

**A REPORT ON THE QUEENSWAY BAY
DEVELOPMENT PLAN AND THE LONG BEACH
TIDE AND SUBMERGED LANDS**

BY STAFF OF THE STATE LANDS COMMISSION
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LIST OF EXHIBITS

1. Workshop Agenda
2. Transcripts from the July 20, 2000 Public Workshop
3. Index of written testimony submitted
4. Correspondence relating to issues brought up at the workshop forwarded on to appropriate agencies
5. Project map
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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.

The Public Trust Doctrine

Upon admission into the Union in 1850, California received title to all tide and submerged lands and lands underlying inland navigable waterways within its borders. The property that the state obtained was not proprietary in character, but rather based upon the state's sovereign status. Sovereign lands are held in trust for the people of the State of California, hence the name Public Trust Lands. Tidelands are those lands located seaward of the ordinary high water mark of the ocean. The filling of such lands does not affect their legal character as "tidelands" or Public Trust Lands.

The origin and purposes of the Public Trust Doctrine in California were summarized by the California Supreme Court as follows:

"By the law of nature these things are common to mankind – the air, running water, the sea and consequently the shores of the sea.' (Institutes of Justinian 2.1.1.) From this origin in Roman law, the English common law evolved the concept of the public trust, under which the sovereign owns 'all of its navigable waterways and the lands lying beneath them "as trustee of a public trust for the benefit of the people.'" [Citation] The State of California acquired title as trustee to such lands and waterways upon its admission to the union [Citation] . . ." (National Audubon Society v. Superior Court (1983) 33 Cal. 3d 419, 433-434).

"Public trust easements are traditionally defined in terms of navigation, commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the state, and to use the bottom of the navigable waters for anchoring, standing, or other purposes [Citations.]"

"The public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the state is not burdened with an outmoded classification favoring one mode of utilization over another [Citation.]" (Marks v. Whitney (1971) 6 Cal. 3d 251,259.)

As stated, traditional public trust uses are considered to include commerce, navigation, and fisheries. Harbor development is an example of a classic public trust use, potentially encompassing all three. Courts have now recognized that the Public Trust Doctrine is flexible and has been explicitly extended to include, in particular, public serving, public recreational uses, as well as environmental protection, open space, and preservation of scenic areas. Moreover, the California Constitution adopted in 1879 includes an express public right of access to navigable waters (Cal. Const., art. X, §4.)

The California Legislature as the representative of the people, is also the trustor of the trust. However, even the Legislature's decisions are subject to review by the judiciary. The California Legislature has, by statute, conveyed approximately 330,000 acres of public trust lands (often referred to as granted lands) in trust to cities, counties, and other governmental entities. The granting statutes often include language such as "for purposes consistent with the trust upon which said lands are held by the State of California." In interpreting land uses under a particular grant, one must look to the uses specified in the legislative granting statutes, but also be guided by judicial decisions which formulate the Public Trust Doctrine itself.

The Public Trust Doctrine, as a legal precept, with its roots in English common law, has been refined by both federal and state courts. In applying the doctrine to specific cases brought before it, a court often must reconcile statutory trust provisions, which sometimes lack specificity, with the broader legal principles espoused by judicial precedent. Determination of what are lawful uses under some of these trust grants has been a matter of both interpretation and adaptation to changing public needs. The lack of case law on specific issues can make it difficult to assert with a great deal of assurance what kind of uses would be permitted in a particular situation. The Public Trust Doctrine is of a special character, akin to the delimiting powers of a constitutional provision, providing for protection of the public's rights in its waterways. Because of the history and importance of the doctrine's legal principles, a court will go to great lengths to make sure that the public's interest is carried out.

Courts have held that some uses may be made on tidelands because they are necessarily incidental to public trust uses. For example, hotels and restaurants are uses that may not be water-dependent, but are uses that may be appropriate for the public enjoyment of trust lands. In the following cases, incidental and ancillary uses are held valid by the courts as inherently promoting or supporting tideland trust uses and therefore consistent with the Public Trust Doctrine.

- City of Oakland v. Williams (1929) 206 Cal. 315
The expenditure of public funds to construct a storage warehouse on tidelands thereafter leased to a private company to be used for packing, processing, storing and shipping goods through the port was found to be an authorized public trust use. The Court also opined that "the necessity for the improvements and the adoption of the method by which they will be accomplished are matters resting in the judgement of the governing body, and courts will not interfere with the exercise of its judgement unless it appears that its proposed plans are not only not the best that might be adopted but that they are so inadequate and impracticable as to inevitably result in a waste of public funds." Such cases must show an unquestionable abuse of judgement and discretion.

- Haggerty v. City of Oakland (1958) 161 Cal. App. 2d 407
A project for the construction and leasing of a convention and banquet building in Oakland's port area was found to be a use consistent with the Public Trust Doctrine. In approving such a use, the court stated that the convention hall in the port area was necessarily incidental to the trade, shipping and commercial associations' needs to meet, exchange ideas and exhibit their products. The court for purposes of analogy stated: "(T)he creation of hotels and restaurants in public parks . . . 'has been generally recognized as ancillary to the complete enjoyment by the public of the property set apart for their benefit.' The facility proposed in our case is likewise ancillary to the complete enjoyment by the public of the port properties" (Id. At p. 413.)
- People v. City of Long Beach (1959) 51 Cal. 2d 875
The use of public trust funds to construct a facility on filled tidelands to be leased for an Armed Services YMCA was held to be a valid trust use on the basis of the Long Beach trust grant and the fact that the proposed lease explicitly set forth that the facility was to be used for the benefit and welfare of members of the armed forces, merchant seamen and other persons engaged in and about the harbor in commerce and navigation. The proposed facility was found to be necessarily incidental to the harbor and necessary or convenient for the promotion and accommodation of commerce and navigation.
- Martin v. Smith (1960) 184 Cal. App. 2d 571
The court upheld a lease of tidelands in Sausalito, which included a restaurant, motel, shops and a parking area in conjunction with a yacht harbor. The court found that the lease of this property allowing commercial uses, had been approved by the CSLC, and authorized by the granting statutes.

The Public Trust Doctrine is a living and growing body of law, adapting to changing needs of the citizens of California. Cities and counties are grappling with redevelopment issues along urban waterfronts, where prior uses and purposes are no longer appropriate. Open space and parks are an important component, but other uses that will attract the public to the shoreline and are associated with a waterfront experience may also be considered.

State of California / State Lands Commission

The California Legislature, as representative of the people of California, holds state authority over sovereign public trust lands of the State. That power includes the ability to make, amend or repeal statutory transfers of trust property to local government.

By 1941 the California Legislature vested all jurisdiction over ungranted sovereign lands and certain residual and review authority for sovereign lands legislatively granted in trust to local jurisdictions in the California State Lands Commission. Public Resources Code (PRC) §6301 provides, *inter alia*, “All jurisdiction and authority remaining in the State as to tidelands and submerged lands as to which grants have been or may be made is vested in the commission.” The CSLC has the authority to involve itself in issues relating to operations of granted public trust property when it deems appropriate. The Commission's authority includes the power to monitor the administration of the trust grant to ensure compliance with the granting statutes and the Public Trust Doctrine.

The Commission and its staff have endeavored to monitor California's over 70 statutory trust grants, which operate under more than 300 granting statutes. The Commission seeks to represent the statewide public interest in assuring that the local trustees of public trust lands operate their trust grants in conformance with their granting statutes and trust law. This has ranged from working cooperatively in assisting local trustees on issues involving proper trust land use issues and trust expenditures to judicial confrontations involving millions of dollars of trust assets, e.g. serving as *amicus curiae* in *Mallon v. City of Long Beach* (1958) 44 Cal. 2d 199 and plaintiff in *State of California ex rel. State Lands Commission v. County of Orange* (1982) 134 Cal. App. 3d 20.

The Office of the Attorney General has summarized the principles followed by the Commission in discharging its responsibilities to oversee the administration by local entities of granted public trust lands as follows:

- The CSLC has the authority, though not the general duty, to systematically investigate, audit and review the administration of all tidelands grants. Furthermore, it has the duty to look into specific charges of serious maladministration coming from credible sources.
- The CSLC's supervisory authority includes the power to seek corrective measures by grantees. However, the CSLC should not ordinarily purport to substitute its judgement for that of the local grantee where reasonable minds may differ as to the wisdom or prudence of particular acts.
- Except in the most flagrant cases, the nature of enforcement action of the CSLC is a matter of discretion. All accusations or information of a serious character coming from a responsible source may warrant further staff inquiry or investigation, particularly when they fall into the categories of fraud, collusion, *ultra vires* acts, failure to perform a duty specifically enjoined by law or acts so contrary to the best interests of the trust that they constitute gross abuse of discretion or constructive fraud.

While the Legislature has vested in the Commission “all jurisdiction and authority” remaining in the State as to granted tidelands, it has enacted only a few specific duties on the Commission and on local grantees regarding reporting or obtaining approval of their activities from the Commission: Public Resources Code (PRC)

§6306 requires that each grantee submit an annual financial report describing revenues and expenditures. Under PRC §6701, et seq., a grantee has the option, but not the obligation, to come before the Commission with a lease or contract to seek the determinations set forth in PRC §6702 (b). The grantee is not obligated to submit leases or contracts for Commission review or approval under this PRC section but may choose to do so to ensure the validity of the lease or contract should the grant be revoked.

The Commission has oversight authority, which may be carried out in a variety of ways. The CSLC has only limited responsibility to affect the decisions of grantees. In most cases the CSLC staff conducts its oversight by commenting on projects, such as the CEQA process, or by consultation and advice. Unless the legislative grant provides for specific duties to the Commission, its only remedy to overturn an action taken by a grantee, which the Commission believes is inconsistent with the grantee's trust responsibilities in managing its granted lands, is through litigation.

