

**STAFF REPORT
108**

A Statewide

04/19/18

S Statewide

S. Pemberton

CONSIDER SPONSORING STATE LEGISLATION TO GRANT IN TRUST TO THE CITY OF SACRAMENTO TITLE TO LAND ASSOCIATED WITH THE SACRAMENTO DOWNTOWN RAILYARDS TITLE SETTLEMENT AND LAND EXCHANGE AGREEMENT, AND THAT WOULD REPEAL PREVIOUS GRANTS MADE TO THE CITY OF SACRAMENTO

SUMMARY:

This legislative proposal would grant in trust to the City of Sacramento title to parcels of land associated with the Sacramento Downtown Railyards Title Settlement and Land Exchange Agreement. It would also repeal two legislative grants of tide and submerged land made to the City of Sacramento in 1970 and amended in 1973.

BACKGROUND AND DISCUSSION:

Railyards Agreement

In 2007, the Commission approved a Title Settlement and Exchange Agreement (Agreement) involving the Sacramento Railyards and certain nearby parcels along the Sacramento River ([Item 37, December 3, 2007](#)). The Agreement was reapproved in 2009 and amended in 2011 ([Item C59, April 6, 2011](#)). The parties to the Agreement are the City of Sacramento (City), the Commission, the California Department of Parks and Recreation, and IA Sacramento Holdings, L.L.C., a Delaware Limited Liability Company.

The Agreement impressed the Public Trust on lands in the city and county of Sacramento known as the Sand Cove and Waterfront Parcels. It also required the City of Sacramento and the Commission to seek legislation to transfer title to the Sand Cove Parcels and the Waterfront Parcel to the City of Sacramento to hold in trust. The City would then hold the lands in trust and manage them for the benefit of all the people of the State for Public Trust purposes. The Sand Cove and Waterfront Parcels have land descriptions, which are depicted in Exhibit A (the proposed granting legislation).

The Waterfront Parcel is part of the City's Riverfront Master Plan, which is designed to encourage greater pedestrian use of the Sacramento River. The parcel is situated to serve as a linkage to the Sacramento riverfront from existing and planned residential, commercial, office and regional transportation facilities in downtown Sacramento, the Richards Boulevard area, the Railyards, and

STAFF REPORT NO. 108 (CONT'D)

surrounding areas of Sacramento. The Waterfront Parcel is just north of the Old Sacramento area, a regional tourist destination. A bikeway passing through the Waterfront Parcel links Old Sacramento with the American River Parkway.

The Sand Cove Parcels provide access from an adjacent rural road and surrounding communities to the Sacramento River. The 11-acre site contains significant value for historic, cultural, and natural resource preservation. Trails and other limited improvements, which exist or are planned by the City for the Sand Cove Parcels, should attract visitors to this waterfront site.

The Agreement required the City to transfer title to the Sand Cove Parcels to the Commission and then the Commission would lease it back, which has occurred. The Agreement provided that the Commission will seek legislation to transfer title back to the City after the Railyards owner conveys to the Department of Parks and Recreation title to the Central Shops building and the right to acquire a second building for a planned Rail Technology Museum.

Grant Repeal

At its February 2018 meeting, the Commission approved a Boundary Line Agreement that permanently fixed and established a common boundary line between State-owned sovereign land within the bed of the Sacramento River and two parcels of land owned by the City ([Item C77, February 27, 2018](#)).

In 1970, the Legislature granted the Miller Park area in the City of Sacramento to the City. In 1973, the grant was amended to correct a land description error. The grants would take effect when the City and Commission resolved a dispute about the State's sovereign interest in Miller Park. It was envisioned that the City would take title to all lands at Miller Park in fee simple or as granted lands.

The Boundary Line Agreement gave the City clear title to most of the lands at Miller Park, about 55 acres, and title to what is known as the North Parcel, an area above Miller Park. It also gave the State clear title to all lands waterward the agreed common boundary line. As a result, very little land is within the area granted to the City in 1970. During the consideration of the Boundary Line Agreement, it was anticipated that the City would seek to repeal 1970 and 1973 statutory grants after the agreement was fully executed and recorded.

