47. REPORTS TO LEGISLATIVE COMMITTEES ON PROPOSED LEGISLATION AFFECTING TIDE AND SUBMERGED LANDS - W.O. 4900.

On August 18, 1964 (Minute Item 29, page 10,420), the Commission authorized the Executive Officer to report to legislative committees these general and specific recommendations of the Commission for consideration as to implementation in legislative tideland grants:

"GENERAL:

1. Placement of a moratorium on the issuance of new grants until such time as the various studies being conducted by the executive and legislative branches of State government are completed and appropriate legislative control specifications have been adopted.

2. Amendment of existing granting statutes and statutes related to tide and submerged land development (and incorporation in future granting acts) of the requirements that the lands thereunder granted be developed in accordance with approved planning concepts, the former to be done where the lands so granted are not yet developed or where development has not proceeded beyond a critical point.

3. Assignment to the State Lands Commission of approval responsibility for programs for the development of granted lands.

4. Determination of priorities, on granted lands having a mineral reservation to the State, between mineral and surface development when the two are not in immediate conflict in point of space or time.

5. Determination of criteria by which the State will share in revenues gained by grantees as a result of operations on lands granted without a mineral reservation to the State.

SPECIFIC:

1. Precise specification of the effective date of grants.

2. Specification of the State Lands Commission's responsibility to determine compliance of grantees with the terms of granting statutes.

3. Definition of the criteria for compliance with a granting statute.

4. Specification of guidelines for allowable expenditures of trust funds by a grantee."

These recommendations were reported to the Assembly Interim Committee on Natural Resources, Planning and Public Works at its hearing on September 17, 1964, to the San Francisco Bay Conservation Study Commission on September 29, 1964, and to the Joint Legislative Committee on Tidelands on December 21, 1964.

The report of the Assembly Committee on Natural Resources, Planning and Public Works recommends that no further grant of tide and submerged lands be made until a uniform and comprehensive tide and submerged lands policy is adopted pursuant to numerous studies currently underway. Additionally, the report of the San Francisco Bay Study Commission recommends that "no further grant of land in San Francisco Bay should be made by the State" without the prior approval of a Bay Conservation and Development Commission (BCDC) which is proposed to be established by Senate Bill 309 (McAteer). Similarly, the report of the Joint Legislative Committee on Tidelands recommends further study on existent tideland grants, which studies will be carried out pursuant to Senate Concurrent Resolution 27 (Resolution Chapter 31) for report to the Legislature at the 1967 Regular Session.

On March 23, 1965, consistent with the recommendations adopted on August 18, 1964, the Commission authorized the Executive Officer to report its position to appropriate legislative committees relative to three proposed legislative tideland grants, i.e., A.B. 1024 (Bagley), S.B. 204 (Short) and S.B. 754 (Schrade).

Since the March meeting of the Commission three additional tide and submerged land grant bills have been introduced in the legislature. These are:

S.B. 985 (Gibson) - An Act to convey approximately [illegible] acres of sovereign lands in Suisun Bay and Carquinez Straits to the City of Benecia subject to specified trusts and conditions.

A.B. 2050 (Stevens)-An Act to broaden the purposes for which tide and submerged lands previously granted to the City of Santa Monica (Chap. 78, Stats. 1917, amended by Chap. 616, Stats. 1949) may be used. Additionally, certain separate parcels of tide and submerged lands in Santa Monica Bay are granted respectively to the City of Los Angeles and to the County of Los Angeles.

A.B. 2182 (Crown) - An Act to convey the State interest arising out of the State's sovereignty in a specifically described 2.548 acre parcel to the Alameda Unified School District for school purposes.

IN CONSIDERATION OF THE AUTHORS, [illegible] AND MERITS, 1965, ACTIONS OF THE COMMISSION, UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE EXECUTIVE OFFICER WAS AUTHORIZED TO REPORT TO APPROPRIATE LEGISLATIVE COMMITTEES THE POSITION OF THE COMMISSION RELATIVE TO THE RESPECTIVE LEGISLATION AS FOLLOWS:

S.B. 985 (GIBSON) -
A.B. 2050 (STEVENS)- REPORT THE GENERAL AND SPECIFIC RECOMMENDATIONS ADOPTED BY THE COMMISSION ON AUGUST 18, 1964, RELATIVE TO GRANTS OF TIDE AND SUBMERGED LANDS TO POLITICAL SUBDIVISIONS.

Although the recommendation put forward above for consideration by the Commission would constitute its present official position the impact of A.B. 2050 is of such magnitude that the following full discussion is presented in order for the Commission to be informed as to all the ramifications of the bill.

