

Foreword

On July 20, 2000 California State Lands Commission (CSLC or the Commission) staff held a public workshop in Long Beach, California to hear questions, concerns, and comments on the Queensway Bay Development Plan (the Plan) (Exhibit 1). The Commission initiated the workshop in response to citizens who believed that Phase II of the Queensway Bay Development Plan is not in conformance with the Public Trust Doctrine and the statutes governing the Long Beach tide and submerged lands (hereafter, for brevity "tidelands"). At the workshop the CSLC staff heard from approximately forty-five participants, both for and against the project, with comments, concerns and questions on issues ranging from the history of the Long Beach tide and submerged lands and their development by the City of Long Beach (the City) to the present state of these tidelands and surrounding areas (Exhibit 2). Staff also accepted written testimony for two weeks following the workshop (Exhibit 3).

Most of the questions, concerns, and comments raised during the workshop and submitted by written testimony have been addressed through the narrative of this report. All questions not specifically addressed within the narrative are addressed at the end of the report. Concerns and questions relating to issues that do not fall under the jurisdiction of the CSLC have been forwarded to the appropriate entity (Exhibit 4). This report focuses on the Phase II development of the Queensway Bay Development Plan and the land uses proposed.

Executive Summary and Preliminary Staff Recommendation

The objectives of this report are:

1. To summarize the responsibilities of the City of Long Beach in managing its public tidelands.
2. To summarize the jurisdiction, authority, and responsibility of the CSLC in overseeing legislatively granted tide and submerged lands.
3. To inform the CSLC as to the specific concerns raised at the workshop.
4. To make an assessment as to whether the Phase II portion of the Queensway Bay Development Plan is in conformance with the Long Beach granting statutes and the Public Trust Doctrine.
5. To provide a recommendation on whether to hold CSLC hearings or to take other action on the Phase II portion of the Queensway Bay Development Plan.

Public trust uses traditionally have been described as uses relating to commerce, navigation, and fisheries, but in recent times, courts have recognized that the public trust doctrine is flexible and has been extended to include other public uses including: visitor serving, public recreation (bathing, swimming, hunting, etc.), as well as environmental protection, open space, and preservation of scenic areas. Staff has analyzed the proposed uses in light of various judicial decisions from the nineteenth century to the present time as to authorized public trust uses. Staff recognizes that the Public Trust Doctrine, as a common law legal principle, is adaptable to the changing needs of the citizens of California.

When California became part of the Union in 1850, the California Legislature was vested with all the state's authority over sovereign public trust lands within state. Soon after statehood the California Legislature began to transfer certain waterfront public trust lands to local jurisdictions in hopes that these local jurisdictions would be better able to develop and control the waterfronts of their cities. Beginning in 1911 the Legislature initiated a series of transfers of tidelands in trust to California's major cities, primarily to develop commercial harbors. In 1938 the California Legislature created the California State Lands Commission. By 1941 the Legislature vested all jurisdiction over ungranted lands and all jurisdiction and authority remaining in the State as to sovereign lands legislatively granted in trust to local jurisdictions in the CSLC. As such, the CSLC has broad discretion to review activities of local trustees, however, it also typically has limited responsibility or authority to involve itself in the operations of local trustees and interfere with an action or decision by a grantee unless the actions are illegal or *ultra vires*.

As the Legislature's delegated trustee of these lands, the City of Long Beach has the primary responsibility and authority to manage its granted tidelands and to select which uses among competing statutorily authorized public trust uses are appropriate for a particular site. Except for statutory provisions specifically involving the CSLC, the California Legislature has transferred legal title to the

City of Long Beach and the City, as trustee, has the primary responsibility of administering the trust on a day-to-day basis.

The project area for the Queensway Bay Development Plan is 319 acres. Phase I of the Plan includes a new commercial harbor, the Queen Mary, an events park, the Aquarium of the Pacific, and a public parking structure. Phase II of the Plan includes a retail / commercial / entertainment project. Specific Phase II proposed developments include restaurants, retail venues, a movie theater complex, an IMAX theater, and a world market on an 18-acre site.

In determining whether the Phase II land uses are authorized public trust uses this report analyzes the uses within the following parameters including, the Public Trust Doctrine, the jurisdiction and authority of the California State Lands Commission, and the jurisdiction and responsibility of the City of Long Beach in managing its legislatively granted tidelands.

Within the specific context of the Queensway Bay Development Plan, staff concludes that Phase II land uses are not barred by the granting statutes or the Public Trust Doctrine, but may be considered necessarily incidental to the enjoyment of public tidelands. Staff, therefore, recommends that the Commission take no further action on this matter. Staff has also examined the concerns expressed about aspects of Long Beach's management of its trust lands, other than the Queensway Bay Development Plan, and has found no documentary evidence of fraud, collusion, *ultra vires* acts or other actions that justify further investigation or Commission action. The Attorney General's office has informally reviewed this report and concurs in its analysis and conclusions.