Staff agrees that it makes sense to repeal the 1970 and 1973 grants because, owing to the Boundary Line Agreement, there is very little land left that is within the grant. Staff thus recommends that the Commission sponsor legislation to repeal these grants.

STAFF REPORT NO. **108** (CONT'D)

EXHIBIT:

A. Draft Legislation

RECOMMENDED ACTION:

It is recommended that the Commission:

1. Sponsor legislation to grant and convey in trust to the City of Sacramento all the right, title, and interest of the State in and to the Sand Cove Parcels and the Waterfront Parcel.
2. Sponsor legislation to repeal Chapter 1266, Statutes of 1970, and Chapter 625, Statutes of 1973.

EXHIBIT A
Draft Legislation

An act to grant in trust to the City of Sacramento certain public trust lands.

SEC. 1. As used in this act, the following definitions apply:

- (a) "Attorney General" means the attorney general of the State of California.
- (b) "City" means the City of Sacramento, a municipal corporation of the State of California, in Sacramento County, and its successors.
- (c) "Commission" means the California State Lands Commission.
- (d) "Public trust purposes" means purposes related to navigation, fisheries, water-oriented recreation and public access, and ecological preservation.
- (e) "Sacramento Waterfront Parcel" means that parcel described in Exhibit B to the Sacramento Downtown Railyards Title Settlement and Exchange Agreement Recorded in the Official Records of Sacramento County on _____, 2010, at Bk _____, Page _____.
- "Sand Cove Parcels" means those parcels described in Exhibit C to the Sacramento Downtown Railyards Title Settlement and Exchange Agreement Recorded in the Official Records of Sacramento County on _____, 2010, at Bk _____, Page _____.
- (f) "State" means the State of California.
- (g) "Trust lands" means those public trust lands identified as the Sacramento Waterfront Parcel and the Sand Cove Parcels.
- (h) "Public Trust" means the Common Law Public Trust Doctrine for protection and promotion of commerce, navigation, fisheries and other accepted public trust uses.
- (i) "Trust" means the provisions of this statutory trust, which also remains subject to the Public Trust.

SEC. 2. It is the intent of the Legislature, in enacting this act, to do all of the following:

- (a) To set forth the trust provisions, conditions, uses and purposes established for the City's government, management, and control of the public trust lands along the Sacramento River granted under this statute.
- (b) To convey in trust to the City the State's right, title and interest to the Sand Cove Parcels and the Waterfront Parcel.

SEC. 3. Since the admission of the State of California into the United States, certain tide and submerged lands have been, and are now held, in trust by the State for the benefit of all Californians for public trust purposes of commercial navigation, fisheries, water-oriented recreation and public access, and ecological preservation. The State has a trusteeship duty to govern, administer, and control those lands for public trust purposes. The State is authorized, when the interests of the public will benefit, to delegate, grant and convey in trust to local governments, limited and defined areas of public trust lands along with the authority and responsibility to govern, control, improve,

and develop those lands in the interests of all of the inhabitants of the State for public trust purposes.

SEC. 4. The State of California hereby grants and conveys in trust to the City all of the right, title, and interest of the State held by virtue of its sovereignty in and to the Sand Cove Parcels and the Waterfront Parcel.