While this is not an exhaustive description of the jurisdiction of the Commission involving trust grants, it does provide a summary of the extent of the jurisdiction and provisions relating to appropriate public trust land use issues. In summary, while the Commission has broad discretion and authority to review activities of local trustees, it also has limited mandatory responsibilities and authority to stop an action or decision by a grantee.

City of Long Beach Jurisdiction

Title to granted tidelands, and revenues derived therefrom, are held by the local government grantee in trust for the benefit of the citizens of California. The Legislature has enacted statutory provisions that provide parameters for local grantees regarding reporting to, or obtaining approval of activities by the Commission. Many jurisdictions, including Long Beach, have certain specific requirements included in their granting statutes.

There are approximately 23 legislative acts which govern the use of the tide and submerged lands granted to the City of Long Beach. All these statutes remain in effect and cumulatively provide the authority and parameters for use by Long Beach of these tidelands. The City of Long Beach first acquired legal title as trustee of its tide and submerged lands by Chapter 676, Statutes of 1911. This statute granted tide and submerged lands, whether filled or unfilled, within the City boundaries below the mean high tide line of the Pacific Ocean. The statute authorized land uses for the "establishment, improvement and conduct of a harbor; construction maintenance or operation of wharves, docks, piers, slips, quays and other utility structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation." The statutory grant states that "the city or its successors may grant franchises thereon for limited periods for wharves and other public uses and purposes and may lease said lands or any part thereof, for limited periods for purposes consistent with the

trust by the State of California and with the requirements of commerce and navigation at said harbor.”

With Chapter 102, Statutes of 1925, the Legislature provided that “none of said lands shall be used or devoted to any purposes other than public park, parkway, highway or playground, the establishment, improvement and conduct of a harbor and the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation . . . provided that nothing herein contained shall be so construed as to prevent the granting or use of easements, franchises, or leases for limited periods for public uses and purposes consistent with the trust upon which such lands are held.”

With Chapter 158, Statutes of 1935, the Legislature authorized the leasing of “tide or submerged lands for limited periods for nonprofit, benevolent and charitable institutions organized and conducted or the promotion of the moral and social welfare of seaman, naval officers, and men and other persons engaged in and about the harbor and commerce, fishing and navigation.”

Chapter 29, Statutes of 1956, 1st Extraordinary Session, according to the California Supreme Court, “set forth a nonexclusive list of trust purposes that were declared to be matters of state, as distinguished from local interest and benefit, and it [the Legislature] expressed its belief ‘that the Attorney General and said city should seek judicial determinations further defining said city’s rights and duties in the premises.’” (People v. City of Long Beach 1959 51 Cal. 2nd 875, 878.)

With Chapter 1560, Statutes of 1959, the Legislature authorized the City to enter into 50 year leases for uses not otherwise authorized by the grant, to yield maximum profits. The City must find that such uses are not required for and do not interfere with trust uses and purposes.

The other 20 subsequent statutes and provisions, which deal generally with oil and gas revenue and expenditures, do not change authorized land uses and are, therefore, not relevant to the Phase II Queensway Bay Development Plan issues.

Chapter 138, Statutes of 1964, 1st Extraordinary Session does discuss various authorized purposes for which tideland oil revenue may be expended. Chapter 138 also authorizes the CSLC to review and approve any proposed expenditure of oil revenues exceeding \$50,000. Chapter 941, Statutes of 1991, has raised this amount to \$100,000. It is the understanding of the Commission staff that Phase II of the Queensway Bay Development Plan does not include the expenditure of tideland oil revenue by the City.

As the Legislature’s delegated trustee of these lands, the City of Long Beach has the primary responsibility and authority to manage its granted lands and to select

which uses among competing public trust uses are appropriate for a particular site. In the statutes affecting Long Beach granted lands the Legislature provided no specific authority for CSLC review of Long Beach's management of granted lands, other than projects involving expenditure of oil revenues. The Commission has the same general statewide oversight previously discussed. These City trust land use decisions remain subject to additional statutorily adopted statewide regulatory legal processes, such as the California Environmental Quality Act and the Coastal Act, which allow public input and review.

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.

Background on the Queensway Bay Development Plan

The project area for the Queensway Bay Development Plan is 319 acres in size (Exhibit 5). Due to its location on filled and unfilled tidelands granted to the City of Long Beach by the State of California, the entirety of the project site is subject to the terms and provisions of the granting statutes and the Public Trust Doctrine, in addition to the various City land use controls and regulations. It is also subject to state and federal regulatory authority.

Historically, the area was a resort area involving the water, public beach and a large privately operated commercial attraction known as the Pike Amusement Park. The park attracted thousands of people to Long Beach in the first half of the last century. In the early 1960s, the City filled approximately 113-acres of the waterfront. This fill moved the shoreline south and further separated the downtown from the waterfront. Except for the convention center and the arena, a significant portion of this filled land has remained vacant for over 20 years.

In 1978 to assist the City in developing a Local Coastal Program (LCP), a LCP Citizens Advisory Committee comprised of representatives of neighborhood groups, housing advocates, environmentalists and business representatives met 133 times over a two-year period. At the completion of the two years, this group presented to the City Planning Commission and the City Council its recommended LCP. In 1980, the City of Long Beach adopted and the California Coastal Commission certified the LCP for the waterfront.

The LCP required that all public parks and beaches within the City's granted tidelands be "designated by the City as permanent public parks or beaches." It further required that "no parkland which has been dedicated or designated within the Coastal Zone shall be committed to another use unless the City replaces such parkland on an acre-for-acre basis within or adjacent to the Coastal Zone with the approval of the California Coastal Commission." Shoreline Park, within

the Queensway Bay Development Plan was designated by the City Council as a permanent park. Within the Queensway Bay Development Plan area, the LCP called for a new downtown marina and marina green, hotels and shops, and a new elevated pedestrian promenade to link downtown to the waterfront.

The City implemented provisions of the LCP, but as of 1992 there were still significant areas of vacant land and an uninviting connection between downtown and the waterfront. During that same year the City started a second major citizen planning process to create the Queensway Bay Development Plan. The Mayor and the City Council appointed 23 citizens as representatives from all areas of the City. These citizens worked with the consulting firm of Ehrenkrantz, Eckstut & Kuhn to prepare the Queensway Bay Development Plan.

The Queensway Bay Citizens Advisory Committee met 25 times over a two-year period. Public testimony was received at each meeting and each speaker was recorded in the minutes (available from the City of Long Beach). In addition, the Chairman and several committee members attended neighborhood association meetings throughout the City to discuss the Queensway Bay Development Plan. The Queensway Bay Development Plan was reviewed by both the City Planning Commission and the City Council. In May of 1995, the California Coastal Commission unanimously certified the Queensway Bay Development Plan as an amendment to the LCP of 1980.

In addition to the California Coastal Commission, the following state agencies have had the opportunity to review and comment on the Queensway Bay Development Plan and its various amendments: the Resources Agency; Department of Boating and Waterways; Department of Fish and Game; State Lands Commission; Department of Parks and Recreation; Caltrans; the Air Resources Board; Waste Management Board; and the Los Angeles Regional Water Quality Control Board.

Over the past six years at least 24 agendas of the City Council have contained items relating to the Queensway Bay Development Plan. The plan and its various amendments were also noticed to the public 14 days before being heard by the Planning Commission. Over the same time period, the director of the Queensway Bay Development Plan reports that he sent out 18 newsletters to over 300 community leaders.

According to the City of Long Beach the goals of the Queensway Bay Development Plan are as follows:

1. To create the premier world-class urban waterfront attraction for Southern California.
2. To strengthen the position of downtown Long Beach as a major center of commerce, entertainment and recreation within the greater Los Angeles region.

3. To increase convention and tourist visitations, promoting Long Beach as a visitor destination from which all other regional attractions can be easily accessed.
4. To create an environment and mix of private and public attractions which has a strong Southern California ambience and a specific identity, which is unique to Long Beach.
5. To create a family destination attraction which appeals to a broad range of age groups, income levels and ethnic backgrounds and which engages the visitor in a variety of wholesome and uplifting recreational and educational activities.
6. To achieve a level of quality and design, construction and operation which evokes a sense of permanence of value and which creates an environment in which the visitor feels welcome, comfortable and safe.

The Queensway Bay Development Plan as proposed includes:

- Phase I (largely publicly funded with emphasis on infrastructure and public facilities; completed in June 1998):
 - The construction of a new commercial harbor which would be the home to historic ships, dinner cruises, whale watches, fishing boats, diving boats among other vessels
 - The south shore, where the Queen Mary and the old Spruce Goose dome are located, linked to the heart of the plan via a water taxi system
 - Retention of the Queen Mary in place
 - The construction of an events park and the construction of a boat launch ramp
 - An aquarium and parking structure on the west-end of the harbor
- Phase II (a privately funded tourist orientated commercial development):
 - Restaurants, retail and entertainment uses, on an 18-acre site, between downtown Long Beach and the waterfront

Phase II, the issue at hand, involves the development of approximately 500,000 square feet of restaurant, entertainment and retail uses on the four acres along the waterfront and 14 acres located northerly of Shoreline Drive. Phase II totals 18 of the 319 acres of the Queensway Bay Development Plan. Phase II calls for constructing a public street to provide a connection from downtown to the waterfront. According to the City of Long Beach, Phase II “should not be seen as an independent project, a mall or a gated attraction but rather a public area with public streets, public metered parking on the streets, wide sidewalks, and open plazas.” The proposed Phase II land uses include movie theaters, an IMAX Theater, a bookstore, a world market, restaurants, entertainment venues and parking areas. The leasing for the area will be approximately one-third restaurant, one-third entertainment venues and one-third specialty retail.

The City of Long Beach expects about 7.5 to 10 million visitors each year to come to Queensway Bay to enjoy this urban waterfront. The market study by J.B. Research Company concludes that the Queensway Bay Development Plan will serve as a regional visitor destination and not as a shopping mall. The study projects that 44% will be overnight visitors (tourists) and that more than half of the day-use visitors will travel more than ten miles to reach the attraction.

