

**CALIFORNIA STATE LANDS COMMISSION**

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*Established in 1938*

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July 2, 2014

File Ref: G 11-00

Dennis Herrera  
City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

RE: Concerns Regarding the Legality of the Proposed Union Iron Works Historic District Housing, Waterfront Parks, Jobs and Preservation Initiative

Dear Mr. Herrera:

The staff of the California State Lands Commission (Commission) is aware of the Union Iron Works Historic District Housing, Waterfront Parks, Jobs and Preservation Initiative (Initiative) proposed for a future election in San Francisco. The purpose of this letter is to share our concerns about the legality of this proposed Initiative and the impact the Initiative may have on the City and County of San Francisco's (City) fiduciary responsibilities and obligations as a trustee of the granted state sovereign land.

It is our understanding that the purpose of the Initiative is to approve an adjustment to the existing height limits applicable to the Pier 70 area, as defined, establish policies to guide the revitalization efforts of the specified area, and encourage all local, state, and federal agencies to take all steps necessary to proceed with the development of the area consistent with the Initiative. The effect of this Initiative is that the decision-making authority of the state's legislatively delegated trustee, the City acting through its Port Commission, is usurped by the local San Francisco electorate. The ability of the San Francisco Port Commission (Port), acting on behalf of all the people of California, could be obstructed by a vote of the local citizenry motivated purely by local concerns. The Legislature has delegated directly to the Port the management authority over the lands at issue that are of statewide significance. Thus, the right to local initiative does not apply to the lands held by the City and administered by the Port.

The land that would be affected by this Initiative includes filled tidelands that have been granted to the City, acting through the Harbor Commission of the City, by the California Legislature and subject to the public trust. However, the State's grant of these lands to the City did not end California's supervision and control of these lands.

California still remains the ultimate trustee of these granted lands. The actual use made of the lands granted by California to its municipal trustee is a matter of statewide importance and one that directly impacts the Commission's jurisdiction. The courts have described California's continuing role over granted lands by stating that, "Upon grant to a municipality subject to a public trust, and accompanied by a delegation of the right to improve the harbor and exercise control over harbor facilities, the lands are not placed entirely beyond the supervision of the state, but it may, and indeed has a duty to, continue to protect the public interests."<sup>1</sup> As an example of the state's continued involvement with these public trust lands, the Legislature has recently authorized a land exchange and issued management directives for the area impacted by the Initiative.<sup>2</sup>

As such, the City serves as a trustee, both as to the lands themselves and as to the revenue derived from trust lands.<sup>3</sup> The trust lands are not held by the City in a municipal or proprietary capacity, but rather for the benefit of all the people of the State of California.<sup>4</sup> The legislative grant created a trust in which the City is the fiduciary/trustee, the State is the trustor, and all the people of the State are the beneficiaries. The legal consequence of this trust relationship is that the proper use of the tidelands and tideland revenues is a statewide affair. While the day-to-day management of these public trust lands was granted to the City acting through the Port, the State, through the Commission, retains trustee and oversight authority over the City's administration of these lands, and the Legislature remains the ultimate trustor.

While all doubts are normally resolved in favor of the initiative process, this presumption is rebuttable where the Legislature intended to delegate exclusive legislative power to a specific local governing body in an area of statewide concern. Local initiatives that seek to direct the use and management of land held in trust for the benefit of the statewide public are of questionable validity. The use of the initiative and referendum powers is limited to municipal affairs only and not to matters of statewide concern. The California Supreme Court has found that the Legislature intended to preclude action by local initiative if the legislation designates a specific local agency to implement policy concerning a matter of statewide concern.<sup>5</sup>

The State Legislature has designated the City, through the Port, to manage, use and improve the trust lands for the benefit of the people of California. Specifically, pursuant to the Burton Act, the "City and County of San Francisco, through a Harbor Commission of the City and County, shall have complete authority to ...manage, regulate, improve, and control the harbor of San Francisco... ." Recently, the Legislature has approved legislation relating to the management of public trust lands by legislative grantees that reiterate the Legislature's exclusive delegation of planning and

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<sup>1</sup> City of Coronado v. San Diego Unified Port District (1964) 227 Cal.App.2d 455, 474

<sup>2</sup> Chapter 477, Statutes of 2011

<sup>3</sup> City of Long Beach v. Morse (1947) 31 Cal.2d 254, 257

<sup>4</sup> Mallon v. City of Long Beach (1955) 44 Ca1.2d 199, 209

<sup>5</sup> Committee of Seven Thousand v. Superior Court (1938) 45 Ca1,3d 491, 510

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management powers to other governmental entities on behalf of the state. Specifically, trustees "...are required to manage the state's tidelands and submerged lands consistent with the terms and obligations of their grants and the public trust, without subjugation of statewide interests, concerns, or benefits to the inclination of local or municipal affairs, initiatives; or excises."<sup>6</sup> Additionally, a trustee has the "duty to not delegate to other the performance of acts that the trustee can reasonably be required to perform and to not transfer the administration of the trust to a cotrustee."<sup>7</sup>

The land use and management decisions that the Port makes regarding these public trust lands cannot be overridden by the local initiative process because the City, as trustee, acts pursuant to authority that the California Legislature specifically delegated to the City acting through its Port to implement state policy on matters of statewide concern. The proposed Initiative limits the City's discretion to develop and improve the waterfront for all people of California. The Initiative states that it does not supersede, affect or conflict with the authority of the City or Commission. However, if the voters disapprove the Initiative, the Initiative would affect the City and State's ability to determine how to develop and manage the public trust lands in a manner that they determine is in the best interest of the state. In addition, the Initiative conflicts with the Legislative intent to facilitate the productive reuse of the lands in a manner that furthers the purposes of the trust.<sup>8</sup> Furthermore, the proposed Initiative attempts to unlawfully delegate certain decision making authorities to the local voters, which is in contradiction to the express trust grant made to the City acting through the Port by the Legislature.

Commission staff is available to discuss our concerns detailed above with you and your staff at your convenience. If you have any questions with regard to our position, please do not hesitate to contact me at.

Sincerely,



Mark A. Meier  
Chief Counsel

cc: Monique Moyer, Executive Director, Port of San Francisco  
Joseph Rusconi, Deputy Attorney General

<sup>6</sup> Public Resources Code section 6009 (d)

<sup>7</sup> Public Resources Code section 6009.1 (c)(13)

<sup>8</sup> Chapter 477, Statutes of 2011, section 2(a).