



Legislation Text

File #: 11-0612, **Version:** 1

Recommendation to authorize City Manager to execute an exchange agreement, on behalf of the City of Long Beach (City) as both a municipality and as the Trustee for the State of California (State), and all related documents to convey to the State Lands Commission (SLC) the Queensway Bay Parcel (QWB Trust Termination Parcel) and immediately receive the parcel back no longer subject to the Tidelands Trust or granting statutes, and to convey to the SLC the Bixby Park Parcel, the Colorado Lagoon Parcel and the Marine Stadium Channel Parcel (Public Trust Parcels) and immediately receive these parcels back on a forty-nine year lease from the SLC subject to the Tidelands Trust;

Find that these activities are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14, California Code of Regulations 15061 as a statutorily exempt project pursuant to Public Resources Code Sections 21080.11 and 15282(f), settlement of title and boundary problems and to exchanges or leases in connection with those settlements; and that these activities are consistent with the use classification designated by the City of Long Beach for the land pursuant to Public Resources Code Sections 6307, et seq.; and

Authorize City Manager to work with the SLC to pursue the enactment of legislation necessary to allow the State to transfer to City as Trustee, all right, title, and interest in the Public Trust Parcels as provided for in the Exchange Agreement. (Districts 2,3)

As authorized by the State Legislature, the City has been delegated the authority to manage the State-granted tidelands property (Tidelands) in Long Beach. Part of this authority requires the City to allow only those land uses consistent with the Public Trust Doctrine (Doctrine) to which all Tidelands is subject. Historically, the City has taken the position that the uses within the Queensway Bay Development (QWB) were consistent with the Doctrine and that the project was compliant with the Doctrine.

Background

In July 2000, the State Lands Commission (SLC) staff conducted a public meeting in response to public comments that some of the proposed uses of the QWB development plan were not in conformance with the granting statutes or the Doctrine. At the SLC meeting in April 2001, SLC staff presented a report of the July 2000 meeting, concluding that the disputed uses may be considered necessarily incidental to the enjoyment of public Tidelands and are not barred by the granting statutes or the Doctrine. However, the SLC did not accept this conclusion and directed its staff to work with the City to resolve the disputed uses.

In June 2001, SLC staff proposed the "exchange" of certain QWB Tidelands parcels for other City-owned parcels of equal or greater value located outside of the current Tidelands boundaries. These City-owned parcels would be made subject to the Doctrine, while the Doctrine restrictions would be lifted from the QWB Tidelands parcels. Following lengthy negotiations with SLC staff to both identify suitable exchange parcels and determine their fair market value, the Long Beach City Council approved a land exchange on September 13, 2001, which was followed by SLC approval on September 21, 2001.

Litigation History

In October 2001, a lawsuit was filed which challenged the approved land exchange, however, the SLC and City prevailed in the trial court. An appeal was filed and, after a number of years of litigation, the Court of Appeal issued a decision in April 2005 which stipulated that under State law, the SLC lacked the authority to approve this type of land exchange. Subsequent to the decision by the Court of Appeal, the City filed an appeal to the California Supreme Court, and in August 2005, the Supreme Court granted review of the decision by the Appellate Court.

Following the Appellate Court's decision, the SLC pursued legislation to amend State law to explicitly provide the SLC with the authority to approve these types of land exchanges. In October 2005, the State Legislature approved the requested amendment to Public Resource Code Section 6307. Unfortunately, the action by the State Legislature was not retroactive and rendered further review by the California Supreme Court moot. Consequently, the California Supreme Court dismissed the City's appeal in January 2006.

In June of 2006, the trial court ordered the SLC to vacate and set aside the land exchange approved in 2001. In July 2006, the developer of QWB filed an appeal, but in September of 2007, the Court of Appeal affirmed the order of the trial court. In November of 2007, the trial court order was reissued, and in March of 2008, the SLC set aside the 2001 land exchange.

Current Negotiations

Following the set-aside of the original land exchange, and pursuant to the State enabling legislation, the City and QWB's developer, Developers Diversified Realty, (DDR) have met with the SLC staff to discuss and pursue a new land exchange. Over time, certain parcels of land have been identified that would be suitable for this new land exchange as further discussed below.

The proposed exchange parcels are identified as the "QWB Trust Termination Parcel," which is comprised of approximately 10.24 acres of land located within the QWB Tidelands boundary (Exhibit A), and the "Public Trust Parcels" which include the Bixby Park Parcel comprising approximately 3.64 acres (Exhibit B), the Colorado Lagoon Parcel comprising approximately 29.47 acres (Exhibit "C"), and the Marine Stadium Channel Parcel comprising approximately 5.86 acres (Exhibit D).

It should be noted that all of the Public Trust Parcels represent existing City-owned land that are permanently dedicated to public open space or recreational use and are, therefore, not developable for other uses. Additionally, the Marine Stadium Channel Parcel is consistent with Alternative 4a as approved by City Council on November 16, 2010.

The agreed upon appraisal methodology utilized a hypothetical development construct consistent with "across the fence" zoning standards (primarily guided by existing nearby or adjacent developed land uses) for determining the value of the Public Trust Parcels. The appraisals for the Trust Termination Parcel and the Public Trust Parcels were performed by an outside licensed MAI appraiser who established the exchange value at approximately \$49 million. In addition, all necessary title work and related documentation has been performed.

Benefits of the Exchange

There are numerous benefits that result from the proposed land exchange. Once the exchange is complete, the Public Trust Parcels transferred into the Tidelands Trust and subject to the Doctrine, will be leased back to the City at no cost for a term of 49 years and will remain in open space or recreational use throughout. During the term of the lease, City and SLC staff will cooperate to pursue the enactment of legislation authorizing the State to transfer to the City, in its trust capacity, the properties subject to these leases. There is potential to secure outside (State) funding particularly to facilitate the improvement of the proposed open channel connection between the Marine Stadium and the Colorado Lagoon as part of the ongoing Colorado Lagoon restoration project previously approved by City Council. In addition, the Public Trust Parcels would be eligible to use Tidelands funding for needed repairs, maintenance and improvement.

With respect to the QWB Trust Termination Parcel, the exchange will enable the developer to lease space within the existing buildings that has been severely restricted by the limited uses currently permitted under the Doctrine. With those constraints lifted, it is expected that a variety of other retailers will consider the QWB for potential retail locations. The improvement in occupancy will improve the public perception and experience at QWB, and also result in greater financial benefits to the City including both sales tax and parking revenues.

This letter was reviewed by Principal Deputy City Attorney Charles Parkin and by Budget Management Bureau Officer Victoria Bell on June 3, 2011.

City Council action on this matter is requested on June 21, 2011, so that the State Lands Commission may take commensurate action to approve the proposed land exchange at their regularly scheduled meeting on June 23, 2011.

All costs, other than staff time, have been borne by DDR. There is no fiscal impact and no known local job impact associated with the recommended action.

Approve recommendation.

MICHAEL P. CONWAY
DIRECTOR OF PUBLIC WORKS

APPROVED:

PATRICK H. WEST
CITY MANAGER