SEC. 5. The Trust lands granted and conveyed to the City pursuant to this act shall be held by the City in trust for the benefit of all the people of the State for public trust purposes, as more particularly provided in this act. The City may use the Trust lands for the construction, reconstruction, repair, and maintenance of any transportation, utility, or other infrastructure that is incidental, necessary, or convenient to promote or accommodate uses consistent with the public trust. The Trust lands shall be held by the City, subject to the following conditions:

- (a) The City shall not grant, convey, or otherwise alienate the Trust lands, or any part thereof, to any individual, firm, or corporation for any purpose, except as provided in this act. However, the City may lease the Trust lands, or any part thereof, for limited periods not to exceed a maximum period of 49 years, for purposes consistent with the public trust. Those leases shall be subject to any terms or conditions that may be imposed by the City that are deemed to be appropriate for public trust purposes. The City shall collect and retain rents from those leases, and any and all rents and revenues received from the Trust lands and trust assets, hereinafter referred to as “trust revenues”, shall be expended only for those uses and purposes consistent with the public trust. The purpose of this requirement is to provide for the segregation of funds derived from the use of the Trust lands in order to ensure that they are expended only to enhance the Trust lands in accordance with the trust uses and purposes upon which the Trust lands are held.
- (b) Pursuant to Public Resources Code Section 6306, on or before October 1 of each year, the City shall file with the Commission a detailed statement of all trust revenues and expenditures relating to its use of the Trust lands and trust assets, including obligations that have been incurred, but not yet paid, covering the fiscal year preceding submission of the statement. This statement shall be prepared according to generally accepted accounting principles and may take the form of an annual audit prepared by or for the City. Prior to Commission approval of a Trust lands use plan as referenced in subsection (d), the following requirements shall apply:
 - (1) At least 30 days before making a capital expenditure of trust revenues in excess of one hundred thousand (\$100,000), but not more than one million (\$1,000,000), in or on the Trust lands, as set forth in Section 8 of this act, the City shall give written notice of that proposed expenditure to the Commission. The notice shall set forth the trust purposes, as set forth in this act, for which the proposed expenditure will be made.
 - (2) The City shall not make a capital expenditure of trust revenues in excess of one million dollars (\$1,000,000) in or on the Trust lands, as set forth in Section 8 of this act, unless the Commission approves the expenditure

pursuant to Chapter 2 (commencing with Section 6701) of Part 2 of Division 6 of the Public Resources Code.

- (3) As to the commitment of trust revenues for capital improvements as described above, the Commission may request the opinion of the Attorney General on the matter; and if it does so, a copy of the opinion shall be delivered to the City with the notice of its determination. In the event the Commission notifies the City that the capital expenditure is not authorized, the City shall not disburse any trust revenues for, or in connection with, the capital improvement, unless and until it is determined to be authorized by a final order or judgment of a court of competent jurisdiction. The City is authorized to bring suit against the State for the purpose of securing such an order or judgment, which suit shall have priority over all other civil matters. Service shall be made upon the Executive Officer of the Commission and the Attorney General, and the Attorney General shall defend the State in that suit. If judgment is given against the State in the suit, no costs may be recovered.
- (c) Any property acquired by the City with trust revenues shall become an asset of the public trust and be subject to the terms and conditions of this act. In addition, the following obligations shall apply to trust revenues:
- (1) On June 30, 2013, and at the end of every third fiscal year thereafter, that portion of the City's trust revenues in excess of two hundred fifty thousand dollars (\$250,000) remaining after current and accrued operating costs and expenditures directly related to the operation or maintenance of trust activities shall be deemed excess revenues; provided, however, that any funds deposited in a reserve fund for future capital expenditures or any funds used to retire bond issues for the improvement or operation of the Trust lands shall not be deemed excess revenue. Any reserve fund for future capital expenditure must be for projects that are consistent with use plan referenced in Section (d) and have prior Commission approval to be deemed non-excess revenues. Capital improvements of the Trust lands made for purposes authorized by this act may be considered as expenditures for the purpose of determining excess revenues.
 - (2) The excess revenues, as determined pursuant to this section, shall be allocated as follows: 50 percent shall be transmitted to the State Treasurer for deposit in the General Fund in the State Treasury; 25 percent to the State Treasurer for deposit in the Land Bank Fund pursuant to Public Resources Code Section 8625(c); 25 percent to the City for expenditures consistent with the provisions of this act.
 - (3) Reimbursement for any and all expenditures by the City of non-trust revenues for improvements made to the Trust lands must be approved by the Commission in accordance with section (c) in advance of such expenditures or such expenditures shall be deemed a gift to the trust.
- (d) Upon Commission's request, the City shall submit to the Commission, a Trust lands use plan indicating details of intended development, preservation, or other use of the Trust lands. The City shall thereafter submit to the

