

**Lunetta, Kim@SLC**

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**From:** Tim Keeton <i>  
**Sent:** Monday, February 22, 2021 12:21 PM  
**To:** CSLC CommissionMeetings  
**Subject:** Public Comment - Blockage of the Tijuana River

**Attention:** This email originated from outside of SLC and should be treated with extra caution.

Dear Sir or Madam:

Over the years, the flow of the Tijuana River has been severely diminished through the unnatural accumulation of trash and debris, as well the uncontrolled proliferation of dense invasive plant species that contribute to the blockage of the flow of both water and sediment through the river valley. This lack of sediment has resulted in the City of Imperial Beach having its beaches starved of sand, endangering coastal homes and businesses - including my own. Natural beach nourishment being a primary means of adapting to the deleterious effects of Sea Level Rise, the CA State Lands Commission needs to do all in it power to help to clean the river valley while restoring the original flow of the Tijuana River.

Thank you for your attention to this matter.

Sincerely,  
Timothy F. Keeton

**Lunetta, Kim@SLC**

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**From:** alison madden < >  
**Sent:** Monday, February 22, 2021 5:21 PM  
**To:** Lunetta, Kim@SLC; Lucchesi, Jennifer@SLC; Andrew Vogel; Nicholas Tsukamaki  
**Subject:** Re: Asking for public comments early at tomorrow's SLC meeting at 1 p.m. if possible - 2 p.m. Redwood City court conflict  
**Attachments:** Screen Shot 2021-02-22 at 1.16.24 PM.png; Screen Shot 2021-02-22 at 1.16.32 PM.png; Screen Shot 2021-02-22 at 1.16.38 PM.png; Screen Shot 2021-02-22 at 1.16.43 PM.png; Screen Shot 2021-02-22 at 1.16.55 PM.png

**Attention:** This email originated from outside of SLC and should be treated with extra caution.

Jennifer,

Thanks so much, can you also attach these screenshots of the relevant section?

It has 2 slides a little before 6009.1 for context but these 5 slides give the entire framework of the section.

Also it goes without saying but sometimes it's good to even say things that could otherwise go without saying.

The 1DCA decision is final, in my present understanding. Any action would not reach back to change this very unfortunate and huge mis step by Redwood City and its Council and Port, on this discrete issue.

However, the assistance I am seeking and shall be seeking from the legislature and the SLC, is the clarification for going forward that will serve Port authorities statewide, AND the commission, in not disturbing the in-place charters and all of the reporting to the SLC that is underway. As you know, Redwood City's port keeps the granted land maps and reports financially and otherwise.

The legislative clarification would avoid any other Port having this occur to it, and not disturb "law of the case" but would invalidate "collateral estoppel" and/or "res judicata", which that result (LoC but not the others) is desirable b/c the instances of interference in the future may be far more harmful than waste of taxpayer \$ and will also avoid the deep constitutional confusion that Redwood City is in right now, and would take away ANY influence (informal or otherwise) of the drive by 1DCA opinion.

Thanks!

On Monday, February 22, 2021, 01:41:30 PM PST, alison madden <

> wrote:

Hi, Jennifer and Kim,

I am asking if it is possible to ask for, and have your agreement to, if the commission will consider it, to allow us to speak for roughly 5 minutes in public comments at the beginning of the SLC meeting?

I would like to report back to the SLC on the resolution of the jurisdiction case and ask them to take certain policy and other considerations that involve the continuing consideration of potential legislation as well as support for the following:

I cc Mr. Vogel and Tsukamaki so as not to surprise.

The 1DCA literally held that PRC sec. 6009.1(c)(13) pre-empts a local charter that purports to create an independent port authority.

This holding is clearly erroneous, as every Port authority in the state (L.A., S.F., Oakland, Stockton, San Diego, Long Beach and more) is a fully or semi-independent. Port, with even the "semi" STILL having full sole and exclusive jurisdiction over tidelands within the scope of the document the creates the Port authority. In some cases it is a charter or a joint powers agreement, in some a statute, in some these overlap (S.F. Port, San Mateo Harbor District, etc.)

The holding is not only a constitutional (charter) crisis in Redwood City, it is of potentially disastrous reach statewide. Although it is not "published" it is, as you know, always available by search, and if you look at even Supreme Court practice (CA) and the Horvitz and Levy appellate specialist page, unpublished opinions are often (very often) used by courts for guidance and information. This one is especially terrible and personally defamatory to me as well (misleading, even if allowable as in a public proceeding).