The bill provides for the State Lands Commission to find that the reclaimed lands are free from the public trusts for commerce, navigation and fishery.

The bill also provides for the sale of reclaimed lands (i.e., those freed from the trusts) to private persons. However, Article XV, Section 3 of the State Constitution provides:

> "All tidelands within two miles of any incorporated city or town in this State, and fronting on the waters of any harbor, estuary, bay or inlet used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships or corporations."

Additionally, Section 7991 of the Public Resources Code provides:

> "The shore and the bed of the ocean or of any navigable channel or stream or bay or inlet within the State, between ordinary high and low water mark, over which the ordinary tide ebbs and flows is hereby withheld from sale."

The provisions of the bill indicate a predetermined finding that the areas of sovereign lands which are no longer subject to the ebb and flow of the tide shall be filled to an elevation above the effects of navigation and to be known as "filled tidelands and [illegible]". This change of physical character of itself does not change the sovereign character of the land which is still subject to the public trusts for commerce, navigation and fisheries under which the title became vested in the State by its admission to the Union. Should the Legislature adopt a policy of circumventing the constitutional intent by approving "fill and sell" projects, such erosion of the sovereign ownership may eventually result in the transfer of such sovereign lands into proprietary private ownership with the resulting lack of State control over its original sovereign lands.

Section 1(b) (p. 1, lines 10 and 11) would amend the grant to the City of Santa Monica by providing that the use of the grant area shall be for "purposes in which there is a general statewide interest". Following this, there are six subsections on pp. 1 and 2 which enumerate uses which have not heretofore been included in other grants to municipalities. These appear to be intended for purposes which are of a local nature and even for purposes which are strictly private in nature, such as residences. Although there is a precedent in prior grants for using sovereign lands for airports (the theory being that air space and filled water area used for an airport is as important as the use of the water surface in connection with a harbor), it must be pointed out that the navigation uses of filled water areas are gradually encroaching upon the navigable water surface areas of this State to the extent that navigation is becoming restricted or eliminated.

Section 1(c) would grant the City of Santa Monica authority to lease for periods up to ninety-nine years "for any and all purposes which shall not interfere with commerce and navigation". Recent legislation (Chapter 2019, Stats. 1961) has amended Section 718 of the Civil Code to allow any municipality holding granted sovereign lands in trust to lease up to sixty-six years. The same time limit was also inserted in Section 37385 of the Government Code (Chapter 196, Stats. 1961). Such legislation was passed upon the contention that the twenty-five and fifty-year lease period limitation in many grants-in-trust to municipalities were not sufficiently long enough periods of time in which to amortize the cost of improvements being placed upon the leased or franchised areas by the holders of such leases or franchises. Sixty-six years was thought to be a sufficient period of time in which to amortize even the largest project which could be placed upon any sovereign lands by private parties leasing or holding franchises from the municipality. Ninety-nine years would seem too long a period in which to relinquish control over the granted lands by either the municipal grantees or the State.

Although every grant-in-trust to any municipality transfers jurisdiction to the municipality over the lands subject to the basic trusts of commerce, navigation and fisheries, Subsection 1(c) refers only to commerce and navigation and omits fisheries. Article I, Section 25 of the State Constitution provides:

> "The people shall have the right to fish upon and from the public lands of the State and in the waters thereof...".

Any attempt to convey any parcel of sovereign lands after its physical character has been changed in any way may constitute a violation of the public right to fish. However, it is intended that subsection 1(g) reserves to the people of the State the right to fish in the waters on all of the lands granted to the City of Santa Monica with the right of convenient access to waters over the granted lands for any such purpose.

Subsections 1(h), 2(h) and 3(h) restrict the right of the State to use, for highway purposes, those portions of the granted areas which will be "unreclaimed". However, Subsections 1(i), 2(i) and 3(i) provide for respective grantees to sell to the Division of Highways any area which is reclaimed or which is "to be reclaimed". Similarly, Subsections 1(j), 2(j) and 3(j) provide for sale of any reclaimed lands or lands "to be reclaimed" to the Department of Parks and Recreation. The result of this authority to reconvey to State agencies is to forever change the land designation from "sovereign lands" under the control of the Legislature for the basic trusts of commerce, navigation and the fisheries, to "proprietary lands" held by the State which may be subject to adverse possession by private parties or alienation of such proprietary interest.

