

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

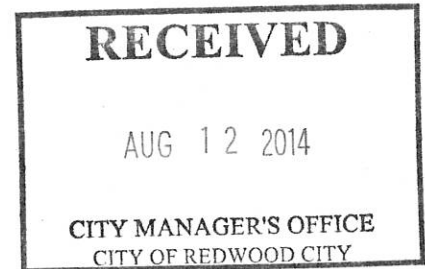
August 7, 2014

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Bill Ekern, Assistant City Manager
City of Redwood City
1017 Middlefield Road
Redwood City, CA 94063



Dear Mr. Ekern:

The purpose of this letter is to provide clarification to questions and issues that were raised during our meeting on May 29, 2014 and in your letter dated June 13, 2014.

As general background, the Legislature holds all sovereign lands in trust for the people of California. Pursuant to statute, Public Resources Code (PRC) Section 6301, the Legislature has delegated its trustee responsibilities to the California State Lands Commission (CSLC). In some locations, the Legislature has further delegated, through specific granting statutes, the trustee responsibilities to local municipalities (the "grantee"). Grantees must comply with the language of their specific granting statutes, PRC 6009 *et seq.*, the California Constitution, and the common law Public Trust Doctrine. For background regarding grantee obligations, please see *City of Long Beach v. Morse* (1947) 31 Cal.2d.254; and *Atwood v. Hammond* (1935) 4 Cal.2d 31.

The Ferrari Property

Commission staff understands that the City of Redwood City (City) is considering developing a floating home community located on Assessor Parcel Number 052-392-350 (Ferrari Property). It is our understanding the City has concerns regarding whether the CSLC would have jurisdiction if the man-made levee surrounding the Ferrari Property was intentionally breached, subjecting the property to tidal influence.

The Ferrari Property is not located on sovereign land and is not under the jurisdiction of the CSLC. Parcel SM-7, which includes the Ferrari Property, was part of a 1964 exchange agreement; referred to as "SLL 43," which declared that the parcel was no longer useful for navigation and fisheries and removed any and all claims of sovereign ownership. The exchange agreement was between the CSLC and Leslie Salt Company and was agreed to in order to resolve conflicting claims over title to several sloughs and channels in the South San Francisco Bay Area. Based on a preliminary review of SLL 43 and current law, if there was a deliberate breach of the levee under the direction of

the City that resulted in the property becoming subject to tidal influence, it would likely not create a sovereign property interest in the Ferrari Property. However, it would be likely that a navigational easement would attach to any submerged lands.

The Use of Arks on Granted Lands

Your second inquiry is whether Arks, which you state are residential uses extending over the granted lands, would be consistent with the permissible uses of sovereign lands and the terms of the City's granting statutes. As discussed below, because an Ark is a private residential use, it is inconsistent with the City's granting statutes and the common law Public Trust Doctrine.

The City's granting statutes limit the public trust uses of the tidelands to the "construction, maintenance and operation thereon of wharves, docks, piers, slips, quays and other utilities, structures, facilities and appliances necessary or convenient for the promotion and accommodation of commerce and navigation by air as well as by water." Further, the City's granting statutes limit the uses permissible in leases and franchises to only those "for wharves and other public uses and purposes ... and for purposes consistent with the trust upon which said lands are held by the State of California...." Arks, as private residential structures, are neither necessary nor convenient for the promotion and accommodation of commerce or navigation.

Additionally, the granting statutes require that any use must be consistent with the common law Public Trust Doctrine, which is the "trust upon which said lands are held by the State of California." The seminal case on sovereign lands and the Public Trust Doctrine is *Illinois Central R.R. Co. v. Illinois* (1892) 146 U.S. 387. Traditionally, public trust uses were limited to water-related commerce, navigation, and fishing. In more recent years, however, the California Supreme Court has held that the Public Trust uses may include preservation of lands in their natural state for scientific study, open space, and wildlife habitat. In contrast, uses that are local, municipal or "neighborhood-serving" confer no significant benefit to Californians statewide and are generally inconsistent with the Public Trust Doctrine (*City of Long Beach v. Morse* (1947) 31 Cal.2d.254). Arks, as a private residential use, even if water-dependent, are contrary to the permissible uses under the common law Public Trust Doctrine. They are not a public use, are not one of the permissible uses identified by the courts, and they do not serve either a regional or statewide public purpose.

As such, under the granting statutes and the common law Public Trust Doctrine, which is incorporated by reference into the City's granting statutes, issuing leases for private residential uses on tidelands would violate the City's duties, obligations and authority as a trustee for the State.

Enforcement Mechanisms

Your third question inquires what enforcement mechanisms are available to the Commission when there is an alleged violation of a granting statute. As you are aware,

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the CSLC, acting on behalf of the State, exercises oversight authority over all granted lands. Generally, the CSLC carries out this responsibility by working cooperatively with local government grantees by offering advice and guidance to ensure that requirements of both the applicable statutory trust grants and the Public Trust Doctrine are met. When a violation of a legislative grant or the Public Trust Doctrine occurs, the CSLC will advise and work with the grantee to correct the violation. If the grantee is unwilling to remedy the violation, the CSLC may report the violation to the Legislature and recommend revocation of the grant, or file a lawsuit against the local grantee.

Potential litigation is greatly minimized to the extent that a grantee will work with CSLC staff on a resolution that corrects the violation. The CSLC has also entered into settlements with grantees to address violations, such as with the cities of Los Angeles, Long Beach, and Redondo Beach. However, in the event that a resolution cannot be reached, the CSLC has resorted to litigation. Some examples of litigation are *State v. County of Orange* (1982) 134 Cal.App.3d 20; *State v. City of Los Angeles* (1996) Case No. BC147094 in the Superior Court for the County of Los Angeles; *State v. City of Long Beach* (2005) 125 Cal.App.4th 767; and, *State v. City of Oakland* (2005) Case No. RG05 196720 in the Superior Court for the County of Alameda. Copies of the settlements to the litigation are included as enclosures to this letter.

The City's stewardship of its legislatively granted public trust lands is a matter of statewide importance. Staff understands the sensitive nature of the transition to remove the impermissible uses on the City's granted lands and we look forward to continuing to work together towards a resolution. Please do not hesitate to contact Reid Boggiano or myself at (916) 574-1800 if you would like further clarification or have additional questions.

Sincerely,



Sheri Pemberton
Chief, External Affairs

Enclosures

cc: Jessica Rader, Senior Staff Counsel
Reid Boggiano, Public Land Management Specialist
Bob Bell, City Manager
Pamela Thompson, City Attorney
Aaron Akin, Community Development Director