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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SACRAMENTO**

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11 **CALIFORNIA EARTH CORPS,**
12 **a Not-For Profit Corporation,**
13 **Petitioner,**

No. 01CS01556 Dept. 11
RULING ON SUBMITTED MATTER

14 **vs.**

15 **STATE LANDS COMMISSION and CITY**
16 **OF LONG BEACH, and DOES 1 through**
17 **50, inclusive,**

18 **Respondents,**

19 **DEVELOPERS DIVERSIFIED REALTY; DOES 51**
20 **through 99, inclusive,**

21 **Real Parties in Interest.**

22 This matter came on for hearing on April 5, 2002. The
23 matter was argued and taken under submission. The Court,
24 having considered the evidence and the arguments of the
25 parties, now makes its ruling as follows:

26 1. In ruling on the first and second causes of action,
27 alleging violation of Public Resources Code section 6307 and
28 the California Constitution, the standard of review
applicable to such a quasi-legislative act is whether the

1 respondent's actions were arbitrary, capricious, or entirely
2 lacking in evidentiary support. Petitioner's argument that
3 a stricter standard of review is applicable is not
4 persuasive.

5 2. Petitioner's argument that Public Resources Code
6 section 6307 does not allow for the termination of the
7 public trust restrictions on the subject land so long as the
8 land is useful for any public trust purpose is not
9 persuasive.

10 Public Resources Code section 6103 provides that
11 property may be declared free from the public trust when
12 they are no longer available or useful or susceptible of
13 being used for *navigation and fishing*:

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15 "Whenever it appears to the
16 commission to be in the best interests
17 of the state, for the improvement of
18 navigation, aid in reclamation, or for
19 flood control protection, or to enhance
20 the configuration of the shoreline for
21 the improvement of the water and upland,
22 on navigable rivers, sloughs, streams,
23 lakes, bays, estuaries, inlets, or
24 straits, and that it will not
25 substantially interfere with the right
26 of navigation and fishing in the waters
27 involved, the commission may exchange
28 lands of equal value, whether filled or
unfilled with any state agency,
political subdivision, person, or the
United States or any agency thereof. Any
land so acquired shall have the same
status as to administration, control and
disposition as the lands for which it
was exchanged. The state may release the
mineral rights in the land conveyed, as
provided in Section 6401, if it receives
the mineral rights in the land conveyed
to it. The lands exchanged may be
improved, filled, and reclaimed by the
grantee, and upon the adoption of a
resolution by the State Lands Commission
finding and declaring that such lands

1 have been improved, filled, and
2 reclaimed, and have thereby been
3 excluded from the public channels and
4 are no longer available or useful or
5 susceptible of being used for navigation
6 and fishing, and are no longer in fact
7 tidelands or submerged lands, such lands
8 shall thereupon be free from the public
9 trust for navigation and fishing. The
10 grantee of any such lands conveyed by
11 the state may bring a quiet title action
12 under the provisions of Chapter 7
13 (commencing with Section 6461) of this
14 part." (Pub. Res. Code sec. 6307,
15 emphasis added.)

16 The California Constitution, Article X, section 3
17 provides:

18 "All tidelands within two miles of
19 any incorporated city, city and county,
20 or town in this State, and fronting on
21 the water of any harbor, estuary, bay,
22 or inlet used for the purposes of
23 navigation, shall be withheld from grant
24 or sale to private persons,
25 partnerships, or corporations; provided,
26 however, that any such tidelands,
27 reserved to the State solely for street
28 purposes, which the Legislature finds
and declares are not used for navigation
purposes and are not necessary for such
purposes may be sold to any town, city,
county, city and county, municipal
corporations, private persons,
partnerships or corporations subject to
such conditions as the Legislature
determines are necessary to be imposed
in connection with any such sales in
order to protect the public interest."

29 Case law interpreting the provisions of California
30 Constitution, Article X, section 3, does not conflict with
31 Public Resources Code section 6307.

32 3. Petitioners have not shown that the actions of
33 respondents are arbitrary, capricious or entirely lacking in
34 evidentiary support.

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2 a. The State Lands Commission adopted its staff's
3 recommendation, making findings in support of its
4 determination to approve the proposed agreement. Those
5 findings included: (A) The exchange agreement was in the
6 best interests of the state and consistent with public trust
7 needs to enhance the configuration and utility of the
8 property adjacent to the shorelines for improvement of public
9 access to the water and development of the upland. (B) The
10 conveyances proposed by the agreement will not interfere
11 with but rather enhance the public's rights of navigation,
12 fishing and access to the Pacific Ocean and Los Angeles
13 River. (C) The lands (Los Angeles River Parcels) to be
14 conveyed to the State and leased to the City of Long Beach,
15 as trustee of the state, are equal to, or greater than, the
16 value of the state interest in the lands to be conveyed by
17 the state to the City of Long Beach, as a municipality
18 (Queensway Bay Parcels). (D) The area of lands being
19 relinquished by the State, which collectively are of a
20 relatively small area (3.05 acres) of the hundreds of acres
21 of filled and thousands of acres of unfilled public trust
22 lands held by the trustee, have been evaluated as to their
23 current physical character and trust utility, and the trust
24 termination parcels (Queensway Bay Parcels) have been filled
25 and reclaimed, as the result of a highly beneficial program
26 of harbor development, and for over 30 years have been
27 excluded from the public channels, and are no longer in fact
28 tide or submerged lands and are not available or susceptible

1 of being used for navigation or fishing. (E) The lands to
2 be acquired from the City of Long Beach (Los Angeles River
3 Parcels) are of such a configuration and location that they
4 can be used more efficiently by the trustee in furtherance
5 of public trust purposes than the filled tide and submerged
6 lands (Queensway Bay Parcels). (AR 2:0496-0499; AR 13:2995-
7 3000; AR 14:3209-3210.)