Commission, for approval all changes of, amendments to, or extensions of, the Trust lands use plan. Any use of the Trust lands must be consistent with the Trust lands use plan as approved by the Commission. Any improvements of the Trust land undertaken by the City, pursuant to a prior lease of the Trust land, as authorized by the Commission prior to the passage of this Act shall be deemed an approved component of the Trust lands use plan.

(1) The Commission shall review with reasonable promptness the Trust lands use plan submitted by the City and any changes or amendments to determine that they are consistent with the public trust and the requirements of this act. Based upon its review, the Commission shall either approve or disapprove the Trust lands use plan. In the event the Commission disapproves the Trust lands use plan, the City must submit a revised plan to the Commission within 180 days. If that revised Trust lands use plan is determined by the Commission to be inconsistent with the Public Trust Doctrine and the requirements of this act, the Commission shall report the matter to the Governor, the Senate and the Assembly for their determination whether all right, title and interest of the City in and to the Trust lands and improvements thereon shall revert to the State.

- i. The Trust lands use plan may consist of any plan, program, or other document which includes all of the following:
 1. A general description of the type of uses planned or proposed for the Trust lands. The location of these land uses shall be shown on a map or aerial photograph.
 2. The projected statewide benefit to be derived from the planned or proposed uses of the Trust lands, including, but not limited to, the financial benefit and the furtherance of those purposes set forth in Section 1 of this act.
 3. The proposed method of financing the planned or proposed uses of the Trust lands, including estimated capital costs, annual operating costs, and anticipated annual trust revenues.
 4. Estimated timetable for implementation of the Trust lands use plan or any phase thereof.
 5. A description of how the City proposes to protect and preserve natural and manmade resources in connection with the use of the Trust lands.
 6. The governing body of the City shall submit to the Commission for its approval, procedures, rules, and regulations to govern the use of or development of any leases of the Trust lands. These rules and regulations shall include, but not necessarily be limited to lease rates, the bases upon which the rates are established, lease terms and conditions, provision for renegotiation of rates and terms and assignments, and such other information as may be required by the Commission.
 7. All leases or similar agreements with a third party for use of the Trust lands proposed, or entered into, by City after the effective

date of this section shall be consistent with the provisions of the Trust lands use plan submitted by the City and approved by the Commission.

8. Upon request, the City shall submit to the Commission a copy of all leases and similar agreements entered into, renewed, or renegotiated for the Trust lands.

(e) Upon the Commission's request, but not earlier than September 30, 2017, the City shall submit an updated report of its utilization of the Trust lands for each immediately preceding five-calendar-year period ending with June 30 of the calendar year in which the report is required to be submitted.

(1) The update shall include all of the following:

- i. A general description of the uses to which the Trust lands have been placed during the period covered by the report.
- ii. A list of the holders of all leases and permits granted or issued by the City for the Trust lands, which list shall specify, as to each such holder:
 1. The use to which the Trust lands have been placed by the lessee or permittee.
 2. The consideration provided for in each such lease or permit, and the consideration actually received by the City for the lease or permit granted or issued.
 3. An enumeration of the restrictions that the City has placed on the use of the Trust lands and each area thereof for the period covered by the report.

(f) The City shall reimburse the Commission for staff costs related to the review of the Trust lands use plan and subsequent report updates described in subsections 5 (d) and (e) above.

(g) The City shall demonstrate good faith in carrying out the provision of the approved Trust lands use plan.

(h) The Commission may, from time to time, institute a formal inquiry to determine that the terms and conditions of this act, and amendments thereto, have been complied with, and that all other applicable provisions of law concerning the Trust lands are being complied with in good faith.

