

SETTLEMENT AGREEMENT

Plaintiff the California State Lands Commission (“State Lands Commission”) and the City and County of San Francisco (“City”), collectively the “Parties,” enter into this Settlement Agreement (this “Agreement”) dated for convenience of reference only as of _____, 2018, with regard to the following facts:

On or about July 15, 2014, the State Lands Commission filed a complaint against the City in the Superior Court, San Francisco County, entitled *California State Lands Commission v. City & County of San Francisco*, Case No. CGC-14-540531 (the “Litigation”).

The complaint, as subsequently amended in the Litigation, challenged the City’s enactment of San Francisco Administrative Code 61.5.1, which was adopted by voter initiative as Proposition B on the June 2014 ballot (“Proposition B”). Proposition B requires voter approval for any increase in then-existing height limits on lands transferred in trust to the City pursuant to the Burton Act, Chapter 1333 of the Statutes of 1968, as subsequently amended (the “Burton Act”).

The State Lands Commission challenged Proposition B on its face as violating California Public Resources Code section 6009 and the Burton Act’s exclusive delegation of regulatory authority to the San Francisco Port Commission (the “Port Commission”) over lands transferred in trust to the City (“Granted Lands”), and as preempted by the San Francisco Charter’s grant of power to the Port Commission. The State Lands Commission further alleged that as applied Proposition B subjugated statewide interests to local initiatives or concerns violating Public Resources Code section 6009 and the common law public trust. The City contends that Proposition B is valid and in conformance with all applicable laws.

On November 4, 2014, the San Francisco electorate approved voter initiative measure Proposition F, which increased height limits for a proposed project on Pier 70. On November 3, 2015, the San Francisco electorate approved voter initiative measure Proposition D, which increased height limits for a proposed project at Pier 48 and Seawall Lot 337 (collectively known as “Mission Rock”). The projects proposed in Proposition F and Proposition D are for development in whole or in part on Granted Lands.

The Port Commission and the Board of Supervisors approved a Disposition and Development Agreement and made trust consistency findings for the Pier 70 project on September 26, 2017 and October 31, 2017, respectively. On November 29, 2017, the State Lands Commission made certain findings related to the proposed trust exchange to implement the Pier 70 project, including that the exchange, subject to the State Lands Commission’s approval of the surveys and legal descriptions, is consistent with and furthers the purposes of the common law public trust and the Burton Act trust.

The Port Commission and the Board of Supervisors approved a Disposition and Development Agreement and made trust consistency findings for the Mission Rock project on January 30, 2018 and February 13, 2018, respectively.

The Parties now wish to settle the Litigation on the terms set forth here.

1. SETTLEMENT TERMS

1.1 Recitals Incorporated: The recitals set forth above, inclusive and alone, are incorporated by reference and made a material part of this Agreement.

1.2 Effective Date. This Agreement shall become effective when all of the following have occurred (the "Effective Date"): the Parties have fully executed and delivered this Agreement; the Port Commission has adopted a resolution recommending approval of this Agreement by the City's Board of Supervisors (the "Board") and the Board has adopted an ordinance approving this Agreement and an ordinance approving the Elections Code Amendment as described in Section 1.3.3 below, and those ordinances have gone into effect; and the State Lands Commission has adopted a resolution approving this Agreement. In the event those actions and approvals have not occurred by July 1, 2018, the Agreement shall have no force or effect.

1.3 City's Obligations:

1.3.1 The City acknowledges that it is required to comply with the common law public trust doctrine and California Public Resources Code sections 6009 and 6009.1 with respect to the Granted Lands.

1.3.2 The City agrees that, after the Effective Date, when the San Francisco Board of Supervisors (the "Board") adopts any ordinance or resolution or proposes any charter amendment that approves a development project on Granted Lands, or that approves substantial land use or zoning changes to Granted Lands, such ordinance, resolution, or charter amendment shall include findings made by the Board that the ordinance, resolution, or charter amendment is consistent with the common law public trust doctrine and the Burton Act. The City further agrees that, when the Port Commission adopts any resolution that approves a development project on Granted Lands, or that approves substantial land use or zoning changes to Granted Lands, such resolution shall include findings made by the Port Commission that the resolution is consistent with the common law public trust doctrine and the Burton Act.