Analysis of Phase II of the Queensway Bay Development Plan

There are three main contentions from concerned citizens in relation to Phase II of the Queensway Bay Development Plan. These contentions include:

1. The State Lands Commission is required to review and take action on the Queensway Bay Development Project.
2. The location chosen for the Phase II development, by law, is to be used solely for park purposes.
3. The Long Beach statutory grants and the Public Trust Doctrine do not allow for uses depicted in Phase II land use plans.

Testimony at the workshop alleged that the Commission is required to review and take action on the proposed Phase II development. There is no such requirement. Neither the legislative grant statutes, nor the Public Resources Code, nor any other laws require review of this project by the CSLC. Chapter 138, enacted in 1964, requires the Commission to review expenditures by Long Beach of oil revenues from tide and submerged lands but such expenditures are not proposed as part of the Phase II development. Staff surmises that confusion exists as to the Commission's role because of its past review of hundreds of projects involving oil revenue expenditures or projects that were voluntarily submitted by the City for Commission review under PRC §6701, et seq.

Citizens have questioned whether the location chosen for the Phase II development may solely be used for park purposes. It is true that this location may be used for park purposes. Public parks were added to the allowable land uses with the 1925 granting statute. Public parks are listed along with ten other uses, as well as public uses and purposes consistent with the trusts upon which such lands are held. This would include both the 1911 statutory trust and the common law Public Trust. The City of Long Beach has the responsibility and authority to select which trust uses among competing public trust uses are appropriate for a particular site. The CSLC oversees the City's administration of the legislatively granted tidelands, however, the CSLC has no authority to substitute its judgement for that of the City regarding choices of land uses among those authorized by the granting statutes where no abuse of discretion is apparent.

The next concern is whether the land uses proposed in the Phase II development are consistent with the Long Beach granting statutes as amended and with the

Public Trust Doctrine. Staff has reviewed the proposed project in light of the approximately 23 legislative acts which govern use of the City of Long Beach tide and submerged land. Staff has also reviewed Phase II uses in the context of the Public Trust Doctrine, pursuant to both case law and statutory provisions. When looking at the Queensway Bay Development Plan, it is important to look at the development as a whole, as opposed to its individual parts, and how it promotes the Public Trust Doctrine. Uses within multi-use projects that may be characterized as public recreation or commercial recreation may be deemed necessary, incidental or ancillary to trust uses because they draw large numbers of the public to the waterfront, where the public may then enjoy amenities that fit within the core of acceptable trust uses.

The Queensway Bay Development Plan provides for a variety of uses, which are clearly consistent with accepted public trust uses. They include a marina, yacht harbor, wetland, aquarium, public walkways, parks, a viewing deck, and other trust related amenities. The Queensway Bay Development Plan also provides for hotels, restaurants, parking and other uses which are necessarily incidental to the public trust. "Necessarily incidental" means that these uses are necessary to accommodate visitors to public trust lands.

On a relatively small portion of the area covered by the Queensway Bay Development Plan (3-4 acres out of 319), the City proposes to locate a movie theater complex, a bookstore and an import store. Such uses are not traditional Public Trust uses, however, they also may be necessarily incidental to promote the Public Trust. The specific context for them in the Queensway Bay Development Plan leads staff to conclude that they are not barred by the granting statute or the Public Trust Doctrine. Staff reaches this conclusion based on the public nature of the uses, their functional integration into the other trust uses, their practical contribution to the public visitor serving attraction of the development and the relatively small area occupied by of these uses. Other important factors, which argue for the inclusion of these uses within the project include the apparent low demand or need for traditional public trust uses north of Shoreline Drive as evidenced by the decades of under or non-use of the area. The isolated location of these uses inland from the waterfront, separated from the shoreline by a four-lane expressway taken together with a proposed pedestrian walkway across the expressway also indicates to staff that the City of Long Beach intends to draw the public to the urban waterfront experience as opposed to creating an additional barrier to such use.

It should be noted that Long Beach Harbor, today, is one of the world's great ports and its operations have developed primarily on lands consisting of filled tide and submerged lands lying southerly and westerly of the subject area and separated from this area by the relocated Los Angeles River mouth. The development of non-harbor related uses for these lands clearly does not interfere with "the requirements of commerce and navigation of said harbor."

Finally, staff notes that other waterfront projects throughout California have included uses, which provide non-marine recreational opportunities and have included visitor/ tourist shops selling clothing, books, and other merchandise. Such uses, when planned as an integrated and contributory part of a public trust project, may be an appropriate use of filled tide and submerged lands. Our conclusion is therefore that Phase II land uses are not barred by the provisions of the granting statutes and the Public Trust Doctrine.

Questions, Concerns and Comments

This section outlines the various questions, concerns, and comments stated at the July 20th workshop. This report is focused on the Phase II development of the Queensway Bay Development Plan. Some of the workshop testimony, both verbal and written, does not relate to Phase II but does raise issues about management of trust lands by the City of Long Beach. Staff has analyzed these issues and responded to them in this section. Those issues that do not fall within the scope of the report or the jurisdiction of the CSLC, but do fall within the jurisdiction of other agencies have been forwarded to the appropriate agency.

The questions, concerns, and comments were categorized using the following categories:

- Queensway Bay Development Plan (Phase II) and Trust Uses
- Public Notice/ Review Process Regarding the Queensway Bay Development Plan
- Jurisdiction of the California State Lands Commission
- Issues Raised Outside the Scope of Phase II of the Queensway Bay Development Plan
 - Mismanagement of Long Beach Tidelands by the City of Long Beach
 - Request for California State Lands Action
 - Jurisdiction of Other Local/ State Agencies
 - Aquarium of the Pacific
 - Bonds/ Financing for Projects Other than the Queensway Bay Development Plan
 - Marina
 - Parkland Mitigation
 - Proposition A (1960)
 - Queen Mary
 - Wetlands Mitigation

The numbers in parenthesis following the questions relate to page numbers within the transcripts of the workshop where the issue was raised. “WT” represents that this particular issue was raised in written testimony received by the CSLC staff. These issues are directly quoted from the transcript or written testimony when possible or are paraphrased in an attempt to convey the speaker’s or writer’s main point.

QUEENSWAY BAY DEVELOPMENT PLAN (PHASE II) AND TRUST USES

1. *“Does the City have the right to give over this park land to a commercial developer who will make a lot of money?” (71)*

The City is not “giving” park land to a commercial developer. Pursuant to the Long Beach trust grant, the City of Long Beach may property lease the

tidelands. In this case, the City is leasing trust land for development of a project that will be open to the public and compensate the public for use of the trust land. Such a lease, which allows for both the private developer and the public land owner to generate income, is authorized under the granting statutes.

2. *“Why must you link downtown to the Harbor?” (71)*

According to the City of Long Beach, one of the purposes of the Queensway Bay Development Plan is to re-energize the Long Beach waterfront and draw people to the water. Promoting access to the water is consistent with the California Constitution, Public Trust Doctrine, the granting statutes, and the California Coastal Act.

3. *“Queensway Bay is a prime oceanfront location, much too valuable to waste on movie theaters and retail stores.” (106)*

Please see Narrative pages 14-16.

As long as the overall development falls within the parameters of the granting statutes and the Public Trust Doctrine the particular use of a small portion of the development which does not interfere with the operation of the harbor or other public trust needs and uses, but is necessary and incidental thereto, is not inconsistent with the trust.

4. *Why have the immediate and deferred maintenance money for the Queen Mary been allowed to be used on the Queensway Bay Project but not for its intended use? (153-155)*

Per the Director of the Queensway Bay Development Plan, only the interest from the money held for in the Queen Mary fund has been utilized for the Queensway Bay Development Plan. Both of these projects involve public trust property within the Queensway Bay Development Plan and are legitimate recipients of tidelands revenue, which, are the source of the Queen Mary Fund.

5. *“Should have allowed the City to vote on the development.” (138)*

This question is more properly addressed to the City, as the trustee of the public trust lands and has responsibility to manage the trust property.

6. *“Commercial operation – movie theaters, restaurants, retail, the Cost Plus and Barnes & Noble – clearly and specifically appear to be prohibited by the Long Beach tidelands trust agreement under land uses permitted, including 1964 amendment delineating authorized uses of the tidelands oil funds. The fact that this land was authorized and created by tidelands oil funds after the*

people of Long Beach voted through local initiative in 1960. This initiative authorized \$42 million [\$275 million in 1999 terms] of oil funds to be spent in accordance with the master shoreline plan presented in that initiative.” (150)

Please see Narrative pages 14-16.

Proposition A, putting the shoreline development to the vote of the citizens of Long Beach, was passed in March of 1960.

In 1960 the Master Plan for shoreline development on Long Beach tide and submerged lands was adopted by the Long Beach City Council. This shoreline development included the proposed filling of approximately 113 acres of tidelands. The Master Plan included developments such as the YMCA, parking lots, a “senior citizen” area, a swimming lagoon, a maritime museum, various landscaping, and depicted an adjoining private redevelopment area (Exhibit 6). Please note that the private redevelopment area and adjacent parking area, the YMCA, and nearly all the senior citizen area depicted in the Master Plan of 1960 are on lands that had already been filled prior to the proposed Master Plan fill approved in 1960-1964. This is the area that encompasses the area north of Shoreline Drive where the movie theaters and large retail businesses are proposed within the current Phase II project of the Queensway Bay Development Plan.

In October of 1962 the CSLC approved, in principle, the expenditure of tidelands oil revenues for shoreline improvements (described above in the Master Plan of 1960) pursuant to Chapter 29, Statutes of 1956, 1st E.S., with the condition that the shoreline development must conform to the Master Plan of 1960.

In August of 1964, the CSLC approved the expenditures of oil revenues for shoreline development, as described above, pursuant to Chapter 138, Statutes of 1964, 1st E.S., for the purposes described in the 1962 approval and the Master Plan of 1960.

