

CALENDAR ITEM

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CONSIDERATION OF THE BOUNDARIES AND CONSENT TO THE INCLUSION OF SOVEREIGN LANDS IN THE CARMEL RIVER AS PART OF THE PROPOSAL TO INCORPORATE SUBMERGED LANDS INTO THE TOWN OF CARMEL VALLEY, MONTEREY COUNTY

APPLICANTS:

Mr. Thom McCue, AICP, Senior Analyst
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BACKGROUND:

Staff of the California State Lands Commission has received a request from the Local Agency Formation Commission (LAFCO) of Monterey County and the Carmel Valley Forum to review and approve the boundaries of incorporation for the proposed Town of Carmel Valley that includes a portion of the historic bed of the Carmel River.

The proposed area to be incorporated is approximately 44 square miles in total, only a small portion of which includes sovereign lands. The Monterey County LAFCO made findings and determinations to approve the incorporation on December 1, 2008, conditioned upon approval of the boundaries by the California State Lands Commission pursuant to the requirements of Government Code § 56740 regarding tidelands or submerged lands owned by the State or held in trust by its grantees.

Pursuant to Government Code § 56740(a), the Commission must consent before land under its jurisdiction or within a legislative trust grant can be incorporated. Government Code §§ 56740(b) - (d) require the Commission to review and approve or disapprove the proposed boundaries that are located upon tidelands or submerged lands.

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The southwestern boundary of the proposed incorporation includes portions of the historic bed of the Carmel River.

OTHER PERTINENT INFORMATION:

1. Staff has reviewed the boundaries referenced herein that include sovereign land and has concluded that they will not affect the Commission's jurisdiction or management of sovereign lands, and thus recommends approval of the proposed boundaries.

2. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, § 15060(c)(3)), staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code § 21065 and Title 14, California Code of Regulations, §§ 15060(c)(3) and 15378.

3. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code §§ 6370, *et seq.* Based upon staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the action, as proposed, is consistent with its use classification.

4. As a result of legal action between the Applicants (*Carmel Valley Forum, Inc. v. Local Agency Formation Commission of Monterey County* (Monterey County Superior Court case no. M83394)), the Superior Court held that the incorporation of the Town of Carmel Valley is not a "project" within the meaning of Public Resources Code § 21065 and "does not trigger environmental review." The court further held that even if incorporation of the Town of Carmel Valley could be considered a project, "there is no substantial evidence in the whole record of any potential effect on the physical environment," and thus the LAFCO was not allowed to require preparation of an Environmental Impact Report for the proposed incorporation. The LAFCO filed a Notice of Exemption based on this decision on February 10, 2009.

EXHIBITS:

- A. Site Map
- B. Legal Description

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

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CEQA FINDING:

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

1. APPROVE THE PROPOSED BOUNDARIES OF INCORPORATION INVOLVING LANDS UNDER THE COMMISSION'S JURISDICTION FOR THE TOWN OF CARMEL VALLEY, PURSUANT TO CALIFORNIA GOVERNMENT CODE §§ 56740(b) - (d), AS DESCRIBED IN EXHIBIT B ATTACHED AND MADE A PART HEREOF.
2. CONSENT TO THE INCORPORATION OF SOVEREIGN LANDS IN THE BED OF THE CARMEL RIVER AS REQUIRED BY GOVERNMENT CODE § 56740(a).
3. AUTHORIZE STAFF TO GIVE THE REQUISITE NOTICE OF APPROVAL TO THE CARMEL VALLEY FORUM AND THE LAFCO OF MONTEREY COUNTY PURSUANT TO GOVERNMENT CODE § 56740(e).