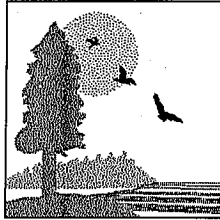


CALIFORNIA STATE LANDS COMMISSION

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September 22, 2009

SENT VIA ELECTRONIC MAIL AND U.S. MAIL

File Ref: G05-03

Long Beach City Council
Long Beach City Hall
333 W. Ocean Blvd., 14th Floor
Long Beach, CA 90802

RE: September 22, 2009 Meeting of the City of Long Beach City Council –
Agenda Item #27

Dear Council Members:

The California State Lands Commission (CSLC or Commission) staff understands that the City Council will be considering Agenda Item #27 at its September 22nd meeting, which involves a request to convene a meeting of the Charter Amendment Committee to discuss charter reform opportunities and charter-based funding sources, including, but not limited to, revising the formula for transferring funds from the Harbor Department to the Tidelands Operating fund. As such, Commission staff would like to take this opportunity to provide some background on the Public Trust Doctrine, the City's statutory trust and the City's fiduciary responsibilities as a trustee for the State, as well as offer our availability and assistance should the Council want additional information.

As general background, upon admission into the Union in 1850 and based on its sovereignty, California received title to all tide and submerged lands and lands underlying inland navigable waterways within its borders. California's sovereign tide and submerged lands are held in trust for the people of the State of California pursuant to the common law Public Trust Doctrine.

In 1938 the California Legislature vested all jurisdiction over ungranted sovereign lands in the Commission and in 1941 specifically included certain residual and review authority for sovereign lands legislatively granted in trust to local jurisdictions. Public Resources Code Section 6301 provides, *inter alia*, "All jurisdiction and authority remaining in the State as to tidelands and submerged lands as to which grants have been or may be made is vested in the commission."

Commencing in 1851 and continuing to the present, the California Legislature has periodically transferred title to certain sovereign public trust lands to local

governmental entities for management purposes. The great majority of tideland grants are held in trust for public trust purposes, including water-related commerce, navigation and fishing. Although courts have recognized that the Public Trust Doctrine is flexible and that it includes water-related public serving and recreational uses, as well as environmental protection, open space, and preservation of scenic areas, the overarching principle of the Public Trust Doctrine is that trust lands and trust assets belong to the statewide public and are to be used to benefit the statewide public rather than for local community or municipal purposes.

The typical granting language utilized by the Legislature has the effect of conveying the State's legal title to the described tide and submerged lands, subject to certain terms and conditions and subject to the statutory and common law public trusts. The local grantee is a trustee, both as to the lands themselves and as to the proceeds derived therefrom. *City of Long Beach v. Morse*, 31 Cal. 2d 254, 257 (1947). The trust is for the benefit of the entire State. *Mallon v. City of Long Beach*, 44 Cal. 2d 199, 209 (1955). Public trust revenues are subject to the same trusts and restrictions as the trust lands themselves. The use of trust lands and revenues derived therefrom for non-trust purposes is a violation of the trustee's fiduciary duty to the trust and its beneficiaries.

The major ports of California, including the Port of Long Beach (Port), can all trace their origins back to a statutory trust grant to a local government of State owned sovereign tide and submerged lands. The California Legislature entrusted to these local jurisdictions the State's public trust lands for the primary purpose of developing commercial ports. The State ensured that these public trust lands would be held by the grantees for the benefit of all of the people of the State and would be developed for port purposes by placing them in an express statutory trust.

The State's sovereign tide and submerged lands within the city of Long Beach (City) were legislatively granted, in trust, to the City pursuant to Chapter 676, Statutes of 1911, and are held subject to the trust as subsequently amended by the Legislature. Through the City's Charter, portions of these public trust lands are within the Port and are managed by the Long Beach Board of Harbor Commissioners. The City's remaining public trust lands are managed by various other City departments.

The City holds these sovereign tide and submerged lands, in trust, for the benefit of all the citizens of California. As with a private trust, the City, as trustee, must manage and utilize the State's lands and their revenues solely for trust purposes and needs, pursuant to both the common law Public Trust Doctrine and the statutorily created trust grants. As such, any funds diverted from the Port are still required to be used for public trust purposes benefitting public trust lands within the City.

The Port is a significant public trust asset and vital component of the national, state and local economies. Pursuant to its fiduciary duty as the State's trustee, the City should carefully consider the potential impact to Port operations that any change to the current formula allowing transferring funds between the two public trust funds may have;

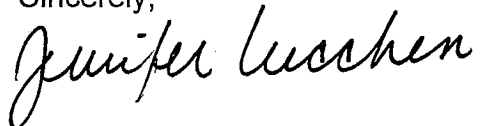
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including balancing the potential adverse impact to the Port's environmental, transportation and security programs from the additional loss of funds against the benefits to the City's other public trust lands.

As the Legislature's delegated trustee of these public trust lands and trust assets, the City has the primary responsibility and authority to administer the trust on a day-to-day basis and to manage its granted public trust lands and assets for the benefit of all the people of California, including the duty to prudently balance competing public trust uses of trust assets to accommodate public trust needs. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Lucchesi".

Jennifer Lucchesi
Staff Counsel

cc: Honorable Bob Foster, Mayor
Paul Thayer, Executive Officer, CSLC
Curtis Fossum Chief Counsel, CSLC