The fill for shoreline development approved in both 1962 and 1964 by the CSLC, voted and passed by the citizens of Long Beach in 1960, and depicted in the Master Plan of 1960 only includes the southern portion of the area proposed for the Phase II project of the Queensway Bay Development Plan (Exhibit 6). Therefore, there apparently has been no direct use of tideland oil revenues for the theater and retail area of the Phase II portion of the Queensway Bay Development Plan north of Shoreline Drive. Moreover, public recreation and commercial recreation may be deemed incidental to public trust uses.

7. *“Is the Queensway Bay Development Plan for the improvement of Long Beach and for the benefit of a population of nearly half a million?” (152)*

The use of the tidelands must be for the benefit of all the citizens of the State of California and not only for the citizens of Long Beach.

8. *“Where are the funds for the Queensway Bay Development Plan from and where are they going?” (152)*

Per the City of Long Beach, the planning for the Queensway Bay Development Plan was funded by the Port of Long Beach. The office of Director, Queensway Bay Development Plan was established in July 1994 to implement the Plan. The expenses of this office through 1998 were paid from interest accrued on the \$6.5 million Queen Mary repair sub-fund, established when the Port turned over the ship and funds to the City for its repair.

Attached (Exhibit 7) is a summary of the overall construction budget to date for the Queensway Bay Project and the sources of the \$184,933,000 spent. The next and last major phase of the Queensway Bay Project is the restaurant / entertainment / retail development, which is being privately financed. Developers Diversified Realty Corporation (DDR) and California Urban Investment Partners (CUIP) are to provide approximately \$40 million in equity, and BankOne is to provide the remaining \$61,500,000 of construction financing in the form of a loan. The City’s commitment, as a municipality, to the project under the executed Disposition and Development Agreement is as follows:

- Forgive all or a portion of the land rent for a period not to exceed 14 years for any year in which the developer does not realize a 12.5 percent return on cost.
- Forgive approximately \$1,400,000 of City and Water Department permit fees, to be paid in the future by the Redevelopment Agency from project tax increment payments.
- Direct net parking meter revenue derived from the project (estimated at \$614,000/ year) to the parking structure revenue fund until such time as parking structure revenue equals or exceeds parking structure costs.
- Contribute up to \$1,169,000/ year from the City’s General Fund to offset annual operating loss, if any, of the parking structure (based upon City requirement to expand parking structure from 1550 to 2200 spaces).

For comparison, the restaurant/entertainment/retail development is expected to generate the following fiscal benefits:

- | | |
|------------------------|-------------------------------------|
| - Sales business taxes | \$1,698,000/ year to General Fund |
| - Lease revenue | \$1,450,000/ year to Tidelands Fund |

- Tax increment \$800,000/ year to Redev. Agency

No tidelands oil revenues are being used for construction of Phase II of the Queensway Bay Development Plan.

Per the Director of the Queensway Bay Development Plan, only tidelands revenues involved are the interest from the money held in the Queen Mary fund has been utilized for the Queensway Bay Development.

9. *“Within the coastal permit for this project, there is a consistency determination put to the State Lands Commission that you’ll make a finding that, in fact, that this particular project conforms to those permitted land uses under the trust agreement.” (161)*

The California Coastal Commission (CCC) did not ask CSLC to make such a determination. The CCC placed several conditions on the City of Long Beach, only one of which involved the CSLC. Condition #25, placed on the City, by the CCC Development Permit #5-98-156, stated:

“Prior to issuance of the Coastal Development Permit, the applicants shall provide written documentation to the Executive Director, including specific citation of the relevant sections of the applicable State Tidelands Grant, specifically demonstrating that the proposed project in its entirety is consistent with the terms and conditions of the Legislature’s grant of this portion of the Downtown Shoreline to the City of Long Beach.”

This condition was apparently met and accepted by the CCC on November 5, 1999. (Exhibit 8) Staff surmises that confusion exists because of the assumption by some individuals that the CCC placed this condition on the City to obtain CSLC concurrence. In fact, the CCC placed the burden of this condition solely on the City of Long Beach.

Under condition #35, the City was required to “demonstrate that a proposed employee parking lot is consistent with the terms and conditions of the Legislature’s grant of this portion of the Downtown Shoreline to the City of Long Beach”. This condition was also apparently met and accepted by the CCC on May 5, 2000.

Condition #38 was placed on the City to obtain a determination from the CSLC as to whether the subdivision of tide and submerged lands within Phase II of the Queensway Bay Development Plan is consistent with the terms and conditions of the legislative grants held by the City of Long Beach. This condition was met and accepted by the CCC on May 5, 2000 (Exhibit 8).

10. *“Where is the document that has to be in writing and which must cite the appropriate sections of the state tideland grant of 1911? Explain the parameters of Condition 25, 38 and 35.” (143)*

Please see answer question #9 above.

11. *“The LCP and EIR that were reviewed by the committees were not considered critical because the uses at the time were compatible. Those uses have been changed.” (162)*

The questioned uses within Phase II of the Queensway Bay Development Plan (theaters and specialty retail) were discussed in the 1994 Environmental Impact Report (EIR). Although these Phase II uses were not specified in the 1980 LCP, the California Coastal Commission reviewed the Environmental Impact Report (EIR) and then certified the Queensway Bay Development Plan as an amendment to the LCP.

12. *Authorized projects are “for those uses that will attract people to the shoreline, attract people to this usage. And indeed, the kind of uses we now see before us are not ones meant to attract people to the shoreline and harbor-related ocean-dependent uses but to another purpose.” (162)*

Please see Narrative pages 14-16.

13. *“The Queensway Bay Project is supposed to bring in ten million people” per year. “The Queen Mary is bringing in 1.7 million visitors per year and the aquarium is bringing in 1.2 million visitors a year. . . The stores are going to bring in 7.5 million people per year?” (191)*

Please refer to answer to question #3 under the Queensway Bay Development Plan and Trust Uses.

14. *“Under what authorization did the fill occur?” (174)*

Voters of the City of Long Beach approved Proposition A in 1960. The fill was authorized in principle by the CSLC on October of 1962, pursuant to Chapter 29, Statutes of 1956, First Extraordinary Session and authorized again by the CSLC on August 28, 1964, pursuant to the authority of Chapter 138, Statutes of 1964, First Extraordinary Session. The fill, so authorized, involves the area primarily south of Shoreline Drive. Please see answer to question #6, above.

15. *“Under what use has the new land been put to?” (174)*

Much of the land has been vacant or under-utilized for more than 20 years.

16. *“What benefit was there to this gigantic program (the fill) to the citizens?”*
(174-175)

The tidelands fill was approved pursuant to the law at the time. The shoreline fill, as well as the development of Pier J and the other offshore filled lands were developed as part of a shoreline and harbor development program by the Port and the City which has evolved over many decades. Millions of visitors have made use of the public visitor serving developed areas and the Port of Long Beach has become one of this nation’s great commercial port facilities. The City is now seeking to improve the public use of the underdeveloped property by providing additional visitor-serving facilities.

17. *“None of the uses seem in accordance with the trust. All of them can be located in Des Moines, Iowa instead of Long Beach. That’s the ultimate test to whether Long Beach has used its trust to safeguard the precious beach resources. . . None of these things are integrated in with the beach.”* (175)

The uses being challenged are not on the beach, they are on lands filled more than forty years ago and separated from the waterfront by a four lane expressway (Shoreline Drive). As explained in the narrative of the report, many uses found away from the shore are also permissible or desirable on public trust lands because they are necessary or incidental to public trust uses.

Please see Narrative pages 14-16.

18. *“Tidelands money should have been spent on booms, trash and toxic removal.”* (176)

Some revenues are spent for such purposes on Long Beach tidelands. This question should more properly be addressed to the City. However, the City as the trust of public trust lands has the responsibility to manage the trust lands.

19. *“If the CSLC is not capable of fixing the situation, then why did the Coastal Commission ask for the CSLC to determine consistency with the tidelands grant when examining Queensway Bay?” CSLC must evaluate Queensway Bay Coastal Permit in writing.* (177)

The CSLC was only asked to determine whether subdivisions were consistent with the tidelands grant in relation to Phase II of the Queensway Bay Development Plan. Please see answer to question #9 above.

20. *“How can those of us that are opposed to this present Queensway Bay Project stop it?”* (192)

This is a request for legal advice that is inappropriate for staff of the CSLC to provide at this time.

21. *"If the development is so wonderful, why not go and build it on private property someplace else?" (204)*

This issue is whether this development is consistent with the granting statutes, as amended, and with the Public Trust Doctrine.

Please see Narrative pages 14-16.

22. *Ask the City of Long Beach to put a hold on this 18 acres of commercial development and see if, in fact, they are obeying the law. (203)*

The CSLC has exercised its authority and responsibility by initiating the public workshop and requesting information from the public and the City. This report constitutes a review of those comments and recommendations regarding the development. It is the conclusion of this process that the City's development proposals are not barred by the Public Trust Doctrine or the granting statutes.

23. *"Whether or not the City of Long Beach is required, as trustee of this property, to retain signed leases for all potential retail tenants for this project?" (225)*

Per the City, Long Beach does not receive copies of signed leases from the developer. The developer is required to submit a tenancing plan to the City and to report all signed leases, but is not required to transmit copies of signed leases.

24. *"The City already had approval from the CSLC to proceed with the project." (WT)*

The CSLC has neither approved nor disapproved the Queensway Bay Development Plan. Staff of the CSLC commented on the draft EIR for the Queensway Bay Development Plan in 1994 (Exhibit 9).

25. *"The plan of 1995 was not approved by the City Council nor submitted to CCC until 1998. The plan of 1995 addressed neither the motion picture complex, nor many of the specific commercial uses proposed in the current project of 2000." (WT)*

Please see Narrative pages 12.

