed in 1949. The lands remain filled today and no portion of the land is submerged or subject to the tide. The property is used primarily as a wastewater treatment facility for local and municipal use and is not available to serve a statewide purpose. As the land is filled and has municipal buildings on site, it is no longer available, useful, or necessary for public commerce, navigation, and fishing. Due to safety concerns associated with the facility, public access to the land is unavailable. The land is a small portion of the total lands granted to the City.

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If the Commission makes these findings, it must record a certificate. When the certificate is recorded, the land described shall be free of the Public Trust for commerce, navigation, and fisheries but will continue to be held by the City, as trustee, on behalf of the people of the state of California and subject to all other terms and conditions of the City's legislative granting statute. In this case, the recommendation of Commission staff is to not permanently terminate the Public Trust, but to temporarily lift the use restrictions of the Public Trust for only so long as the land is used primarily as a treatment facility for the City's wastewater. Commission staff believe that the temporary lifting of the use restrictions of the Public Trust will help the City better manage the Public Trust lands and ensure that the future use of the lands is in the best interest of the state.

Commission staff believe that this land meets the requirements found in Chapter 1040 and recommends that the Commission make the required findings and authorize the filing of a certificate that would temporarily lift the use restrictions of the Public Trust for so long as the land is being used primarily as the City's treatment facility for its wastewater. The Commission may find, in its sole discretion, at a regularly scheduled public meeting, that all or a portion of the land has been put to another use unassociated with the City's wastewater treatment facility or ancillary utility support facilities, and that the land has ceased to be used or has been put to inactive use. Upon such a finding by the Commission, the property will, once again, become subject to the use restrictions of the common law Public Trust Doctrine.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.2 of the Commission's Strategic Plan to provide that the current and future management of ungranted sovereign land and resources and granted lands are consistent with evolving Public Trust principles and values, particularly amid challenges relating to climate change, sea-level rise, public access, and complex land use planning and marine freight transportation systems.
2. Authorization of this action is a discretionary action by the Commission.
3. On April 3, 2019, the City Council took action approving the Commission's making of certain findings found in Chapter 1040, Statutes of 1976.
4. All uses of trust lands and revenues must consider the overarching principle of the Public Trust that the lands belong to the public and their use must serve a statewide purpose, as opposed to a purely local or municipal purpose.

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5. The improvements to the City's wastewater treatment facility will be financed by the City, as a municipality, and will not include any expenditures of Public Trust funds.
6. This action would not limit the Commission's authority under Chapter 1040 to later find that the land should be permanently free from the Public Trust, if all of the findings under Chapter 1040 are made and such action is found to be in the best interest of the state.
7. Considering findings and authorizing staff to file a certificate that would temporarily lift the use restrictions of the Public Trust on lands granted to the City are not projects as defined by the California Environmental Quality Act because they are administrative actions that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

- A. Location and Site Map
- B. Land Description
- C. Draft Certificate

RECOMMENDED ACTION:

It is recommended that the Commission:

AUTHORIZATION:

1. Find that the lands described in this staff report have been filled, improved, and reclaimed in connection with the development of the area, are no longer in fact tidelands or submerged lands, and are no longer available, useful or necessary for public commerce, navigation, and fishing.
2. Authorize Commission staff to execute and file a certificate, substantially in the form of Exhibit C, in the official records of the County of Humboldt that describes the land in this staff report and the findings and determinations of the Commission to temporarily lift the use restrictions of the Public Trust for so long as the land is being used as the City's primary treatment facility for its wastewater treatment.

