

CALENDAR ITEM

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**INFORMATIONAL BRIEFING ON THE STATUTORY TRUST GRANT OF STATE
SOVEREIGN LANDS TO THE CITY AND COUNTY OF SAN FRANCISCO
ADMINISTERED BY THE PORT OF SAN FRANCISCO**

INTRODUCTION:

The Port of San Francisco (Port) manages over seven miles of the San Francisco waterfront, including legislatively granted sovereign tidelands and submerged lands that the Port holds and manages in trust for public trust purposes that benefit the statewide public. The Port has one of the most diverse maritime portfolios of any port in California and features a key stopping point for cruise vessels along the West Coast, ferry service across the Bay, ship repair in the largest floating drydock on the west coast of the Americas, and in its Southern Waterfront, significant breakbulk and bulk shipping terminals and sand and gravel processing. The Port is an invaluable public trust asset, a vibrant and world-renowned tourist destination, and a vital component of the local, state and national economies.

The State Lands Commission (Commission) has the statutory responsibility to oversee the management of sovereign public trust lands and assets by legislative grantees who manage these lands in trust on behalf of the state (Public Resources Code section 6301, et seq.), including those lands and resources under the Port's jurisdiction. The Commission and its staff exercise this responsibility and authority through various mechanisms, including informational briefings on a particular trust grant.

HISTORICAL BACKGROUND:

In 1848, the United States entered into the Treaty of Guadalupe Hidalgo with Mexico. One of the treaty obligations was to honor the land commitments made by Mexico. Federal legislation in 1851 dictated the process by which the United States confirmed Mexican land grants. San Francisco had been a pueblo authorized under Mexican law and applied for a federal patent under the 1851 legislation. After much litigation, San Francisco received a patent. The boundaries of the patent were the ordinary high water mark as surveyed by the federal surveyor Von Leicht.

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When California became a state in 1850, it acquired title to all of the tidelands and submerged lands within its new boundaries. In 1851, the State Legislature enacted the San Francisco Beach and Water Lots Act that granted the tide and submerged lands to San Francisco and directed their filling and sale into private ownership. Those lands were located waterward of the Von Leicht surveyed line. These lots are known today as the Seawall Lots. Much of what is now downtown San Francisco below the original shoreline at Montgomery Street passed into private ownership in this fashion.

In order to further the development of the waterfront, the State Legislature created the State Board of Tide Land Commissioners (BTLC) in 1868. The Board was directed to subdivide the bay out to a depth of 24 feet of water at low tide along San Francisco bay frontage. These are known as BTLC lots. By extending the pattern of the subdivision for the upland streets and blocks into the bay and creating channels and basins and by selling the BTLC lots, the state created a new San Francisco waterfront.

The selling of tidelands into private ownership ended in 1879 when a provision was added to the California Constitution banning the sale of tidelands or submerged lands within two miles of an incorporated city or town. In 1892, the United States Supreme Court established as a principle of American constitutional law that public rights in lands lying under the navigable waters of a state are an element of sovereignty which may not be alienated by the state except under very limited circumstances. The ban was subsequently broadened to include all tidelands and submerged lands in the state. California courts have strictly applied this principle ever since. Today, nearly one-quarter of the San Francisco Bay is claimed by private parties.

In 1863, the Board of State Harbor Commissioners for San Francisco was created to manage San Francisco's working waterfront, including constructing a seawall to stabilize the shore. According to the Port, by 1880, over two and a half miles of seawall were completed from Fisherman's Wharf in the north to China Basin Channel in the south, creating more than 800 acres of land behind the new seawall; land which is currently home to San Francisco's downtown financial and commercial districts.

In 1968, the tide and submerged lands within San Francisco, including the lands under the control of the Board of State Harbor Commissioners, were legislatively granted in trust to the City and County of San Francisco pursuant to the Burton Act (Chapter 1333, Statutes of 1968). These lands are now controlled and managed by the San Francisco Port Commission subject to the terms and conditions of the Burton Act, as amended, and the common law Public Trust Doctrine. The Port Commission is a five-member body that is appointed by the Mayor of San Francisco and confirmed by the Board of Supervisors.

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When the Burton Act was enacted, many of the Port's assets were in disrepair. For example, 23 of the piers transferred to the Port to hold in trust were virtually unusable for maritime purposes because of their poor physical conditions. Since the enactment of the Burton Act, the Legislature has amended the Port's statutory trust grant through over 20 statutes. Of particular note, in 2007, Chapter 660 (SB 815, Migden) made two significant changes, which were intended to facilitate the improvement of the infrastructure and historic structures on trust lands along the San Francisco waterfront, including preservation of, and structural repairs and improvements to, historic piers, and the enhancement of public access within and around historic piers.

STATE LANDS COMMISSION AND PORT COLLABORATION:

The San Francisco waterfront is dynamic, diverse and ever-evolving. The Port is continuously adapting to meet the public's needs and remain a vibrant working waterfront and tourist destination. When the Port was established over 150 years ago the waterfront was an industrial seaport. Today, the Port is not synonymous with industrial uses. Unlike the state's largest ports of Long Beach and Los Angeles, the Port of San Francisco is not an industrial port shipping high volumes of cargo and engaging in large-scale containerized shipping activity. The San Francisco waterfront is widely enjoyed by the statewide public and is a tourist destination that draws millions of visitors from all over the world who enjoy the dining, recreational, maritime, and navigational amenities that the waterfront offers.

Although the Port has the primary responsibility of administering the trust, the Commission retains oversight authority over the management of these state lands managed in trust by the Port on behalf of the state. The Commission has a long history of successful collaboration with the Port on several landmark projects that have invigorated the City's waterfront and created new public access and recreational opportunities that significantly enhance the relationship between the public and its waterfront. Examples of these projects are the AT&T Giant's Ballpark, the Ferry Building Renovation, the Pier 1 Historical Rehabilitation Project, the Piers 1½ - 3 - 5 Historical Rehabilitation Project, and the Exploratorium at Piers 15-17. The Commission and the Port have worked together to ensure that the waterfront is developed in a manner that addresses the unique issues associated with the San Francisco Waterfront, while adhering to the principles and values of the Public Trust Doctrine. The strong working relationship, exemplified by effective communication and shared respect for the importance of these public trust lands and resources, between the Port and the Commission has allowed for the Commission to be actively involved in these projects to promote maximum statewide public enjoyment of these lands and

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ensure compliance with the Port's granting statutes and the common law Public Trust Doctrine.

In these waterfront development projects, the Commission's specialized public trust expertise has been integral to increasing public trust uses and public access within projects, ensuring that waterfront development benefits the statewide public consistent with the Burton Act and the Public Trust. In addition to contributing its unique knowledge about the history and application of the Public Trust Doctrine, the Commission has facilitated projects through resolving complex title and boundary issues along the waterfront. The most recent example is the Hunter's Point/Candlestick Title Settlement and Land Exchange that was approved by the Commission in April 2011. This agreement will provide for the development of a wide variety of open space areas, bike trails, walking and jogging paths, viewing areas to experience expansive views of San Francisco Bay, visitor-serving facilities and other trust consistent uses. This agreement will also facilitate the reconfiguration, redesign and improvement of the Candlestick Park State Recreation Area for regional and statewide visitors.

Commission staff looks forward to continuing its successful working relationship with the Port to facilitate future projects in a manner that promotes Public Trust values and principles along the San Francisco waterfront for the benefit of all California residents.