Sections 1(k), 2(k) and 3(k) contemplate the alienation of the title to any filled area and would allow the respective grantees to retain all revenues obtained from such sales as well as any revenues by any hypothecation. The provision for sale is contra to the trusts under which the State holds title, since there is no provision whatever in the bill for compensation to the State of any of the revenues which properly are allocable to trust uses. In

essence, to permanently alienate the title of the land without compensation to the State could constitute a breach of Article IV, Section 31 of the Constitution, which prohibits gifts.

Furthermore, any sale attempted to be conducted by any of the grantees pursuant to the authority of Subsections 1(i), 1(j), 1(k), 2(i), 2(j), 2(k), 3(i), 3(j) and 3(k) could not be in conformance with the provisions of Article V, Section 14 of the Constitution, which requires that:

> "All grants. . .shall be in the name and by the authority of the people of the State of California, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State".

This latter procedure is that which was in past years used to convey tidelands under general statutes by issuance of patent. It follows that if patents are to be issued carrying the signature of the Governor (if possible, in spite of Article XV, Section 3 of the Constitution), it would be easier to require compensation to the State commensurate with the value of the land. Greater legislative and administrative control is exercised under the procedure for issuance of a patent by the State than there would be under this bill wherein the grantees are authorized to grant their interest in a usual form of proprietary land deed.

The descriptions of the lands to be granted to the City of Los Angeles and the County of Los Angeles in Sections 2(a) and 3(a) refer to the mean high tide line in an attempt to describe all the sovereign lands in this area. The mean high tide line under normal conditions is constantly fluctuating. Since the ordinary high water mark is a particular line and may be fixed in position as the boundary of the sovereign lands of the State, the references in the descriptions should be to the "ordinary high water mark". In this manner, the problem of determining the position of the mean high tide line in areas where artificial conditions may exist (e.g., Will Rogers Beach State Park sewer outfall; vicinity Hyperion sewer outfall, etc.) can be determined, if necessary, by mutual agreement or litigation.

Section 4 contemplates a joint agreement among the grantees for operation and management of any development or project which may affect any of the granted areas. It should be noted, however, that even though the State retains some interest in the land, there is no provision for representation of the State in any such agreement. Certainly the mineral interest reserved to the State, including the right to use certain portions of the areas for certain purposes, are matters in which the State is vitally interested. It would appear proper, in any such general powers agreement, to designate State representatives having a direct interest in the operation of the matters coming under the agreement (e.g., mineral interest and general supervision now under the State Lands Commission and to be reserved to the State in this bill; development of beaches and parks under the purview of the State Department of Parks and Recreation; development of highways for freeways by the Division of Highways).

The usual forms of previous grants-in-trust to municipalities have recited that the granted lands shall be improved without expense to the State. Sections 4(c) and 4(d) contemplate that the grantees shall seek financial

assistance from practically any source. Section 4(c) specifically exempts the grantees from being liable under any obligations contracted. This feature, along with the implications in Section 4(d), to seek financial assistance from the State or any agency thereof could indicate that the proponents intend to rely upon the State to assume financial responsibility for any projects which may be placed upon the granted areas.

One such project, the proposed Santa Monica Causeway, contemplates that a large fill shall be placed in Santa Monica Bay. Such a fill will be exposed to the erosive powers of the Pacific Ocean along the westerly side where the proponents plan to establish a public beach under the jurisdiction of the State Department of Parks and Recreation. Such beach area will constitute a buffer against the elements for a State freeway and such State freeway, in turn, will be expected to act as a buffer for lands lying easterly thereof where recreational and residential developments are proposed to be placed. Through such development the State might be required to absorb the greater percentage of the possible nonreimbursable costs for maintaining any development.

In view of the State's present basic land title, it appears that the proponents could develop State land, obtain all the revenue therefrom, and leave the State with a substantial responsibility for maintaining any project without any liability or obligation of the grantees as corporate entities.

A.B. 2182 (Crown) - Under authority of Chapter 388, Stats. of 1869-70 the subject lands were sold by the Board of Tide Land Commissioners. The deed of the Board of Tide Land Commissioners is presumed to have been delivered to the purchaser, Mathew Crooks, at the time of final payment, thereby divesting the State of all its sovereign interest in this area.

By various conveyances the 2.548 acres came into the ownership of the Federal government from which source the Division of Parks and Recreation acquired the land in a proprietary capacity for the Alameda Memorial State Beach.

