

**CALENDAR ITEM
C37**

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**CONSIDER APPROVAL OF A TRUST LANDS USE REPORT PURSUANT TO
CHAPTER 275, STATUTES OF 2006, CITY OF PITTSBURG,
CONTRA COSTA COUNTY**

TRUSTEE:

City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565

INTRODUCTION:

All tide and submerged lands, granted or ungranted, as well as navigable rivers, sloughs, etc., are impressed with the Common Law Public Trust. The Public Trust is a sovereign public property right held by the State or its delegated trustee for the benefit of all the people. This right limits the uses of these lands to water-related commerce, navigation, fisheries, open space, recreation, or other recognized Public Trust purposes. The California State Lands Commission (Commission) has been given the responsibility to manage the Public Trust lands in the state, and to represent the state's and the public's residual interest and rights in tide and submerged lands legislatively granted in trust to local governmental entities (Public Resources Code Sections 6301, et seq.).

Chapter 275, Statutes of 2006 granted, in trust, to the city of Pittsburg (City), all of the right, title, and interest of the State held by the State by virtue of its sovereignty in and to all tidelands and submerged lands, whether filled or unfilled, situated within the boundaries of the City as such boundaries existed on January 1, 2007. Pursuant to Chapter 275, Statutes of 2006, the City, as trustee, is required to submit to the Commission a Trust Lands Use Report (Report) for its review and approval.

The Report submitted by the City provides an explanation of the types of uses proposed for the lands legislatively granted to the City. In addition, the Report also outlines the City's responsibilities related to its role as Trustee, on behalf of the State of California and the Commission, in managing its Public Trust lands. The Report represents what the City proposes will be the general land uses of its granted Public Trust lands. As specific projects are proposed, Commission staff

CALENDAR ITEM NO. **C37** (CONT'D)

will continue to exercise its oversight jurisdiction in reviewing those specific projects for consistency with the Public Trust Doctrine and the City's granting statutes.

The Pittsburg City Council unanimously approved the Report on January 20, 2009.

THE PUBLIC TRUST DOCTRINE AND LEGISLATIVELY GRANTED PUBLIC TRUST LANDS:

Traditional Public Trust uses are considered to include water-related commerce, navigation, and fisheries. Harbor development is a classic example of a public trust use, potentially encompassing all three. And, 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 same holds true for legislatively granted public trust lands and assets managed by a local government. Commencing in 1851 and continuing to the present, the California Legislature has periodically transferred sovereign Public Trust lands to local governmental entities for management purposes. The majority of legislative grants of tidelands are held in trust for Public Trust purposes, including water-related commerce, navigation and fisheries. However, the terms of these grants can vary.

As to any particular trustee, the terms of the trust must be derived from both the original and all supplementary and amendatory legislation, as well as general legislation applying to all such trust grants. The usual 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 Trust. The effect of the legislative grant is, therefore, to create a trust in which the grantee is trustee, and the State is the trustor, and the people of the State are the beneficiaries of the trust. The 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)]. 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.

CALENDAR ITEM NO. **C37** (CONT'D)

In addition to the Common Law judicial protections given public trust lands and assets laid down by both federal and state courts, the people of California have adopted several Constitutional restrictions on the state and local governments in their handling of these statewide public assets. Specifically, **California Constitution Article X §3** (adopted in 1879 as Article XV, §3) prohibits the sale of tidelands within two miles of a city to private parties. **Article XVI, § 6** prohibits the state from making a gift of public monies or thing of value to any municipal corporation [*Mallon* at 211].

In addressing what constitutes an appropriate use to which Public Trust lands may be dedicated, California courts have made it clear that water dependent uses related to commerce, navigation, fisheries, and other water-related uses or activities, such as public access and use for water-related recreation, and ecological preservation for scientific study and wildlife habitat (*Marks v. Whitney* (1971) 6 Cal.3rd 151), as well as those uses that are necessary and incidental to accomplish or promote those [Public Trust] uses (*Haggerty v. City of Oakland* (1958) 161 C.A.2d 404), are consistent with the land use requirement of the trust. Ancillary visitor serving facilities, such as restaurants and hotels, have also received judicial approval because they enhance and facilitate the public's enjoyment of trust lands, by providing public accommodation (*Martin v. Smith* (1960) 184 Cal. App. 2d 571). When analyzing the consistency of expenditure of public trust funds for specific uses, the trustees of public trust lands must exercise caution so as not to violate their fiduciary duties to the trust or violate the State Constitution.

ANALYSIS OF THE TRUST LANDS USE REPORT:

The Report details the City's proposed uses for its Public Trust lands and adjacent uplands. Historically, according to the Report, the City's waterfront was utilized for docking, fishing, canning, and shipping of coal. While the majority of the Public Trust lands legislatively granted to the City are submerged lands, there are also portions that are filled, waterfront property.