1.3.3 The City shall present to the Board of Supervisors a proposed ordinance amending the San Francisco Elections Code (the "Elections Code Amendment") to require that, when voters are presented with a proposed ordinance, resolution, or charter amendment that approves a development project on Granted Lands, or that approves substantial land use or zoning changes to Granted Lands, the ballot pamphlet for the measure shall include a statement that the measure "involves the San Francisco waterfront, which includes sovereign lands that the State of California has legislatively granted to the City. These waterfront lands and their resources are protected by the common law public trust doctrine and the City holds them in trust on behalf of all the People of California."

The Parties acknowledge that the Board has the authority to later amend or repeal any ordinance enacted under this Agreement. Such amendment or repeal shall not constitute a breach of this Agreement, but any repeal of the Elections Code Amendment shall be subject to the provisions of Section 1.4.1.

1.4 State Lands Commission's Obligations:

1.4.1 Following the Effective Date, the State Lands Commission shall promptly dismiss its Amended Complaint in the Litigation, without prejudice. The State Lands Commission further agrees that it shall not file, or cause to be filed, in any court a facial challenge to Proposition B so long as the obligations established by the Elections Code Amendment referenced in paragraph 1.3.3 remain in effect. If the Elections Code Amendment is no longer in effect and the State Lands Commission files a facial challenge to Proposition B, then the City's obligations under paragraphs 1.3.1 and 1.3.2 terminate, but the obligations of the State Lands Commission under paragraphs 1.4.2, 1.4.3, and 1.4.4, and the obligations of both Parties under paragraph 1.5, shall not terminate but remain in effect in perpetuity.

1.4.2 The State Lands Commission agrees not to challenge in court the validity of Proposition B as applied to the Pier 70 or the Mission Rock projects.

1.4.3 The State Lands Commission commits to partnering with the Port of San Francisco to advocate for funding to support the Port's Seawall Resiliency Project.

1.4.4 Where legislatively authorized and to the extent permitted by law, the State Lands Commission commits to working with the Port of San Francisco to facilitate affordable housing efforts on historic public trust lands within the City and County of San Francisco that have been filled and reclaimed and are no longer necessary for public trust purposes, where the Port receives fair market value for such lands.

1.5 Mutual Agreement: The Parties agree to bear their own costs associated with the State Lands Commission's review of the Pier 70 and Mission Rock projects. The State Lands Commission waives any right to reimbursement from the City, including its Port, or the project sponsors for the cost of staff time in connection with these projects that it may have under existing law or agreements. This term shall not apply retroactively to reimbursements associated with the Pier 70 project already paid.

2. GENERAL TERMS

2.1 The Parties enter into this Agreement with full reservation of all arguments they made or could have made in the Litigation, except as expressly provided in this Agreement.

2.2 The Parties shall bear their own attorneys' fees and costs.

2.3 This Agreement is intended by the Parties as a final expression of their agreement and understanding concerning the subject matter of the Litigation and is intended as a complete statement of the terms and conditions of their settlement, and any and all prior oral or written agreements or understandings between the Parties related to the subject matter of this

Agreement are superseded. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement, have been made by any of the Parties.

2.4 In construing this Agreement, neither of the Parties shall have any term or provision, or any uncertainty or ambiguity as to any term or provision, construed against that party solely by reason of such party having drafted the same, as a result of the manner of the preparation of this Agreement, or otherwise.

DATED: _____ Plaintiff California State Lands Commission

By: _____
Name: _____

DATED: _____ Defendant City & County of San Francisco

By: _____
Name: Elaine Forbes
Title: Director, Port of San Francisco

APPROVED AS TO FORM:

DATED: _____

By: _____
Name: Joel S. Jacobs
Deputy Attorney General
Attorneys for California State Lands Commission

DATED: _____

By: _____
Name: Christine Van Aken
Deputy City Attorney
Attorneys for City & County of San Francisco