8 These findings meet the requirements of Public
9 Resources Code section 6307 and *City of Long Beach v.*
10 *Mansell* (1970) 3 Cal.3d 462 and are supported by evidence in
11 the record.

12 Petitioner has not shown that the exchange was not in
13 the best interests of the state "to enhance the
14 configuration of the shoreline for the improvement of the
15 water and upland" as required by Public Resources Code
16 section 6307. There is evidence in the record that the
17 Queensway Bay parcels had been filled, paved over and used
18 as parking lots for many years, and that the exchange will
19 allow improvements of the upland which will make greater use
20 of the Queensway Bay parcels, will attract additional
21 visitors to the shoreline, and will improve the access to
22 the shoreline and water. The fact that there may also be
23 benefit to the developer does not mean that it is not in the
24 best interests of the state.

25 Petitioner has not shown that the exchange will
26 substantially interfere with the public's right of
27 navigation and fishing in the waters involved. The
28 Queensway Bay parcels have been filled for many years and

1 are at least 550 feet from the shoreline, and there is
2 evidence that the Los Angeles River Parcels may even present
3 potential for enhancing the public's right to fish by
4 providing access to the Los Angeles River.

5 As to the value of the exchanged parcels, the Court
6 concludes that "value" in section 5307 is to be interpreted
7 as meaning economic value. Appraisals made by respondent
8 State Land Commission's staff's professional appraiser
9 conclude that the Los Angeles River parcels are of greater
10 value than the Queensway Bay parcels.

11 The record shows that the Queensway Bay parcels are not
12 available or useful or susceptible of being used for
13 navigation or fishing. They have been filled for many
14 years, are used for parking lots, and are at least 550 feet
15 from the shoreline and separated from the shoreline by a
16 major automobile thoroughfare. Petitioners contend that
17 respondent violated public trust restrictions because the
18 Queensway Bay parcels are available and susceptible for
19 other public trust uses. Although cases refer to public
20 trust purposes other than fishing and navigation,
21 petitioners' arguments ignore the language of section 5307.
22 Petitioner's contention that the lands must be totally
23 useless to the trust is without merit.

24 Petitioner's claim of violation of Article X, section 3
25 of the California Constitution is without merit. The
26 Queensway Bay parcels are being conveyed to the City of Long
27 Beach, not to a private person, partnership or corporation.
28 Moreover, in *Atwood v. Hammond* (1935) 4 Cal.2d 31 and *City*

1 of Long Beach v. Mansell (1970) 3 Cal.3d 462, the California
2 Supreme Court held that the constitutional prohibition
3 against conveying certain tidelands into private ownership
4 is not absolute. The Legislature, as administrator of the
5 public trust, may convey tidelands free of the trust, if it
6 has declared them to be valueless for navigational and
7 related purposes, they have been or are to be reclaimed
8 pursuant to and in the course of a highly beneficial public
9 program of harbor development, and they are a relatively
10 small parcel (City of Long Beach v. Mansell (1970) 3 Cal.3d
11 462, 482-487.) Respondent State Lands Commission, adopting
12 the staff recommendation, made findings regarding the
13 Queensway Bay parcels to comply with the requirements of the
14 California Constitution, Article X, section 3, and there is
15 evidence in the record in support of those findings.

16 b. Petitioner's argument that the State Lands
17 Commission did not intend to permanently alienate the
18 property does not defeat the reasonableness of the
19 respondent's actions. In fact, it supports the argument to
20 be discussed later concerning whether or not there is a
21 legitimate dispute concerning whether the proposed use of
22 the subject property is or is not consistent with the public
23 trust, i.e., a bona fide title problem.

24 c. All the elements of the Public Resources Code
25 section 6307 have been met, and the constitutional
26 requirements set forth in City of Long Beach v. Mansell,
27 supra, 3 Cal.3d 462, have also been met.

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1 4. There has been no violation of Article X, section
2 4, of the California Constitution, as the transaction does
3 not exclude the right of way to the water, nor does it
4 destroy or obstruct the free navigation of the water. There
5 is evidence in the record showing that it improves access to
6 the water.

7 5. Petitioner's CEQA claim: The substantial evidence
8 test generally applies to claims of violation of the
9 California Environmental Quality Act, but the issue of
10 interpretation of a statute is a question of law on which
11 the Court exercises its independent judgment. The Court
12 finds that the dispute concerning the proper usage of the
13 Queensway Bay property is a bona fide title problem within
14 the meaning of Public Resources Code section 21080.11. The
15 exchange was in connection with a settlement of this title
16 problem. Thus, the transaction is exempt from environmental
17 review. The exchange and the removal of the public trust do
18 not need to be examined separately for purposes of the
19 exemption.

20 6. The Court declines to rule on the objections to
21 petitioner's Statement of Issues.

22 7. In view of the fact that the Court has ruled on the
23 merits, the Court declines to rule on the motion for summary
24 adjudication of issues.

25 The petition for writ of mandate is DENIED.

26 Respondents and real party in interest shall recover
27 their costs, including those recoverable pursuant to
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1 Government Code section 6103.5, pursuant to memoranda of
2 costs.

3 Respondents shall prepare a formal judgment consistent
4 with this ruling and submit it to the Court for signature.

5 DATED: MAY - 8 2002

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8 GAIL D. OHANESIAN
9 JUDGE OF THE SUPERIOR COURT
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