According to the Report, the City is committed to utilizing its Public Trust lands "in a manner consistent with the Public Trust and the legislative granting statute." The uses projected for the City's Public Trust lands are categorized as: 1) Land Preservation and Open Space; 2) Recreational/Visitor Oriented; 3) Management of Existing Residential Development; and 4) Commerce/Economic Development.

It is important to note that the existing residential developments mentioned above are adjacent to the water, but are located on non-public trust lands, are not included with the City's trust grant and, according to the City, were included in the Report solely to present a complete overview of the waterfront. In addition,

CALENDAR ITEM NO. **C37** (CONT'D)

there are several private recreational docks constructed without appropriate permit/authority, but according to the Report, the City will bring these docks into compliance or the City will require these private recreational docks to be removed.

Land Preservation and Open Space Uses

According to the Report, the City's public lands, including Public Trust lands and adjacent uplands, include a significant amount of open space and conserved natural resource and wildlife refuge areas. For example, Riverview Park, which includes both Public Trust lands and City-owned uplands, consists of four acres of open space, offers public access to the waterfront, including shoreline trails, a floating pier, fishing facilities, picnic areas and a children's playground area. In addition, the City's Public Trust lands also include 172 acres of tidal wetlands and a 30-acre beaver pond.

The Report describes the City's desire to include its Public Trust lands in its efforts to open the shoreline for more recreational uses and generally give the public more access to the waterfront by potentially providing fishing piers and additional small boat access. Such efforts to manage Public Trust lands in these ways are generally consistent with the Public Trust Doctrine. However, not all open space/park uses are consistent with the Public Trust Doctrine. Recreational uses, including open space and public parks, which have no relation to the water and do not provide a statewide benefit, but primarily serve the local community, are not uses consistent with the Public Trust Doctrine.

Recreational/Visitor-Oriented Uses

According to the Report, the Pittsburg Marina is one of the City's treasured recreational/visitor serving uses of waterfront property and consists of approximately 588 berthing slips, a 24-hour public launch ramp (free of charge for public use), on-site boat haul out service (available as needed), public fuel docks (open seven days a week), seasonal fishing charters, Delta cruises, live bait shop/market, and extensive waterfront access for passive recreational use. According to the Report, the City's redevelopment agency recently invested approximately \$7 million to renovate and improve the Marina.

Marinas, associated marine services and other visitor-serving amenities are generally consistent with the Public Trust Doctrine and the City's granting statutes. However, general retail uses, which have no relationship to the water, serve the local citizenry and are not visitor-serving are uses inconsistent with the Public Trust Doctrine. Alternatively, commercial retail uses which are visitor-serving, catering to the statewide general public, and are water-related, may be considered incidental and necessary in promoting the public's use of public trust

CALENDAR ITEM NO. **C37** (CONT'D)

lands and hence would be considered consistent with the Public Trust Doctrine. Also, general civic/cultural uses that are not water-related and are not visitor-serving in nature are not appropriate Public Trust uses as such uses cater to the local community and do not serve the statewide general public.

Commercial/Economic Development Uses

According to the Report, the majority of the industrial waterfront area is underutilized at this time and it is the City's desire to attract and expand industrial uses which require access to the City's Public Trust lands. There may also be potential contamination and environmental issues that need to be addressed. According to the Report, it is the City's intention to maintain the industrial use and character of this historical stretch of the waterfront while encouraging the development of "clean" industries and supporting the modernization of all industrial uses in the area to reduce both air and water pollutant levels, as well as the reclamation and reuse of contaminated industrial sites. The City has begun the important process of removing blighted conditions along the waterfront and continues to explore potential industrial/commercial operations.

As stated throughout this staff report, Public Trust lands must be used for uses that are water-dependent or water-related and serve the statewide public. A strictly industrial or commercial use without any connection to the water would be an inconsistent Public Trust use.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that these activities are not subject to the provisions of the CEQA because they are not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

2. These activities involve lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq., but such activities will not affect those significant lands.

CONCLUSION/STAFF RECOMMENDATION:

In conclusion, staff recommends that the Commission approve the City's Trust Land Use Report. According to the Report, which was adopted unanimously by the City Council in January 2009, the City is committed to using its Public Trust lands in a manner consistent with the Public Trust Doctrine and the City's granting statutes. In

CALENDAR ITEM NO. **C37** (CONT'D)

addition, as stated previously, as specific projects are proposed, Commission staff will continue to exercise its oversight responsibility by working with the City in reviewing those specific projects for consistency with the Public Trust Doctrine and the City's granting statutes.

EXHIBIT:

- A. City of Pittsburg Trust Land Use Report

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITIES ARE NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITIES ARE NOT A PROJECT AS DEFINED BY THE PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.
2. FIND THAT THESE ACTIVITIES ARE CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.
3. APPROVE THE CITY OF PITTSBURG'S TRUST LAND USE REPORT, IDENTIFIED AS EXHIBIT A, AS ATTACHED AND MADE A PART HEREOF.