SITE

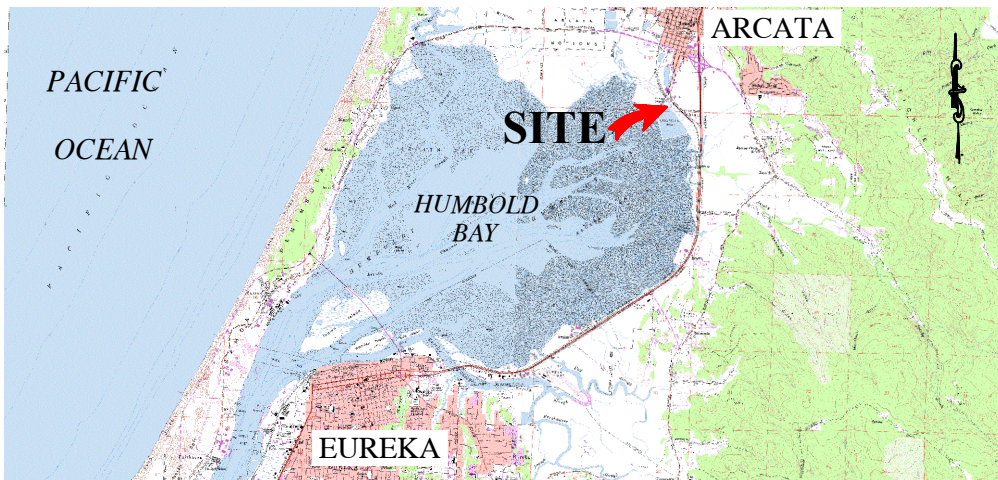
NO SCALE



ARCATA WATER TREATMENT FACILITY, CITY OF ARCATA

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit A

G 04-01
CITY OF ARCATA
WATER TREATMENT
FACILITY
TEMPORARY TRUST LIFTING
HUMBOLDT COUNTY



TS 06/12/19

EXHIBIT B

LEGAL DESCRIPTION
For Area Encompassing
City of Arcata Wastewater Treatment Plant and Corporation Yard
To be removed from Public Trust

All that real property in Section 32, Township 6 North, Range 1 East, Humboldt Meridian, in the City of Arcata, County of Humboldt, State of California, lying within the area described in Chapter 1238, of the Grant from the State of California of Public Trust Lands to the City of Arcata in 1989, being a portion of the lands described therein in Section 13 (a), Parcel 1, more particularly described as follows:

COMMENCING at the monument at Murray Field Airport, NGS PID No. LV1180, with Designation "ARP 1967", thence North $24^{\circ}12'14''$ East 19,656.71 feet to a point in the easterly fence line of the City of Arcata Wastewater Treatment Plant and Corporation Yard, said point in fence also being South $25^{\circ}14'11''$ East 716.79 feet from the brass disk monument set in the concrete headwall marking NGS PID No. LV0299, with Designation "P 735", being the POINT OF BEGINNING of this description;

Thence leaving said fence line South $40^{\circ}09'54''$ West 275.20 feet to a point on the southwesterly edge of an access road;

Thence South $79^{\circ}22'14''$ West 90.94 feet to the top of a bank on southerly side of an access road;

Thence North $29^{\circ}31'29''$ West 131.00 feet to an angle point in the top of bank;

Thence North $56^{\circ}17'29''$ West 52.57 feet to an angle point in the top of bank;

Thence South $84^{\circ}45'56''$ West 50.50 feet to an angle point in the top of bank;

Thence North $78^{\circ}12'00''$ West 75.92 feet to an angle point in the top of bank;

Thence North $75^{\circ}03'01''$ West 194.06 feet to an angle point in the top of bank;

Thence South $34^{\circ}13'06''$ West 28.18 feet to an angle point in the top of bank;

Thence South $8^{\circ}54'24''$ West 199.67 feet along top of bank and the southerly extension thereof to a point on the southerly edge of an access road;

Thence westerly along the south edge of an access road North $82^{\circ}20'11''$ West 173.48 feet to a point on the west edge of an access road running northeasterly;

Thence North $13^{\circ}26'58''$ East 94.89 feet along westerly edge of an access road;

Thence North $15^{\circ}54'46''$ East 38.04 feet along westerly edge of an access road;

Thence North $19^{\circ}53'52''$ East 95.71 feet along westerly edge of an access road to the beginning of a non-tangent curve to the right;

Thence along westerly and northerly edge of an access road along a non-tangent curve to the right, whose radius bears South $69^{\circ}30'44''$ East, radius of 183.00 feet, through a central angle of 80 degrees 56 minutes 07 seconds, an arc length of 258.50 feet;

Thence leaving edge of road North $4^{\circ}50'14''$ East 54.33 feet to an angle point in the top of bank;

Thence North $2^{\circ}42'36''$ East 86.51 feet along top of bank to an angle point in the top of bank;

Thence North $16^{\circ}27'51''$ West 44.54 feet along top of bank to an angle point in the top of bank;

Thence North $29^{\circ}28'33''$ West 115.86 feet along top of bank to an angle point in the top of bank;

Thence North $4^{\circ}07'40''$ East 57.83 feet along top of bank to an angle point in the top of bank;

Thence North $9^{\circ}27'23''$ East 66.52 feet along top of bank to an angle point in the top of bank;

Thence North 25°28'00" East 128.08 feet along top of bank to a point in the existing fence line;

Thence South 74°11'45" East 64.58 feet along fence line;

Thence South 69°16'44" East 9.44 feet along fence line;

Thence South 60°04'06" East 53.03 feet along fence line;

Thence South 49°35'17" East 11.74 feet along fence line;

Thence South 39°28'38" East 102.83 feet along fence line;

Thence South 41°17'26" East 105.44 feet along fence line;

Thence South 37°15'17" East 154.05 feet to an angle point in fence;

Thence South 41°52'59" East 265.09 feet along fence line;

Thence South 41°59'06" East 138.99 feet, more or less, to the POINT OF BEGINNING.