26. *"CSLC staff approved the \$1,000,000 project on the Long Beach tidelands by an informal telephone conversation between Long Beach and Sacramento, basically a back room deal." (WT)*

CSLC staff has neither approved nor disapproved the subject project in the Long Beach tidelands, formally or informally. Prior to submitting the letter required by the CCC condition #25, the City of Long Beach consulted with CSLC staff relating to the general concept of the Queensway Bay Development Plan.

PUBLIC NOTICE/REVIEW PROCESS REGARDING THE QUEENSWAY BAY DEVELOPMENT PLAN

The following questions involve the public notice and review process for the Queensway Bay Development Plan. These questions are answered in the narrative portion of this report. Please see Narrative page 12 for answers.

1. *The participants on the committee were the “in” people. (Not a true representation of the city). (70)*
2. *“23 people came up with the plan in private, closed-door meetings.” (137)*
3. *“They propose something that the community liked then they chipped away at it until it became something that we [the community] don’t agree with.” (165)*
4. *“The plan was not available to the public on the Tuesday before the Thursday meeting of the city-planning department.” (WT)*

JURISDICTION OF THE CALIFORNIA STATE LANDS COMMISSION

1. *It is the duty of CSLC to sue to stop the present abuse of the public trust. (151)*

Please see Narrative pages 8-9.

2. *“There was a legislative act that amended the Long Beach trust agreement to incorporate Proposition A and thus making the State Lands Commission responsible for the enforcement of that agreement.” (184)*

CSLC staff is unaware of any legislative act that amended the Long Beach tidelands granting statutes and incorporated Proposition A. Proposition A (Exhibit 10) was an initiative put to the City of Long Beach voters in March of 1960 to allow for the fill of tidelands between Alamitos Avenue and the Los Angeles River Flood Control Channel using approximately \$42,000,000 from the City’s Tidelands Oil Fund. The voters authorized the fill.

The City of Long Beach also had to seek approval from the CSLC for the use of the \$42,000,000 of Tidelands Oil Fund by the City. In October of 1962, pursuant to Chapter 29, Statutes of 1956, 1st E.S., the CSLC approved the project in concept and on August 28, 1964, pursuant to Chapter 138, Statutes of 1964, 1st E.S. the CSLC approved the use of the Tidelands Oil Fund for the fill involving the shoreline development.

3. *"It is up to agencies, such as yours [the CSLC] to prevent a repeat of the tragedy of the commons."* (209)

Please see Narrative pages 14-16.

4. *"Does the CSLC have the responsibility to enforce the trust and can the City of Long Beach act as trustee with impunity and interpret the trust for it's own political, pragmatic and financial gain?"* (WT)

As the Legislature's delegated trustee of the tidelands, the City of Long Beach has the primary responsibility and authority to manage the lands on a day to day basis and to select which uses among competing public trust uses are appropriate for a particular site. The City's responsibility as trustee of these lands is not to further the political, pragmatic or financial gain of the City. It is in the interest of all the citizens of California consistent with the statutory trust grant and the public trust. The CSLC oversees the City's administration of the trust, but does not have statutory authority to approve or disapprove individual projects within the tidelands area.

However, see Narrative pages 8-9 for discussion on when and how the CSLC can intervene.

5. *"Was the financing plan under your concurrence and approval in your authority under the trust agreement?"* (WT)

No. The financing plan of the Queensway Bay Development Plan did not require CSLC review because according to the City of Long Beach no revenues from the Tidelands Oil Fund were used.

Please see Narrative page 10-11.

6. *"Explain the inconsistency of the CSLC in reviewing some proposed leases and expenditures of public trust lands and funds in the Long Beach tidelands but not others."* (WT)

Please see Narrative page 10-11.

7. *"Four office buildings on the former beach."* (184)

On January 24, 1980, the CSLC made a determination, pursuant to Section 6701, et seq. of the Public Resources Code concerning a lease by the City of Long Beach involving the Golden Shore Professional Building. With the advice from the office of the Attorney General, the CSLC found; the lease to be in conformance with the terms of the granting statutes; that the proceeds

were to be expended for statewide purposes as authorized by the granting statutes; and that the project was in the best interest of the State.

On December 17, 1981 the CSLC made a determination under 6701, et seq. of the Public Resources Code concerning a lease between the City of Long Beach and Crowley Development Corporation; which lease has been assigned to Catalina Landing Associates. After careful review and consultation with the Attorney General's Office and due to the fact that 75% of the office space was to be leased to marine or maritime oriented businesses, the CSLC found the lease to be in conformance with the terms of the granting statutes; that the proceeds were to be expended for statewide purposes as authorized by the granting statutes; and that the project was in the best interest of the State.

The Legislature authorized the conveyance of trust lands by the City of Long Beach for use as an office facility for the California State University and Colleges by Chapter 854, Statutes of 1971. The Commission approved this transfer and authorized terminating the trust from the property by Minute Item No. 30 at its April 26, 1973 meeting. An additional parcel was authorized to be transferred and the trust terminated by Minute Item No. 98 of the Commission's June 19, 1998 meeting.

8. *"Is there a document granting the City of Long Beach the trusteeship of the tidelands that lie within the City of Long Beach? Where can it be viewed or copied by the public, if it exists?" (WT)*

There are approximately 23 legislative acts which govern the use of tide and submerged lands granted to the City of Long Beach. Long Beach first acquired control over its tide and submerged lands by Chapter 676, Statutes of 1911. Subsequent statutes include: Chapter 102, Statutes of 1925; Chapter 158, Statutes of 1935; Chapter 29, Statutes of 1956, 1st E.S.; Chapter 1560, Statutes of 1959; and Chapter 138, Statutes of 1964, 1st E.S. The other 20 statutes deal generally with oil and gas revenue and expenditures and do not change authorized land uses and are, therefore, not relevant to the Queensway Bay development issues

These statutes should be available in local public law libraries and are available at the CSLC offices in Long Beach and Sacramento.

CSLC – Mineral Resource Management Division
200 Ocean Gate 12th Floor
Long Beach, CA 90802-4331
(562) 590-5201

CSLC – Marine Facilities Division
330 Golden Shore, Suite 210
Long Beach, CA 90802-4246

(562) 499-6312

CSLC – Sacramento
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202
(916) 574-0234

9. *The eyesore was the public land that CSLC is supposed to be monitoring for the public for 20-plus years. (132)*

As the Legislature’s delegated trustee of the tidelands, the City of Long Beach through its City Council has the primary responsibility and authority to manage the lands on a day to day basis and to select which uses among competing public trust uses are appropriate for a particular site. The CSLC oversees the City’s administration of the trust, but does not have statutory authority to approve or disapprove individual projects within the tidelands area.

10. *The public trust has not been extinguished but has been substantially improved and strengthened through the trust agreement. CSLC is to enforce the specific language of the trust agreement. CSLC doesn’t have a whole lot of latitude. The language must be followed. (158)*

There is no independent “trust agreement” between the CSLC and the City of Long Beach. The language of the granting statutes, together with judicial interpretations of uses, is the primary authority setting forth the relationship between the CSLC and the City of Long Beach.

11. *“Since the City Attorney is an officer of the State of California and is also an officer of the City of Long Beach, does a conflict exist for the City Attorney to be objective in his interpretation of tidelands law.” (WT)*

The City Attorney is an officer of the court, not an officer of the State of California. The City, as trustee, has an obligation to manage its granted tidelands according to its respective granting statutes and the Public Trust Doctrine. The City Attorney advises the City Council on its legal obligations as trustee of tidelands. There is no illegal conflict, however the City Attorney must reconcile between the planning policies of the City and the City’s responsibility as a trustee of granted tidelands. The City of Long Beach is a trustee for the State of California.

12. *“Is there an entity, other than the City Council, that is accountable, responsible or liable for the uses of revenues and land uses of the Long Beach tidelands?” (WT)*

Pursuant to the City Charter, portions of the grant to the City of Long Beach are administered by the Port of Long Beach.

ISSUES RAISED OUTSIDE THE SCOPE OF PHASE II OF THE QUEENSWAY BAY DEVELOPMENT PLAN

Following is a list of issues raised at the workshop which do not fall within the scope of this report. CSLC staff has attempted to address each issue with a summary of facts, as provided by the City of Long Beach.

When reading through the various issues it should be remembered that as the Legislature's delegated trustee of the tidelands, the City of Long Beach has the primary responsibility and authority to manage its lands on a day to day basis and to select which uses among competing public trust uses are appropriate for a particular site. The CSLC oversees the City's administration of the trust, but does not have statutory authority to approve or disapprove individual projects within the tidelands area.

