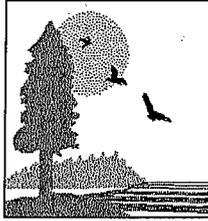


CALIFORNIA STATE LANDS COMMISSION

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November 3, 2009

File Ref: W25560 / G04-02

SENT VIA ELECTRONIC MAIL AND U.S. MAIL

Mr. David Tyson
City Manager, City of Eureka
531 K Street
Eureka, CA 95501

RE: City of Eureka City Council/Redevelopment Agency Regular Meeting,
November 3, 2009 – Agenda Item #1: Marina Center Phase 1 Coastal
Development Permit

Dear Mr. Tyson:

It has been brought to the attention of the staff of the California State Lands Commission (CSLC or Commission) that Eureka's City Council will be holding a public hearing this evening and will be considering the approval of a Coastal Development Permit for Phase 1 of the Marina Center Project (Project). For the reasons detailed below, staff of the Commission believes this action is premature. The boundaries and title to the property has been the subject of dispute and negotiations between the City, the Project proponent and the State of California for several years. Given the extensive research and work that has gone into resolving the title issues to the property, we were surprised to learn that this action is being considered now without any coordination or contact from the City. The last meeting with the City, Project proponent staff of the Commission and Attorney General's office was on April 2, 2009. Prior to that, in January 2009 we submitted comments on the Draft EIR and on June 15, 2009 our staff met with City staff and that of the Project proponent to discuss appraisal instructions and on September 2nd, our office submitted appraisal instructions to the Project proponent's representative and appraiser to facilitate a title settlement agreement. We have not received a response to date.

According to the City's staff report, the Project proposal consists of a mixed use development on a 43-acre brownfield site, including approximately 313,500 sq. ft. of Retail/Service/Furniture including 28,000 sq. ft. of Nurseries/Garden; 104,000 sq. ft. of Office; 72,000 sq. ft. of Multi-Family Residential (54 dwelling units); 70,000 sq. ft. of

Light Industrial use; 14,000 sq. ft. of Restaurant; and a 12,500 sq. ft. Museum. Also included, as part of the entire project, would be the development of approximately 1,590 parking spaces, including a four-level parking structure. Additional phases are proposed to incorporate pedestrian, roadway improvements, and landscaping.

It is the understanding of Commission staff that Phase 1 of the Project proposes a site soils remediation and creation of a wetland reserve. Both remediation of soils and wetlands creation are obviously ones supported by staff of the Commission and we would expect all concerned parties. However, whether the specific details of this Phase are appropriate, given the unresolved title issues, cannot be determined at this time. According to the City's staff report, "Approval of the coastal development permit for Phase 1 would not authorize the future phase(s) of the Marina Center Project, nor would approval of the coastal development permit for Phase 1 vest any rights or entitlements to the property owner for construction of the Marina Center project that are not otherwise due the property owner under law." What that statement is intended to convey is not only unclear and does nothing to clarify the pending situation, but rather muddies the water by the oblique references to "rights or entitlements... due the property owner under law." Phasing of development does not obviate the need for compliance with CEQA or the need to fully determine what governmental entity or private property owner is vested with what respective property interest in the subject property. Has the City reviewed evidence of title issued by a title insurance company to the Project proponent? If the City does not know where it owns fee title or holds a public trust easement or where the State owns the minerals in the proposed development, how can it determine what impact will occur to public trust resources it holds in trust for the statewide public? Again the proposed action by the City appears to be premature until these issues are resolved.

As previously mentioned in our January 30, 2009 letter to the City (copy enclosed), the Project area falls within lands granted to the City pursuant to Chapter 82, Statutes of 1857 and Chapter 225, Statutes of 1945, as amended, with minerals reserved to the State. Any proposed uses involving granted tidelands and submerged lands must be consistent with the common law public trust and with the applicable statutory trust. Any and all proposed uses necessitate a clear understanding of the respective property rights of the City, State and Project proponent. There has been disagreement between the Project proponent and the CSLC staff over the extent of the State's sovereign interests within the Project boundaries. Discussions to resolve this title dispute have been ongoing for some time. As such, Commission staff recommends that the City consult and coordinate with Commission staff in advance so that any action proposed to be taken by the City will not adversely impact the negotiations for a resolution of the title issues currently being discussed by City staff, the Project proponent and CSLC staff, including a potential title settlement agreement. While the development of a wetland reserve has been offered by the Project proponent as a potential site to be impressed with the public trust in exchange for the terminating any public trust interest at the Property site, this proposal has not been agreed to by CSLC staff or approved by the Commission. Neither has resolution of the Commission's mineral interest in the Project site been reached.

Additionally, pursuant to Chapter 225, Statutes of 1945, minerals are reserved to and owned by the State. Therefore, if any grading is planned as part of this Project that

involves the State's mineral rights, pursuant to Chapter 225, Statutes of 1945, a lease will be required from the Commission. A lease application may be found on our website at www.slc.ca.gov.

The City's staff report also assumes the City has jurisdiction to issue a Coastal Development Permit. Public Resources Code section 30519 (b) clearly sets forth that the delegation to local governments for development review of projects "...shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone...." Therefore, should the City consider approving a Coastal Development Permit, prior to resolution of title issues, that act may be without legal authority.

Given the above issues involving property interests and jurisdiction related to those interests we respectfully suggest postponing the matter until title and boundary issues and hence jurisdictional issues have been resolved. In the alternative, should the City decide to act we suggest that the City expressly condition the issuance of any permit upon prior resolution of title and boundary issues with the City of Eureka, as trustee pursuant to Chapter 82, Statutes of 1857 and Chapter 225, Statutes of 1945, as amended, and the State of California, acting by and through the State Lands Commission, including the state's reserved mineral rights.

Thank you for considering our comments. If you have any questions regarding this letter, please contact me at (916) 574-1828. For issues regarding the CSLC's jurisdiction, please contact Grace Kato, Public Land Management Specialist, at (916) 574-1227 or at katog@slc.ca.gov. Thank you.

Sincerely,



Curtis Fossum
Chief Counsel

cc: City Council, City of Eureka
Virginia Bass, Mayor, City of Eureka
Sheryl Schaffner, City Attorney
Kevin Hamblin, Director of Community Development
John Briscoe, Esq.
Joseph Rusconi, Deputy Attorney General
Jim Frey, Senior Staff Counsel
Grace Kato, Public Land Management Specialist