Quite simply, the 1DCA Dist. 2 got it so wrong. I don't think the AG and SLC even "want" this result. I do not think Mr Tsukamaki advanced it, I would have to go back and check the filings. The other parties advanced it, but the SLC and AG did not tell the court, "no, that's not what the PRC says at all). This is a basic and fundamental, and elementary, concept of agency law, that if any party/entity that HAS jurisdiction (whether council or Port, as the case may be, at any given time) seeks to delegate or contract/subcontract with respect to any fiduciary duty, it must oversee it. This is agency 101.

Important to note is to really read the charter. It was adopted by the people (not the city as Justice Kline got wrong and dead gave away his statist approach), in 1937, before any grant. The Port is defined in the charter as "Redwood City". Just like SLC, it is the "State of CA" (SLC is), and the Port sues and is sued as Redwood City ex rel. the Port Dept. and the SLC is The state of CA "ex rel" the SLC, or BCDC etc. as the case may be.

I don't even think Judge Miram feels he made this incredibly jaded / cynical or result-oriented holding. Judge Miram, in his initial tentative ruling before the very first OSC for preliminary injunction in this case, in March of 2017; under Gary Redenbacher, put a laundry list bucket of 8 reasons why the was denying OSC. This was in it, under the

urging of Hannig/Redwood City before SLC or AG was even in the case. However Judge Miram reversed himself on nearly all 8 of the bucket list reasons. Further, on the second round of Demurrer, he denied the City's demurrer, saying it was a triable issue of fact whether council or Port had jurisdiction.

In a very key aspect, the City (both Council and Port) and the People, in adopting the Charter, were well aware of any general applicability to not "co trustee". The charter says only the council OR the Port, at any given time, has jurisdiction over any portion, or part or parcel of "Port Area", which is defined as all of Redwood City under water AND the upland lot/parcel. This was intentional. There are provision for passing jurisdiction back and forth, by formal, official action - resolution and/or ordinance.

When Gary Redenbacher and I researched this and read every paper at the Port, we saw that the council and Port had observed this religiously for decades, and only asserted or claimed that one or the other entity had jurisdiction over very specifically delineated public trust lands if they had enacted ordinances and resolutions both sending and confirming receipt of the transfer or jurisdiction.

This was diligent and responsible and in conformity with the Charter, which may only be amended by the people in a vote.

The very simple inquiry here at all times, is whether the giving over in 1964 and giving back in 1970, put the portion of Redwood Creek in which Docktown resides, as in the Port or the council. This was before SLC was even brought in by Redwood City. They (the judge/RWC) made "me" sue the SLC instead of y'all intervening or them interpleading you, just another cowardly move of theirs, and not your fault nor mine.

This could have been resolved by a 5 day trial at most, confirming whether the Port or council, under the charter, ended up with portion of Redwood Creek on which Docktown sits.

But noooooo, the RWC Burke law firm and Hannig had to once again use gaslighting and shenanigans to assert this ridiculous argument that PRC Sec. 6009.1(c)(13) precludes the PEOPLE of the State of CA from adopting, in their local jurisdiction (whether City or county, as the case may be) a CHARTER that creates an independent Port Commission.

This cynical and jaded and result-oriented chimera of an argument worked for an OSC and Judge Miram then did not adhere to it on Demurrer round 2 where he said this is a triable issue. If Judge Miram felt his OSC had ruled on this issue, jurisdiction was irrelevant and all I had to do was allege concerted action (collusion). Not corruption, nor fraud, all of which the court got wrong.

In any event, what has occurred, because of Mr. Hannig and the Redwood City City Attorney and Council and their outside Burke law firm, is that Redwood City now has a constitutional crisis, and an argument was asserted and approved by the 1DCA that, if applied statewide, or in another jurisdiction at any time, by another Superior Court or DCA that is being result orientered, is a disaster for CA ports.

Notably, Oakland appears to have modeled its charter on Redwood City, at least the one it adopted in the 80s. It uses almost all of the same verbiage and provisions. Look at SF and Oakland and every other Port and see what is intended, and what is the result, of independent Ports.

I will be seeking the support of every state assembly member and senator touching any county on any public trust land, to clarify that Ports and districts that are created by voters and intended to be vested with entirely independent authority and jurisdiction, remain protected by the law.

I will be seeking legislation that confirms that this general principle of agency law does not have pre emptive effect, and therefore, does not pre-empt, any local charter that vets sole jurisdiction in a Port authority. It is simple, and a one-liner, and I would like the SLC's concurrence, that of the SLC and AG, b/c it is right, and it is the right thing to do statewide.