MISMANAGEMENT OF LONG BEACH TIDELANDS BY THE CITY OF LONG BEACH

1. *Record of actions in the City of Long Beach – misuse of public land. (130)*
2. *“Long Beach seems to feel that they have a right to manage the public resources as they see fit, and quite often they do it without proper documentation.”*
3. *“There is a long history of problems of great proportion in terms of large amounts of money misspent and misappropriated. Two examples are the Queen Mary and the Hyatt Hotel. Queen Mary (Have AG opinion recommending suing the city). Hyatt Hotel (built in Rainbow Lagoon, \$24 Million rent-free over the last 20 years.)” (139)*
4. *All misspent and misappropriated Long Beach money could add up to an excess of \$200 Million. What is the fiduciary responsibility? Conviction and imprisonment of Ernie Mayor Jr., Planning Director of Long Beach. (139)*
5. *“Spending of tidelands funds through the Port of Long Beach, as well as federal and state directly by the legislature, have totaled \$172 million on the Queen Mary as of 1984. Despite all this, the trustees, the City of Long Beach chose to lease this priceless state asset for \$250,000 per year. They did this without bid and without any significant commitment to invest in this operation. This amounts to \$400 per month for that lease with all that money expended on the public's behalf.” (146-147)*
6. *Council members are not aware of their responsibility to govern by the dictates of the Long Beach Tidelands Trust Agreement. (151)*

7. *Long Beach cannot operate the trust for the sole benefit of a class of its citizens without accounting to all of us. (171)*
8. *“They [part-time city council] who listen to city staff. The city staff is asleep at the wheel and they pulled off a lot of these kinds of developments in Long Beach.” (204)*
9. *“The Queen Mary, the aquarium, our beach, Pier J, the port – all of these public lands are being mismanaged and we are asking one layer of government to oversee another layer of government.” (205)*
10. *“The history of tidelands-related coastal projects here in Long Beach have historically not been for the benefit and interest to the state citizens.” (210)*
11. *“If we can’t count on the trustee to protect our commons – who can we depend on to help protect our coast?” (212)*
12. *“Big mistakes have been made regarding the use of Long Beach tidelands. These should not be misinterpreted as precedent.” (213)*
13. *“Why build another shopping mall when others so close by have failed miserably?” (107)*
14. *“Have a problem with the general idea of trying to build over the shoreline in order to get people to come to the water line. Why re-create the water front attraction with faux constricts and icons. . . People, tourists want the real thing – beaches, waves and clean water.” (213)*
15. *“What kind of beaches will we [Southern California] have? What are we leaving to future generations?” (218)*

Other than the subjects of the Queen Mary and the Hyatt, the rest of the issues raised are broad statements and questions, which are difficult to respond to within the parameters of this report. The issues surrounding the Queen Mary and the Hyatt are described below.

Queen Mary

The City represented to the Commission in 1967 that acquisition and conversion of the Queen Mary would cost approximately \$8.75 million and that 70 percent of the ship would be used for museum purposes, with the remaining 30 percent to be used for commercial purposes, for which no tideland trust funds would be used. In the succeeding seven years, the City changed the plans until tidelands fund expenditures on the ship had increased from the proposed \$8.75 million to an actual \$62.7 million in

violation of trust principles. A 1973 Attorney General Opinion stated that the CSLC had a cause of action against the City. However, litigation was ultimately avoided with the approval of a settlement agreement entitled the **Pacific Terrace Agreement** between the City of Long Beach and the CSLC.

On September 12, 1974 the Pacific Terrace Agreement, was approved by the CSLC, which made the following findings:

- “Finds that it is in the best interest of the State to settle its claims against the city of Long Beach regarding the Queen Mary project, rather than pursuing such claims through litigation . . .
- Recognizes that the City of Long Beach, in its offer of settlement, does not admit that it has made any illegal expenditures or in any way acted improperly in relation to the Queen Mary project . . .
- Waives any and all claims of the State of California as to tideland trust fund expenditures by the city of Long Beach on the Queen Mary project as set forth in paragraph 7a of that certain Pacific Terrace Agreement approved by the City Council of the City of Long Beach on September 10, 1974 . . .
- Determines that the City of Long Beach's Pacific Terrace project and associated tideland trust expenditures, as outlined in the City's letter of September 6, 1974, are in conformance with Chapter 138, Statutes of 1964, 1st E.S., and the tidelands trust . . .”

In reference to question #5 above, the City cannot confirm or deny the \$172 million figure that was mentioned. The City's original lease (February 1993) with the RMS Foundation, Inc., required a base rent of \$20,000/month or \$240,000/year plus percentage rent. This lease was modified in July 1995 and again in October 1998 with the base rent rising to \$25,000/month or \$300,000/year plus percentage rent. The percentage rent varies according to gross revenue and contributed just over \$1 million to the Tidelands Fund last fiscal year. The current Tidelands Fund budget anticipates the contribution of base rent, percentage rent, and Transit Occupancy Tax (TOT) to total approximately \$2 million. This entire amount is restricted to the Tidelands Fund.

Hyatt Hotel

When the original lease with Hyatt was negotiated in 1983, there was no first-class hotel facility in the downtown waterfront area. As a result, the Convention Center catered primarily to consumer shows rather than overnight conventions. According to the City, it negotiated the original “loss leader” lease to attract the prestigious Hyatt Corporation to Downtown. Subsequent to the Hyatt opening, Downtown has seen the construction of three additional first-class hotels, the replacement of undesirable uses with quality restaurants and shops, and a large rise in Convention Center bookings.

The original Hyatt lease provided for a base rent of \$200,000/year, a percentage rent of 5 percent of gross operating profits with an additional 15 percent of the balance of Hyatt's cash flow, and a facilities (banquet room and kitchen) sub-lease of \$1,781,078. In addition, the City agreed to lease the parking structure from Hyatt for \$2,855,263, and lease back 500 spaces to Hyatt for \$476,543. In the prioritized list of thirteen recipients of available Hyatt revenues, the parking rent was third in line, the percentage rent sixth in line, the base rent seventh in line, the facilities sublease ninth in line, and the additional percentage rent 13th in line. Although the Hyatt did pay some rent, because of the City's position in the payment priority list, by 1995 the recorded uncollected receivables in base rent, percentage rent and accrued interest totaled \$22 million. The City had an opportunity to renegotiate the lease in 1995. As part of the new lease, the City wrote off the receivable mentioned above and Hyatt paid the City \$2,751,000. In addition, the new lease removed the payment priorities and therefore guarantees the payment of the base rent of \$242,000/ year with 10 percent escalation each five years, and a percentage rent of 2.5 percent of gross operating profit. The lease / lease-back for the parking structure remained intact.

REQUEST FOR CALIFORNIA STATE LANDS COMMISSION ACTION

These are requests made by citizens during the workshop or in written testimony for additional CSLC action in the nature of a management and financial audit/ investigation into the City of Long Beach and its granted tidelands. CSLC staff concludes that no additional action by the CSLC is warranted at this time (see Narrative pages 13-15 for a more detailed discussion). Additional CSLC staff have been recently hired for the express purposes of monitoring the management of granted tidelands statewide to avoid similar problems in the future.

1. *Request increased control varying from either legislative or commission annual budgetary approval of expenditures to recognizing prior discretionary approval of capital expenditures of trust revenues. (146)*
2. *Encourage CSLC to go beyond a hearing and investigate actions of Long Beach. (151)*
3. *"The people are entitled to an audit and an accounting of financial and land use status of this grant. The people are requiring an audit of the tidelands trust fund and all use to which Long Beach has put the tidelands and its income generated over the years since the original grants." (171)*
4. *Review PRC 6005 and Government Code 11158 regarding the seizure of land. Request SLC to examine the use Long Beach has made of the tidelands trust and consider why trust has not been revoked. Please consider seizing and removing much of the existing illegal structures and expanding the beach-related uses in this audit and accounting that should be done. (178)*

5. *Request that the Commission hold a hearing to address all of the concerns that have been voiced. (189)*
6. *“An investigation is warranted into the compliance of the tidelands issues and open parkland issues. Request the same to be implemented with the involvement and cooperation of the attorney general.” (201-202)*
7. *“Request an audit of what the City has been doing with our tidelands.” (205)*
8. *“Request an investigation on the Long Beach tidelands with the cooperation of the Attorney General.” (WT)*

JURISDICTION OF OTHER LOCAL/ STATE AGENCIES

Many questions were raised within the jurisdiction of various state and local agencies, including the City of Long Beach. Following is a list of the questions with the contact name and address of the appropriate agency cited. Each agency has received a copy of the questions pertinent to its organization. For more information, please direct inquiries to the appropriate agency.

1. *Proposed development is going to bring a lot of traffic that causes environmental degradation. (134)*

California Coastal Commission
200 Oceangate 10th Floor, Long Beach, CA 90802

2. *“Long Beach has fought compliance with the Clean Water Act for 20 years.” (176)*

Regional Water Quality Control Board, Los Angeles Region #4
320 W. 4th Street, Suite 200, Los Angeles, CA 90013

3. *“3,000 acres of Amazonian rain-land ecosystem was destroyed to supply the Epay wood used on the walkway, decks and docks in Rainbow Harbor.” (183)*

Although, it is not illegal to use Epay wood, concerns about its use may be directed to City of Long Beach, Strategic Planning, 333 W. Ocean Blvd., Long Beach, CA 90802.

4. *“Parking is explicitly stated as insufficient in the plan; yet the city seeks to bypass its own laws and name existing parking for which other retailers, businesses and developers on Pine Avenue pay dearly.” (198)*

California Coastal Commission
200 Oceangate 10th Floor, Long Beach, CA 90802

5. *"The parking structure plans do not include a foundation system design in accordance with this statute. There is no assurance that the proposed parking structure has been designed in a structurally safe and sound manner. This will result in a massive liquefaction and reduce ground subsidence."* (199-200)

City of Long Beach
Strategic Planning
333 W. Ocean Blvd., Long Beach, CA 90802

California Coastal Commission
200 Oceangate 10th Floor, Long Beach, CA 90802

6. *"The location of the Queensway Bay Project is at the mouth of the LA River, which is a toxic site."* (207)

City of Long Beach
Strategic Planning
333 W. Ocean Blvd., Long Beach, CA 90802

Regional Water Quality Control Board, Los Angeles Region #4
320 W. 4th Street, Suite 200, Los Angeles, CA 90013

7. *"Remove or reconfigure the Long Beach breakwater and restore water circulation to our shore. . . It is absolutely irresponsible of our city government to spend millions of dollars to pour more concrete before we can clean up our water and our shoreline."* (207-208)

US Army Corps of Engineers
Los Angeles District
P.O. Box 2711
Los Angeles, CA 90053-2325

Regional Water Quality Control Board, Los Angeles Region #4
320 W. 4th Street, Suite 200, Los Angeles, CA 90013

8. *Concerns about water and air quality.* (214)

Regional Water Quality Control Board, Los Angeles Region #4
320 W. 4th Street, Suite 200, Los Angeles, CA 90013

South Coast Air Quality Management Division
21865 East Copely Drive, Diamond Bar, CA 91765

9. *"There's trash all over the beaches."* (216)