(i) There is hereby reserved in the people of the State of California the right to fish in the waters on and from the Trust lands with the right of convenient access to those waters for fishing purposes.

(j) The State shall have the right to use without charge, any transportation, landing, or storage improvements, betterments, or structures constructed upon the Trust lands by City for any vessel or other watercraft or railroad owned or operated by, or under contract to, the State as long as such use is consistent with the approved Trust lands use plan. The State's use of those facilities shall be governed by the City's rules and regulations.

(k) The Trust lands granted and conveyed to the City are subject to the express reservation and condition that the State may at any time in the future use

those lands, or any portion thereof, for highway purposes without compensation to the City, or its successors or assignees, or any person, firm, or public or private corporation claiming any right to those lands, except that in the event improvements have been placed with legal authority upon the property taken by the State for highway purposes, compensation shall be made to the person entitled thereto for the value of the interest in the improvements taken or the damages to that interest.

- (l) The State of California reserves all rights to any remains or artifacts of archaeological or historical significance and to all minerals and mineral rights in the Trust lands, whether now known to exist or hereafter discovered, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and the perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the State of California or to its successors and assignees. Notwithstanding section 6401 of the Public Resources Code, any mineral right retained pursuant to this section shall not include the right of the State or its successors or assignees in connection with any mineral reservation, removal, or disposal activity, to do either of the following:
 - (1) Enter upon, use, or damage the surface of the Trust lands or interfere with the use of the surface by the City or by the City's tenants.
 - (2) Conduct any mining activities of any nature whatsoever above a plane located five hundred feet below the surface of the Trust lands without permission of the City.
- (m) In the management, conduct, operation, and control of the Trust lands or any improvements, or structures on that land, the City shall make no discrimination in rates, tolls, or charges for any use or service in connection therewith nor shall the City discriminate against or unlawfully segregate any person or group of persons on account of sex, race, color, creed, national origin, ancestry, or physical handicap for any use or service in connection herewith.
- (n) The Trust lands shall be improved by the City without expense to the State of California, except that nothing contained in this act shall preclude the City from accepting and retaining any grant of funds or subvention from the State or other governmental agencies made available for the purpose of aiding in the development of those Trust lands for any public purpose consistent with the promotion and accommodation of commercial navigation, fisheries, water-oriented recreation and public access, or ecological preservation.

SEC. 7. Whenever the Commission finds that the City has violated or is about to violate the terms of its trust grant or any other principle of law relating to its obligation under the Public Trust Doctrine, it shall notify the City of these violations. The City shall have 30 days from receipt of such notice of violation to conform to the terms of its grant and the principles and laws under the Public Trust Doctrine. In the event the City fails or refuses to so conform, the Commission is authorized to bring such actions as are necessary to enforce the rights of the State and people as beneficiary of the Public Trust Doctrine. The Attorney General shall represent the State and people in all such

actions or proceedings. If the judgment is given against the State in any such action or proceeding, no costs can be recovered from the State and people.

SEC. 8. Lands granted pursuant to this act are:

- (a) The Sand Cove Parcels, being those parcels described in Exhibit C to the Sacramento Downtown Railyards Title Settlement and Exchange Agreement Recorded in the Official Records of Sacramento County on _____, 2010, at Bk _____, Page _____. (b) The Sacramento Waterfront Parcel, being that parcel described in Exhibit B to the Sacramento Downtown Railyards Title Settlement and Exchange Agreement Recorded in the Official Records of Sacramento County on _____, 2010, at Bk _____, Page _____.

SEC. 9. The City may resolve title and boundaries of the Trust lands, with the formal concurrence and approval of the Commission. The City may take and hold title, subject to the public trust and this statutory trust, to lands exchanged pursuant to Public Resources Code Section 6307, with the participation and formal approval of the Commission.

SEC. 10. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 11. The Legislature finds and declares that, because of the unique circumstances applicable only to the lands described in this act, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.