Also, I would like the SLC to place this email into the public comments record for tomorrow's meeting and to be sent to the commissioners and their aides, and every other person at the AG's office of SLC that should be aware of this issue.

We also would like the SLC (commission, staff) continuing support not to railroad the remaining people out of docktown in a pandemic and a housing crisis, especially b/c the SLC and City of S.F., likely by and through its Port commission and/or a joint-enabled action with the Supervisors, that has allowed low income housing to be built on "filled" public trust land at the Port upland in S.F. I also call your attention to the Obama era last action he took signing into law the Army Corps bill that allowed 1500 homes to stay on TVA land in the Southern and southeastern states where both republicans and democrats sprung to save these people's properties, homes and livelihoods. BTW there, republicans started the effort as a no brainer to fend off overly statist and overly bureaucratic action by the TVA, and democrats then joined them, and Obama signed the bi partisan legislation. And that's just the two most recent things that are post the Vogel letter that contained "no" authority on marinas or vessels.

Thank you in advance for conveying this and for putting it into the record.

I would like to ask to speak for 5 minutes at the beginning of the meeting, and won't go into all fo this but a capsule summary, and the basis for early public comments, which Gavin Newsom frequently allowed when there was significant public not to wait for hours to speak at the end. I generally like the SLC meetings and don't mind waiting, but I have a court conflict at 2 p.m. and fear that it may last long enough to span to the end of the SLC meeting and miss public comments.

Thank you for considering this and passing it to those referenced above.

Most Sincerely,  
Alison Madden

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**PUBLIC RESOURCES CODE - PRC**  
**DIVISION 6. PUBLIC LANDS [6001 - 8561]** ( *Division 6 added by Stats. 1941, Ch. 548.*  )  
**PART 1. ADMINISTRATION AND CONTROL OF STATE LANDS [6001 - 6477]** ( *Part 1 added by Stats. 1941, Ch. 548.*  )

**CHAPTER 1. General Provisions [6001 - 6010]** ( *Chapter 1 added by Stats. 1941, Ch. 548.*  )

**6001.** Unless the context otherwise requires, the general provisions and definitions set forth in this chapter shall govern the construction of this division.  
(*Added by Stats. 1941, Ch. 548.*)

**6002.** "Commission" means the State Lands Commission.  
(*Added by Stats. 1941, Ch. 548.*)

**6003.** "City" includes "city and county."  
(*Added by Stats. 1941, Ch. 548.*)

**6004.** "Oil and gas" includes oil, gas and all other hydrocarbon substances.  
(*Added by Stats. 1941, Ch. 548.*)

**6005.** Whenever permissive authority or discretion is vested in any public officer or body under this division, such authority or discretion is subject to the condition that it be exercised in the best interests of the State.

*(Added by Stats. 1941, Ch. 548.)*

**6006.** The repeal of Chapter 303 of the Statutes of 1921 and of Chapter 227 of the Statutes of 1923 effected by the State Lands Act of 1938 shall not affect any existing rights thereunder or any permit, lease, or agreement entered into under any provision of either chapter, nor shall it affect the rights or duties of any purchaser of State lands prior to June 11, 1938, the effective date of the State Lands Act of 1938.

*(Added by Stats. 1941, Ch. 548.)*

**6007.** The repeal by this code of any provision of law codified herein shall not affect any existing vested rights thereunder or any contract, permit, lease, or agreement entered into under any such provision of law, nor shall it affect the rights or duties of any purchaser of State lands sold prior to the effective date of such codification.

*(Added by Stats. 1941, Ch. 548.)*

**6008.** In order to protect the public's access to, and use of, all state-owned lands in Humboldt Bay, no right to the use of any state lands, including, but not limited to, tide and submerged lands, in and adjacent to Humboldt Bay south of the entrance to the bay shall be sold.

This section shall not be applicable to settlements of title or boundary problems by the commission or to exchanges in connection therewith.

*(Amended by Stats. 1987, Ch. 1132, Sec. 2. Effective September 25, 1987.)*

**6009.** The Legislature finds and declares all of the following:

(a) Upon admission to the United States, and as incident of its sovereignty, California received title to the tidelands, submerged lands, and beds of navigable lakes and rivers within its borders, to be held subject to the public trust for statewide public purposes, including commerce, navigation, fisheries, and other recognized uses, and for preservation in their natural state.

(b) The state's power and right to control, regulate, and utilize its tidelands and submerged lands when acting within the terms of the public trust is absolute.

