

MINUTE ITEM

THE CALIFORNIA STATE LANDS COMMISSION
Item No. 42
Commission by a vote of 3
to 0 at its 5/26/77 meeting.

INFORMATIONAL
CALENDAR ITEM

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PROPOSED PROCEDURE FOR MAKING PUBLIC TRUST
DETERMINATIONS ON PROJECTS IN TOMALES BAY, MARIN COUNTY

In handing down its decision in the case of Marks v. Whitney, the California Supreme Court elaborated upon the concept of the trust for commerce, navigation and fisheries. Greater emphasis can now be placed on the overall aspects of the trust including recognition of the changing public needs for tideland areas.

Recent cases of California courts have also clarified public policy on the navigational servitude affecting non-tidal waters under the Commission's jurisdiction, as well as waterways where the fee to the bed may not be state-owned. Public interest requires that improvements placed in these waterways be examined for possible interference with public rights of use and navigation.

In many of the areas where the above principles apply, use of the waterway or patented tidelands for improvements will require review by the Commission. At Tomales Bay in Marin County, there are several projects pending before the Board of Supervisors and County Planning Commission. The County is seeking State review and evaluation of the effects of these projects on the public trust for commerce, navigation and fisheries. Marin County had proposed its own tideland trust regulations early in 1975. On May 23, 1975 the Executive Officer asked the County to postpone action on its pending ordinance until the Commission considered State trust permit procedures. The County has complied with that request. Because of the variety of situations presented by the court decisions, staff review and development of overall trust procedures has proven more complicated than first anticipated. Still more analysis needs to be done in considering procedures to handle the complex situations and title conditions which will come up for Commission consideration. It seems unfair to require the public to wait further for this complete analysis before considering any proposed projects.

In order to accommodate public needs, it is proposed to bring projects before the Commission for consideration on an individual basis. Those projects in Tomales Bay where applications have been received and reviewed will be calendared for the next agenda. Projects proposed for Commission approval on this basis would be those on patented tidelands which either meet the Commission's own standards for use of

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side and submerged lands or those where environmental assessment indicates no significant environmental effects. Experience gained in processing projects in Tomales Bay will be of help in completing work on overall procedures.