It would be a most disadvantageous precedent, from the standpoint of land title records, to have any legislative inference that the area described in this bill is now sovereign land of the State. To rectify this situation, it should be recommended that the bill be amended by deleting references to sovereignty and tide and submerged lands and insertion of the statement that the area is a portion of Lot 17 of Section 10, T. 2 S., R. 4 W., M.D.M., as shown upon "Map No. 2 of Salt Marsh and Tide Lands Situate in the County of Alameda", dated 1871 and prepared by order of the Board of Tide Land Commissioners. Based on the foregoing, Sections 1(b), 1(c) and 2 should also be deleted from the bill.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE EXECUTIVE OFFICER WAS AUTHORIZED TO CLARIFY FOR THE AUTHOR AND THE APPROPPIATE LEGISLATIVE COMMITTEES THE ACTUAL STATUS OF THE LANDS PROPOSED TO BE CONVEYED AND TO OFFER AMENDMENTS AS DESCRIBED IN THE PRECEDING DISCUSSION; THE EXECUTIVE OFFICER WAS FURTHER AUTHORIZED TO OPPOSE A.B. 2050 IF THE PROPOSED AMENDMENTS THERETO ARE NOT IN ACCORD WITH THE BASIC TIDELAND GRANT POLICIES OF THE STATE LANDS COMMISSION, UNTIL A STUDY HAS TAKEN PLACE, AND ON A.B. 985 TO

REPORT TO THE LEGISLATIVE COMMITTEES THE BASIC RECOMMENDATION OF THE COMMISSION THAT THERE SHOULD BE NO FURTHER TIDELANDS GRANTS UNTIL THERE IS AN ESTABLISHED LEGISLATIVE POLICY.

THE FOLLOWING ARE NONGRANT BILLS, BUT ARE OF SIGNIFICANCE TO THE COMMISSION.

S.B. 995 (Dolwig) - Makes certain findings and determinations relative to offshore oil and gas production among, which are the following:

1. That the people of California have a direct interest in the safety and security of persons and property from possible dangers of fire and explosions occurring during the development of petroleum resources from submerged lands underlying navigable waters which are usable in commerce, fisheries, or by the armed forces for passage or harbor purposes;

2. That in such areas any surface oil production drilling island or other structure which would in any manner alter or modify the course, location, condition or capacity of the navigable waters of the U.S. will in fact constitute a violation of the declared trust (i.e., commerce, navigation and fisheries) and a violation of Section 403 of Title 33 of the United States Code; any such drilling island or structure which will tend to increase fire and explosive hazards should be prohibited;

3. That the construction or laying of oil and gas pipelines in the water or upon the bed of such navigable waters overlying submerged lands will constitute a hazard.

Having made the findings, the bill then:

1. Requires that all exploration, development and production operations to extract oil or gas from the lands underlying navigable waters in California be conducted as prescribed by the State Fire Marshal.

2. Requires State Fire Marshal to promulgate regulations to protect persons from fire, explosion, and other hazards involved in development and production of oil and gas by use of surface drilling islands when located as specified.

3. Authorizes and requires State Fire Marshal to bring proceedings to restrain violations of the act or regulations promulgated thereunder.

4. Provides that damages arising from breach of the act or regulations result in liability of the person, corporation, or political subdivision of the state responsible for the breach.

Assuming that the regulations promulgated by the "State Fire Marshal" would be based on the findings and determinations made by S.B. 995, the development of petroleum resources (on submerged lands underlying navigable waters of the U.S.) would be seriously restricted if not completely eliminated or prohibited.

The jurisdiction and duties proposed to be assigned to the "State Fire Marshal" appear to be a duplication of the responsibilities previously conferred by the Legislature in 1945 to the Division of Industrial Safety

(i.e., formerly the Industrial Accident Prevention Bureau). This Division, pursuant to statute (i.e., Division 5, Part 1 of the Labor Code) has authority to:

1. Enforce all laws and lawful orders requiring work and work places to be safe,

2. Investigate disabling or fatal industrial injuries;

3. Check whether work places are safe;

4. Prepare standards of industrial safety (Safety Orders), which if approved by the Industrial Safety Board have the effect of law; and

5. Establish special orders, or rules and regulations to cover a specific individual place of employment or process of work.

Pursuant to this authority, the Division of Industrial Safety has in fact promulgated, and enforces, "Petroleum Safety Orders", covering drilling, production, refining, transportation and handling. When added to the safety requirements imposed and enforced by the Commission upon permittees and lessees for oil and gas exploration and production, as outlined in the permit and lease forms, the result is, and in fact has been, one of the outstanding safety records achieved in the United States for offshore oil and gas production.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE EXECUTIVE OFFICER WAS AUTHORIZED TO EXPRESS THE COMMISSION'S OPPOSITION TO APPROPRIATE LEGISLATIVE COMMITTEES ON THE BASES THAT:

1) THE BILL WOULD UNNECESSARILY STIFLE THE PROGRESS BEING ACHIEVED BY THE STATE IN DEVELOPING A RESOURCE OF EXTREME SIGNIFICANCE TO THE REVENUE NEEDS OF THE STATE AND CONSEQUENTLY TO THE WELL BEING OF THE PEOPLE OF THE STATE.