Containing an area of 8.42 acres, more or less.

BASIS OF BEARINGS in this description are based on California Coordinate System of 1983 Zone 1 (2010.0 Epoch). Rotate bearings herein counterclockwise 1 degree 21 minutes 37 seconds to obtain True North bearings. Multiple distances herein by inverse of Combined Scale Factor of 1.00010254 to obtain ground distances.

END OF DESCRIPTION



David A. Crivelli, LS 7015
3/10/2016

EXHIBIT C

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
State Lands Commission
Attn: Legal Unit
100 Howe Avenue, Suite 100- South
Sacramento, CA 95825-8202

**STATE OF CALIFORNIA
OFFICIAL BUSINESS**

Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN No. 503-241-013; 503-211-005
SLC No. G 04-01

CERTIFICATE

(City of Arcata - Chapter 1040 Statutes of 1976)

WHEREAS, the city of Arcata is a trustee of sovereign tide and submerged lands granted by the Legislature under Chapter 1238, Statutes of 1989. The City holds these lands in trust on behalf of the people of the state and subject to its granting statute and the common law Public Trust Doctrine.

WHEREAS, the city of Arcata has a wastewater treatment facility and other municipal facilities located within the land legislatively granted to the City. A municipal wastewater treatment facility is not consistent with the Public Trust Doctrine.

WHEREAS, the wastewater treatment facility needs improvements, which will be financed by the city of Arcata, as a municipality. To facilitate these improvements, the city of Arcata requested that the Commission consider the findings in Chapter 1040, Statutes of 1976 for the land underlying the City's primary treatment facility for its wastewater treatment facility.

WHEREAS, pursuant to Chapter 1040, Statutes of 1976, the State Lands Commission, on behalf of the State of California, is required to make certain determinations about lands within the city of Arcata and record a certificate describing the lands and the Commission's determinations. Upon the recordation of such a certificate, the lands described shall be free of the Public Trust for commerce, navigation, and fisheries.

WHEREAS, at its publicly held meeting on June 28, 2019, the State Lands Commission made the required findings under Chapter 1040, Statutes of 1976 for the land described in Exhibit A and authorized the recordation of this certificate to terminate the Public Trust for so long as the land is used primarily as the facility for the City's wastewater.

WHEREAS, consistent with legislative authorization and the State Lands Commission's approval, upon the recordation of this certificate, the land described in

EXHIBIT C

Exhibit A shall be held free of the use restrictions of the Public Trust for commerce, navigation and fisheries for so long as the land is used primarily as the treatment facility for the City's wastewater treatment. The land will otherwise continue to be held by the city of Arcata, as trustee, on behalf of the people of the state of California subject to all other terms and conditions of the Public Trust and the city of Arcata's legislative grant. The Commission may find, in its sole discretion, at a regularly scheduled public meeting, that all or a portion of the land has been put to another use unassociated with the City's wastewater treatment or that all or a portion of the land has ceased to be used, or has been put to an inactive use, as the City's wastewater treatment facility. Upon that finding by the Commission, the land will, once again, become subject to the use requirements of the common law Public Trust Doctrine.

NOW, THEREFORE, I, Jennifer Lucchesi, Executive Officer of the California State Lands Commission, hereby certify that the Commissioners for the California State Lands Commission met on June 28, 2019, and made findings that the land described in Exhibit A has been filled, improved, and reclaimed in connection with the development of the area, is no longer in fact tidelands or submerged land, and is no longer available, useful or necessary for public commerce, navigation, and fishing. The Commission authorized the filing of this certificate to lift the use restrictions of the Public Trust for commerce, navigation, and fisheries for so long as the land is used primarily as the City's treatment facility for its wastewater treatment facility. A copy of the Commission's Staff Report C _____ describing the land and findings of the Commission is attached hereto as Exhibit A and the findings in the attached Exhibit A are incorporated here by reference.

Date: _____

By: _____

Jennifer Lucchesi, Executive Officer
California State Lands Commission

APPROVAL AS TO FORM

Date: _____

Xavier Becerra
Attorney General

By: _____

Andrew Vogel
Deputy Attorney General