(c) Tidelands and submerged lands granted by the Legislature to local entities remain subject to the public trust, and remain subject to the oversight authority of the state by and through the State Lands Commission.

(d) Grantees are required to manage the state's tidelands and submerged lands consistent with the terms and obligations of their grants and the public

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- (c) Tidelands and submerged lands granted by the Legislature to local entities remain subject to the public trust, and remain subject to the oversight authority of the state by and through the State Lands Commission.
- (d) Grantees are required to manage the state's tidelands and submerged lands consistent with the terms and obligations of their grants and the public trust, without subjugation of statewide interests, concerns, or benefits to the inclination of local or municipal affairs, initiatives, or excises.
- (e) The purposes and uses of tidelands and submerged lands is a statewide concern.

*(Added by Stats. 2010, Ch. 330, Sec. 3. (SB 1350) Effective January 1, 2011.)*

**6009.1.** The Legislature finds and declares all of the following:

- (a) Granted public trust lands remain subject to the supervision of the state and the state retains its duty to protect the public interest in granted public trust lands.
- (b) The state acts both as the trustor and the representative of the beneficiaries, who are all of the people of this state, with regard to public trust lands, and a grantee of public trust lands, including tidelands and submerged lands, acts as a trustee, with the granted tidelands and submerged lands as the corpus of the trust.
- (c) A grantee may fulfill its fiduciary duties as trustee by determining the application of each of the following duties, all of which are applicable under common trust principles:
  - (1) The duty of loyalty.
  - (2) The duty of care.
  - (3) The duty of full disclosure.
  - (4) The duty to keep clear and adequate records and accounts.
  - (5) The duty to administer the trust solely in the interest of the beneficiaries.
  - (6) The duty to act impartially in managing the trust property.



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- (1) The duty of loyalty.
- (2) The duty of care.
- (3) The duty of full disclosure.
- (4) The duty to keep clear and adequate records and accounts.
- (5) The duty to administer the trust solely in the interest of the beneficiaries.
- (6) The duty to act impartially in managing the trust property.
- (7) The duty to not use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, and to not take part in a transaction in which the trustee has an interest adverse to the beneficiaries.
- (8) The duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property.
- (9) The duty to make the trust property productive under the circumstances and in furtherance of the purposes of the trust.
- (10) The duty to keep the trust property separate from other property not subject to the trust and to see that the trust property is designated as property of the trust.
- (11) The duty to take reasonable steps to enforce claims that are part of the trust property.
- (12) The duty to take reasonable steps to defend actions that may result in a loss to the trust.
- (13) The duty to not delegate to others the performance of acts that the trustee can reasonably be required to perform and to not transfer the administration of the trust to a cotrustee. If a trustee has properly delegated a matter to an agent, the trustee has a duty to exercise direct supervision over the performance of the delegated matter.

(d) All duties endowed upon a trustee of state lands shall depend upon the terms of the trust, and if there is no provision, express or implied, within the terms of the trust, a statute, or a grant, the trustee's duties shall be interpreted and determined by principles and rules evolved by courts of equity with respect to common trust principles.

(e) Notwithstanding any other law, and in addition to any other rights and capacities of a trustee to act under law, a trustee of public trust lands shall have the right to bring any action related to its granted public trust lands, including an action to abate a public nuisance, as a representative of the beneficiaries.

(f) Common trust principles do not nullify an act of the Legislature or modify its duty under the California Constitution to do all things necessary to execute and administer the public trust.

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(6) The duty to act impartially in managing the trust property.

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(e) Notwithstanding any other law, and in addition to any other rights and capacities of a trustee to act under law, a trustee of public trust lands shall have the right to bring any action related to its granted public trust lands, including an action to abate a public nuisance, as a representative of the beneficiaries.

(f) Common trust principles do not nullify an act of the Legislature or modify its duty under the California Constitution to do all things necessary to execute and administer the public trust.

*(Amended by Stats. 2016, Ch. 368, Sec. 11. (SB 859) Effective September 14, 2016.)*

**6010.** The repeal of any provision of law codified in this division shall not affect any existing vested rights under those repealed provisions or under any contract, permit, lease, or agreement entered into under those repealed provisions, or the rights of any purchaser of school lands sold before the effective date of that repeal.