2) THE SAFETY RECORD FOR CALIFORNIA OFFSHORE OIL AND GAS PRODUCTION DOES NOT WARRANT ASSIGNMENT TO THE STATE FIRE MARSHAL THE RESPONSIBILITIES ENUMERATED IN S.B. 995.

3) THE SAFETY RECORD ESTABLISHED INDICATES THAT PRESENT CONTROLS ARE ADEQUATE TO THE NEED.

4) A SERIOUS CONFLICT IN JURISDICTION COULD ARISE WHICH WOULD PREVENT THE COMMISSION FROM FULFILLING ITS STATUTORY RESPONSIBILITIES.

S.B. 1064 (Farr) - Amends Sections 6950, 6952, and 6953 of the Government Code. Provides that cities and counties may acquire real property by eminent domain as well as by purchase, gift, grant, bequest, devise, lease or otherwise, for the purpose of limiting the future use of or otherwise conserve open spaces and areas within their respective jurisdictions.

The basic California law is that lands belonging to the State, including tide and submerged lands, may be taken under eminent domain proceedings, with certain exceptions, as follows: (See Section 1240, California Code of Civil Procedure, in effect since 1872.)

1. Lands reserved for school purposes;

2. Lands within National Reservations;

3. Lands within corporate limits of a city; and

4. Lands not appropriated to some public use.

The law under exception No. 4 is that when there is a conflict between two public uses, the court will decide which one should be paramount. Generally, the State should not put itself in the position of having to litigate the question of the use that would best serve the public. An amendment to the bill as follows would achieve this end:

> On Page 2, line 5, following the word "chapter" add:
>
> "except that the right of eminent domain shall not be exercised under this chapter by a city or county with respect to any lands within the corporate limits of a city, or lands owned by a county, or owned by the State of California, unless the Legislature by special enactment consents thereto."

The application of this amendment beyond sovereign lands is purposely intended so as to preclude cities and counties from attempting to acquire each other's lands by eminent domain proceedings. The same logic applies to any of the State's lands. Additionally, the wording of this amendment should bring broad-based support for its adoption.

There is a precedent for this type of amendment which may be found in Section 6503 of the Welfare and Institutions Code. Following is a full quote of the Section:

> "Eminent domain: All lands necessary for the use of State hospitals except those acquired by gift,devise, or purchase, shall be acquired by condemnation as lands for other public uses are acquired.
>
> "The terms of every purchase shall be approved by the Department of Institutions. No public street or road for railway, or other purposes, except for hospital use shall be opened through the lands of any State hospital unless the legislature by special enactment consents thereto." (Emphasis added.)

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE EXECUTIVE OFFICER WAS AUTHORIZED TO:

1. APPRISE APPROPRIATE LEGISLATIVE COMMITTEES OF THE CONFLICT WHICH MIGHT BE GENERATED AMONG PUBLIC AGENCIES AS A RESULT OF ADDING THE POWER OF EMINENT DOMAIN TO SECTIONS 6950, 6952 AND 6953 OF THE GOVERNMENT CODE.

2. REQUEST APPROPRIATE LEGISLATIVE COMMITTEES TO CONSIDER THE FOLLOWING AMENDMENT TO S.B. 1064:

ON PAGE 2, LINE 5, FOLLOWING THE WORD "CHAPTER" ADD:

"EXCEPT THAT THE RIGHT OF EMINENT DOMAIN SHALL NOT BE EXERCISED UNDER THIS CHAPTER BY A CITY OR COUNTY WITH RESPECT TO ANY LANDS WITHIN THE CORPORATE LIMITS OF A CITY, OR LANDS OWNED BY A COUNTY, OR OWNED BY THE STATE OF CALIFORNIA, UNLESS THE LEGISLATURE BY SPECIAL ENACTMENT CONSENTS THERETO."

The Executive Officer reported that, in view of the tremendous volume of legislation introduced at the last minute and the large number of bills of direct concern to the State Lands Commission, it might be necessary to call a special meeting of the Commission to consider recommendations for submission to the legislative committees.

(Reference Supplemental Calendar Item 46)