Department of Parks, Recreation, and Marine

2760 Studebaker Road, Long Beach, CA 90815

10. *Red tide (217)*

Regional Water Quality Control Board, Los Angeles Region #4
320 W. 4th Street, Suite 200, Los Angeles, CA 90013

11. *Removal of 100,000 cubic yards of soil. (241-242)*

California Coastal Commission
200 Oceangate 10th Floor, Long Beach, CA 90802

12. *Water quality – enforcing litter laws. (WT)*

City of Long Beach
Strategic Planning
333 W. Ocean Blvd., Long Beach, CA 90802

Regional Water Quality Control Board, Los Angeles Region #4
320 W. 4th Street, Suite 200, Los Angeles, CA 90013

13. *“Why does the redevelopment agency throw money at restaurants in the downtown area trying to keep them alive when the demographics don’t support it?” (72)*

Redevelopment Bureau
Department of Community Development
333 West Ocean Blvd., Long Beach, CA 90802

14. *“In 1981, \$2,024,000 of land and water conservation funds were given by the federal government to the City of Long Beach to develop a passive waterfront park along the edge of downtown Long Beach known as Shoreline Park.” (186)*

U.S. Department of the Interior
National Park Service, Western Region
600 Harrison Street, Suite 600, San Francisco, CA 94107

15. *The proposed project “is in violation of the Marine Mammal Protection Action, the Marine Protected Act, and the Endangered Species Act.” (229)*

National Oceanic & Atmospheric Administration
National Marine Fisheries Services
501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802

AQUARIUM OF THE PACIFIC

These questions have been forwarded to: Warren Iliff, President and Chief Executive Officer of the Long Beach Aquarium of the Pacific (310 Golden Shore, Suite 300, Long Beach, CA 90802, 562-951-1601). Please direct any further questions or comments to Mr. Iliff.

1. *No one wanted the aquarium – no one in Long Beach was asked to vote on it (68)*

Per the City, it is not the practice of the City of Long Beach to put development projects to the vote of the people.

2. *\$7.5 Million loss in a year for the Aquarium. (135)*

Per the City, the aquarium realized a \$709,632 profit in fiscal year 1998 and had a loss of \$1,907,201 in fiscal year 1999. The original bond issue provided substantial reserves from which losses can be paid. If losses continue after the reserves have been exhausted, the City is committed to make up the difference.

To date, the City of Long Beach (including Tidelands Funds) has not paid any Aquarium costs or debt payments. The original financing and initial success of the Aquarium have provided funding necessary to effectively operate the Aquarium, to expand exhibits and to make debt service payments. The Aquarium and the City are currently reviewing options to refinance the Aquarium bonds to lower debt service payments.

3. *“The trustees authorized the backing of approximately \$130 Million in bonds sold by a brand-new private non-profit corporation. The Long Beach Aquarium of the Pacific is not a city project, but the State of California backs the bonds.” (147)*

Per the City, the amount of the Aquarium bond issue is \$117 million. Revenue from the Tidelands Fund (an account in the City of Long Beach separate from the Harbor Revenue Fund and the Tidelands Oil Fund) are pledged to the bondholders should Aquarium revenues and downtown bed tax be insufficient to make payments. The State of California does not back the bonds for the Aquarium.

4. *“The port money, the tidelands money, redevelopment money, bed tax money all go in to make up the collateral package for that project, \$130 million, some of which has been refinanced already, increasing the amount of indebtedness, ostensibly, to the state.” (147-148)*

Per the City, the Port revenues are technically not pledged to support the bonds. The Port has subordinated its right to repayment of its interest free loan to the City Redevelopment Agency involving the Convention Center to allow priority payment by the Redevelopment Agency to the Aquarium bondholders. Please refer to the above question for more details.

5. *"The [Aquarium] bond measure was actually brought before the city council on the day that it was approved by the city council." (148)*

Per the City, the issue of the bonds for the Aquarium was provided legal public notice and the aquarium planning and financing was reported on extensively in the local newspapers. In addition, the City obtained a judgment that the financing commitment is valid, legal, and binding. (Friedland, et al v. City of Long Beach, et al. 1998 62 Cal. App. 4th 835)

6. *The aquarium had 250,000 adult attendees last year, undercutting what was an estimate (the estimate was made by the board of the private corporation and then a disclaimer was made by Coopers & Lybrand in the report that was given to the council). (149)*

This is true.

7. *"The aquarium has utilized all its bond and operating reserves after only two operating years, which means the people of California may have to pay off the bonds through the taking of the tidelands trust fund and the port funds of Long Beach, which may put the port in serious jeopardy." (149)*

Please refer to questions #3 and #4 above.

8. *The only salvation for the aquarium at this time may be take over by the state. (149)*

Please refer to questions #2, #3, and #4 above.

9. *The tropical fish in the aquarium were obtained from Palau, which dynamites the coral reefs and uses cyanide to obtain these fish from the waters. (183)*

The Aquarium bought their fish from a wholesale company. The issue of how the wholesale company obtained the fish is not known.

10. *The firm that did the research for the aquarium will not stand behind the figures that they have put forth. (191)*

Please refer to question #6 above.

11. *“Was the planned land use of the aquarium and parking structure under your concurrence and approval in your authority under the trust agreement?” (WT)*

An aquarium is an authorized public trust use on granted tidelands. A parking structure is also allowed on granted tidelands. Please see Narrative pages 5-6 for further discussion. The City of Long Beach was not required to nor did it choose to bring the aquarium and the parking structure projects before the State Lands Commission for review.

12. *“Aquarium bonds are to be repaid with aquarium revenues. As supplemental security for bond repayment, the port agreed to accept a deferred repayment of \$30 million loaned to the City Redevelopment Agency to expand city convention center in 1994. City hotel bed taxes earmarked for repayment to the port would instead go to repay bondholders if the aquarium fails to make enough money to repay debt.” (WT)*

This is true. PRC §6306 provides the requirements and procedures for the City’s administration of its trust lands and the expenditures.

13. *“Have any bed tax funds been transferred to the aquarium foundation as of this date. If so, in what amount? Another issue is the bonded debt of the Aquarium of the Pacific, a private foundation/corporation, in a larger issue.” (WT)*

No bed tax (TOT) funds have been transferred to the Aquarium to date; all debt service payments have been made out of Aquarium revenues and bond reserves.

14. *“Is the \$130 million bond issue supported or secured, in any way, by the net income of the Port of Long Beach and/or any tidelands funds held under the trust agreement?” (WT)*

Please refer to questions #3, #4 and #12 above.

BONDS/FINANCING FOR PROJECTS OTHER THAN THE QUEENSWAY BAY DEVELOPMENT PLAN

Questions regarding bonds and financing for projects other than the Queensway Bay Development Plan have been forwarded to the City Manager, Henry Taboada (333 West Ocean Blvd, 13th Floor City Hall, Long Beach, CA 90802, 562-570-6711). Please direct all further questions and concerns to Mr. Taboada.

1. *Is the convention center subsidized by the city? (69)*

Per the City, the Convention Center is not being subsidized by the City. The Convention Center operates within its own operating account. This account receives revenue from all booked activities occurring within the complex and

pays for all expenses associated within these activities including the management fee. The City has no financial obligation to this specific operation but the Tidelands Fund does have some responsibility. This includes paying for all utilities, operation of the Energy Plant, debt service on the Energy Plant and other minor expenses. These expenditures typically run about \$4 million annually. The Fund is also responsible for any financial deficit to the operating account, but the City has historically received shared profits from the operation. In fiscal year 2000, these profits placed \$882,241 into the Tidelands Fund.

2. *“The Port of Long Beach has to subordinate a \$30 million loan that had already been made to the convention center that was promised to be paid back in a very, very complicated package that puts you, as a state agency, me, as a state citizen, on the hook for these bonds, as well as a citizen of Long Beach. Does your commission have oversight responsibility for this \$30 million loan? Does annual deferral for the life of the bonds constitute a permanent evergreen loan or gift of these funds?” (WT)*

It is the understanding of the staff of the CSLC that in 1991 the Port of the Long Beach loaned the Redevelopment Agency of the City of Long Beach \$30 million, interest free, for the expansion of the Convention Center, which is located on filled tide and submerged lands legislatively granted to the City of Long Beach. Staff also understands that the Port has agreed to defer repayment of that loan and subordinate its payment for other projects being undertaken on tidelands, including security for the Aquarium bonds. Because deferment of repayment of this loan involves projects which also promote or constitute tidelands trust uses, the deferment is within the discretion of the City (Harbor Commission), as trustee, who has the responsibility to manage the lands and funds pursuant to the granting statutes.

3. *“Do the bondholders have priority security by the subordination of the repayment of the loan from the port to the city in the amount of \$30 million? Does this constitute a lien? If the loan is repaid to the port, do the bondholders have a claim from the tidelands funds for the subordinated amount?” (WT)*

Per the City, the bondholders have priority over the port to access the bed tax collected by the Redevelopment Agency from Downtown hotels. This does not constitute a lien, but rather a subordination agreement between the Redevelopment Agency and the Board of Harbor Commissioners. Once the port loan is repaid, the bondholders will continue to have access to the bed tax if the Aquarium revenues are insufficient to make the bond payments.

4. *“Do the bondholders have lien rights on any tidelands funds including harbor revenue funds?” (WT)*

Per the City, technically, the bondholders have no lien rights to the Tidelands Fund since there is no property to lien. What they have is a pledge of net revenues, if any, in the Tidelands Fund of the City. Harbor revenues are not pledged. Please refer to answers for questions #3, #4, and #12 above.

5. *“Can the City Council, as trustee, refuse to authorize tidelands funds to be paid to the bondholders?” (WT)*

The City Council has pledged Tideland Fund revenue to the bondholders, if it is needed.

6. *“What are the consequences in refusing the transfer if any?” (WT)*

Per the City, the bondholders could sue the City if it failed to honor its pledge in the bond documents.