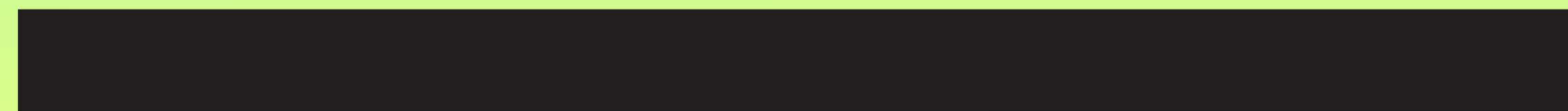
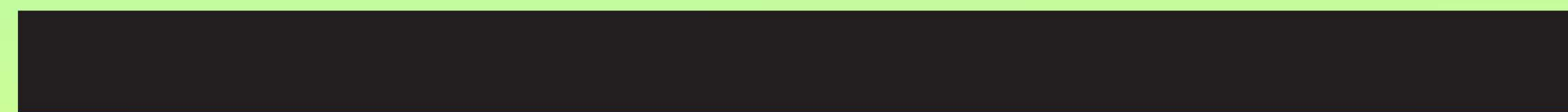
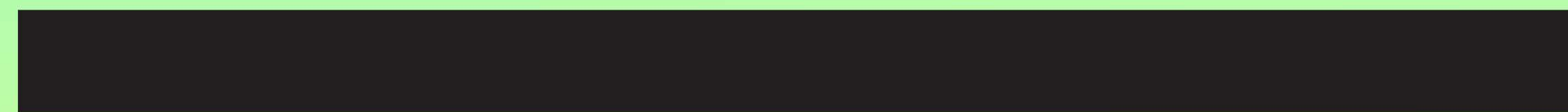
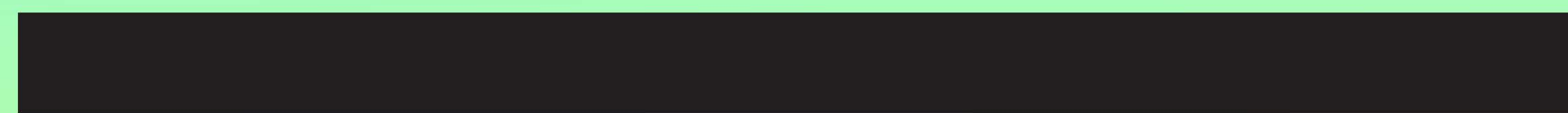
*(Added by Stats. 2020, Ch. 311, Sec. 1. (SB 1472) Effective January 1, 2021.)*

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SURF



EQUITY



# State Lands Commission Meeting



February 23, 2021



In 2015, I asked the Coastal Commission to correct decades of gender discrimination by requiring that women be included in a big wave surf competition held at Mavericks in San Mateo County. I received support for a Coastal Development Permit condition requiring the inclusion of women going forward...

Subsequently, the Coastal Commission voted unanimously to require the inclusion of a single heat for women in 2016 and 2017.

In 2018, they unanimously supported requiring a multi-heat women's division with equal prize money at each participant level.

In October 2018, the State Lands Commission approved a lease requiring the inclusion of a multi-heat women's division and equal pay for all competitors regardless of gender.

This was a precedent-setting victory for equal pay in sporting events held on state property.

In, December 2020, you approved a lease to a woman owned company for future Mavericks surf competitions. One of the conditions of the new 5-year lease requires a Coastal Development Permit from the Coastal Commission.



# Keala Kennelly at Mavericks Beach

2019 Big Wave World Champion





## Surf Contest Running Without a Lease and Without Permits

Currently, the Mavericks Surf Awards is running from Dec 1st to April 15th, 2021. The event is held on every surfable day for 4.5 months.

**Men are competing for 80% of the prize money and women are competing for 20%. Please address this lack of parity.**



Bianca Valenti surfing Mavericks on January 10, 2021

Photo by Sachi Cunningham





The Mavericks Surf Awards is running without a state lease and without any permits. Event organizers should be required to apply for a State Lands lease so the Commission can review the contest to ensure that state land is being used fairly, without impeding public access or jeopardizing public safety.

The Mavericks Surf Awards event has transformed the entire surf season into a multi-day contest. A website describes the event as a, "Performance Based Video Contest That Lasts All Season Long." Some may describe this as a "digital" format however the contest is an actual competition that uses State lands, State waters, public beach and public facilities.

The density and intensity of use has dramatically increased because the event runs everyday waves break at Mavericks as opposed to the traditional format that includes one contest day per winter season and requires a State Lands Lease.

Please consider requiring a lease for the multi-day Mavericks Surf Awards.

Thank you

The New York Times Magazine

The Washington Post

The New York Times  **HUFFPOST**

San Francisco Chronicle 

 SILICON VALLEY  
BUSINESS JOURNAL

San Jose Mercury News

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