MARINA

Questions regarding the marinas have been forwarded to Mark Sandoval, Manager of the Marine Bureau (205 Marina Drive, Long Beach, CA 90802). Please direct any further inquiry to Mr. Sandoval at 562-570-3241.

1. *What has happened to the revenues (\$12-\$14 Million per year) from the marinas? (224)*

Per the Manager of the Marine Bureau, the Marina generates approximately \$15 million per year which, is used for associated costs including operating costs, debt repayment, and capital.

2. *“The needs of the City of Long Beach to operate its various operating entities has been overwhelming to the extent that the revenues generated by the slip fees have only been partially used to support the marinas. The level of support has been such that the marina is now in a catastrophic condition.” (224)*

Per the Manager of the Marine Bureau, the Marina is not in catastrophic condition. The Marina had a net loss of \$800,000 last year, however, the Marina Manager is now involved in a report to analyze how to allocate revenues generated more efficiently.

The Marina Fund is part of the bigger Long Beach Tideland’s Fund, which includes the Queen Mary Fund; the Convention Center Fund; the Queensway Bay Fund. Neither the granting statutes nor the City Charter prohibit any transfer of funds between the various sub-funds, as long as revenues generated within the marina are used for purposes within the Long Beach Tideland’s Fund.

Staff of the CSLC have completed an on-site inspection of both marinas and found the facilities to be sufficient and not in catastrophic condition. CSLC staff has not received any documented evidence, which proves otherwise.

The California Department of Boating and Waterways (DBW) has recently authorized two loans to the City of Long Beach Marina Operation for construction of a separate basin in Alamitos Bay and for a refurbishment project in the Downtown Marina. Per the Marina Operator, the Marina Operation plans to approach DBW for a loan to fund the rebuilding of the Alamitos Bay marina.

The City of Long Beach recently (October 2000) contracted with the Public Management Associates to perform a Long Beach Marina Survey (on file at the main office of the CSLC). Some of the results indicated that there is a waiting list for four different sizes of boat slips and both marinas run at approximately 4.8% vacancy rate. The results also indicated that a majority of the respondents were satisfied with the facilities, the operation, and the staff of both marinas, Alamitos Bay and the Downtown Marina.

3. *“Request the State of California take back at least those portions of the tidelands trust which are the marinas, forgive the debt, and contract to privatize the entire operation.” (224)*
4. *“Request establishment of a reasonable governing body with representatives appointed by the several cities which represents the majority of the slip fee payers in order to give the marina policy determination to those who pay the bill.” (225)*

PARKLAND MITIGATION

1. *The City replaced on an acre for acre basis for parks by counting existing parks as replacement parks. (139)*
2. *Shoreline Park is to be taken. Acre for acre park replacement (184)*
3. *There has not been a one-acre for one-acre replacement for parkland. (189)*
4. *“The City has a historical legacy of taking parkland without proper mitigation, of taking land for improper, illegal and non-recreational use. This particular illegal taking is in violation of the Tidelands Act, and it is publicly owned land, not city land. This is a matter of record.” (197-198)*
5. *Long Beach is critically under the NRPA recommendation of ten acres of open land per thousand people. (The City of Long Beach has a population of approximately 429,433, according to its official Website.) This equates to 3.2 acres per thousand people. In a recent study by the National Recreation of*

Parks Association, it was revealed that the downtown first district has only 0.4 acres of land per thousand people. (199)

6. *“Queen Mary Events park is located on state owned public trust land, the City is unable to dedicate the replacement parkland as park in perpetuity. The City cannot use the Queen Mary Events Park as mitigation because it violates several conditions of coastal application as well as State statutory provisions of dedicating parkland in perpetuity.” (WT)*
7. *“The City of Long Beach has consistently and historically broken Federal, State and City laws to do with open parkland as it sees fit.” (WT)*
8. *Certified LCP (1980) – “the following shall be dedicated or designated in perpetuity by City ordinance as public parks: Victory Park and Santa Cruz Park, Shoreline Aquatic Park, Rainbow Lagoon and Park, Marina Green Park.” (WT)*

Dennis Eschen, Superintendent of Parks Planning and Development for the City of Long Beach, in his testimony at the Workshop, provided an in depth explanation of the park conversion process. He presented, for the record, a letter of October 16, 1995 from the National Park Service and letters of October 17, 1995 and July 5, 2000 from the State Department of Parks and Recreation approving the park conversion process. Shoreline Park was completely rebuilt and substantially improved by the Queensway Bay Project. The RV campground, which was located in the original Shoreline Park was completely relocated to a vacant property which was not designated, dedicated, or used as a public park. With regard to the four acres of the original Shoreline Park which will be developed with restaurant and other waterfront commercial uses, the City, in accordance with its own policy and with requirements of the California Coastal Commission, State Department of Parks and Recreation, and the National Park Service, developed and opened a new four-acre public waterfront park which has been approved by all three of the above-cited agencies as full mitigation for the conversion of a portion of Shoreline Park. This new four-acre Events Park is located at the bow of the Queen Mary on land, which was previously used for gasoline service station and a heliport. Please refer to Exhibit 11 for correspondence relating to parkland mitigation.

Questions and concerns relating to parkland mitigation measures have been forwarded to the California State Parks and Recreation Department, Acquisition and State Park System Planning, P.O. Box 942896, Sacramento, CA 94596-0001.

PROPOSITION A (1960)

1. *“Proposition A – the Resolution reads, in part, as follows: “A resolution of the city council of the City of Long Beach determining that the public interest require the use of not to exceed \$42 million from the city’s tideland oil fund for*

the purpose of the construction and development of shoreline improvements between the prolongation of Alamitos Avenue on the east and Los Angeles flood control channel on the west in accordance with the master plan therefore adopted by the city council on March 8th 1960.”

The argument in favor of Proposition A as it appeared on the ballot and information booklet is as follows: “A yes vote is recommended for Proposition A. This measure authorizes the use of up to \$42 million of the tideland oil fund for improvements along the shoreline. A yes vote for Proposition A will bring into being the shoreline development plan which has been approved by scores of civic groups after numerous public hearings. The entire shoreline would be developed as an elongated park linked from one end to the other by a pedestrian walk. Parking facilities and recreational areas will make your shoreline as accessible to you as it is now to those living on the beach. Long Beach is blessed by two natural resources unmatched by any city in the nation. An unexcelled ocean frontage and oil revenues that can be used only for tideland development. Your yes vote on Proposition A will put these resources to work to raise Long Beach from the position of just another oceanfront town to a city of unique and unmatched beauty.” (183)

2. *“The wording of the initiative and of the agreement for the use of tideland oil for this fill required that the land be open space in perpetuity.” (184)*
3. *“It would take another ballot measure to change the master plan of 1960. Is there such an initiative? Is one proposed?” (185)*
4. *“How can you justify any land use other than permanent open space?” (185)*

The issue of Proposition A and its relationship to the CSLC was addressed in Question #2 under the Jurisdiction of the CSLC.

QUEEN MARY

1. *“You [SLC] were warned in 1972 after significant unauthorized use of tidelands funds on the Queen Mary. After \$58 Million in tidelands oil funds were illegally spent, the Attorney General recommended suing the City.” (145)*
2. *What is the reason for the discrepancy of attendance numbers and revenue for the Queen Mary? (156)*
3. *“If the ship Queen Mary was capable of generating \$418 Million in direct and indirect revenue to the City in 1991, why is it considered positive when the ship’s operator reports a million dollars profit in one year?” (157)*

4. *“The Attorney General’s Opinion of 1973 stated that the CSLC has a cause of action against the city of Long Beach in regards to the Queen Mary.” (WT)*

The Commission has previously investigated and acted upon issues surrounding the Queen Mary. The investigation resulted in the Pacific Terrace Agreement between the CLSC and the City of Long Beach (on file at the main office of the CSLC). Please refer to the section, “Mismanagement of Long Beach Tidelands,” for a more detailed discussion on the Queen Mary.

WETLANDS MITIGATION

1. *Question regarding the successfulness of the tidal mud flat replacement. (188)*
2. *Mitigation for destruction of wetlands is four-to-one. (That means you have four times the amount of land taken set aside for new wetlands.) (193)*
3. *“They [the wetlands] were not restored properly. There was no scientific board or biologist included in the restoration. It is the wrong shape. There is no bio-diversity in plants. There are 70 plants that should have gone in there, and they put in two.” (193)*

Per MBC Applied Environmental Sciences, the City’s consulting firm, the City of Long Beach, acting through its Department of Public Works, created the Golden Shore Marine Reserve, a wetland habitat along the Los Angeles River. Creation of the wetland habitat is mitigation for the loss of intertidal habitat at the former Shoreline Lagoon (now called Rainbow Harbor) resulting from Phase II of the Queensway Bay Development Plan. Golden Shore Marine Reserve (the Reserve) covers 6.4 acres of what previously was a boat ramp and parking lot. The goal of the Mitigation Plan for the Reserve is to offset the loss of subtidal and low intertidal habitats in Shoreline Lagoon, along with the functions and values provided by those habitats. The purpose of monitoring, to continue for a period of five years, is to determine if the Mitigation Plan, designed to assess habitat values, has been successful. The plan outlines the protocol and criteria for annual assessment of the progress of the mitigation effort to provide productive, self-sustaining coastal wetlands habitat.

A Planting Plan was prepared for the Reserve in 1996. The plan called for two principal zones of intertidal emergent marsh habitat. Low-to-mid marsh species selected for planting included pickleweed, saltwort, and jaumea. High-marsh species included salt grass, alkali heath, sea lavender, and shore grass. The Physical, Water Quality, and Biological Monitoring at the Golden Shore Marine Reserve reports for the past two years are on file at the main office of the CSLC.

Questions and concerns relating to these issues have been forwarded to the California Coastal Commission, 200 Oceangate 10th Floor, Long Beach, CA 90802.