

**From:** [Craig Moyle](#)  
**To:** [CSLC CommissionMeetings](#)  
**Subject:** CEQA, EIS, CDFW, Nevada County  
**Date:** Monday, August 19, 2024 11:05:49 AM

---

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

Hello my name is Craig Moyle I live along the Greenhorn Creek in Nevada County, District 1.

My concern is all projects along Greenhorn Creek are and have been CEQA, EIS mandates Non-compliant. Nevada Irrigation District SCH No. 2017052054, SCH No. 2017032040, SCH No. 2013112054 and CDFW permit 1600-2007-0142-R2 through 2081-2017-050-02-A1. These projects include Nevada Irrigation District Sediment Removal Project, Hansen Brothers Enterprise aggregate plant, Hansen Brothers Enterprise Expansion Project and Mr. Smith Blue Lead Gold Mine all Non-compliant for decades.

Nevada County Board of Supervisors Heidi Hall unconstitutionally expanded these Non-compliant projects, rezoned Forest land to Mining and is selling aggregate from the creek bed. This material is controlled by the State of California and belongs to the people.

Nevada County is the “Lead Agency” who will not enforce CEQA, EIR and CDFW mandates. No records exist of enforcement, monitoring or compliance with CEQA. HBE was shut down in 2013 by CDFW because of the Foothill Yellow Leg Frog. NID, HBE, Mr. Smith and Nevada County are known CEQA violators.

HBE has been documented burying an entire population of Yellow Leg Frogs. HBE has barricaded public access points preventing access to Greenhorn Creek. Sand drying all along the creek stacked 15’ high makes safe travel impossible. HBE has placed concrete barricades and steel gates in the creek damming the flow. Craig Moyle  
Sent from my iPhone

**From:** [Francis Coats](#)  
**To:** [CSLC CommissionMeetings](#)  
**Subject:** Re: email address for comments to be submitted?  
**Date:** Friday, August 23, 2024 2:53:06 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)

---

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

Ok, then.

To the California State Lands Commission:

Please post the Surveyor General's pamphlets listing school land available for sale or lease on your website. The Surveyor General and the Division of State Lands within Finance are your predecessor agencies - this your turf.

These pamphlets begin in 1915, well after the adoption of section 25 article I of the California Constitution. Material in the pamphlets states that any patent issued will be subject to the reservation in the people of the absolute right to fish upon the land being transferred as provided in section 25 article I of California Constitution.

That is land described in the pamphlets is either expressly subject to the absolute right in the public to fish, or is owned by the state and subject to the public right to fish from and on state-owned land also provided in section 25.

In the spirit of Access For All, the California State Lands Commission should make this information (the commission's own publications) readily available to the public.

The Commission is also the trustee for the benefit of the public of these interests and as trustee is obligated to inform the beneficiaries/public of the body of the trust.

If you don't have these at hand. originals are in the California State Library, and I can provide with the dates and call numbers

See San Luis Obispo Sportsman's Ass'n (1978) 22 Cal. 3d 440; " California's Constitutional Right to Fish," Coats and Bork, 2021 Lewis & Clark Environmental Review Vol. 51 No. 4.

  
Get [Outlook for Android](#)

---

**From:** CSLC CommissionMeetings <[CSLC.CommissionMeetings@slc.ca.gov](mailto:CSLC.CommissionMeetings@slc.ca.gov)>  
**Sent:** Friday, August 23, 2024 12:27:50 PM  
**To:** Francis Coats  
**Subject:** RE: email address for comments to be submitted?

Hi Francis – Yes, this is the correct address to submit comments.

Thank you,

**Kim Lunetta**, Administrative Assistant  
Executive Office  
**CALIFORNIA STATE LANDS COMMISSION**  
100 Howe Avenue, Suite 100-South  
Sacramento CA 95825  
916.574.1397  
[Kim.Lunetta@slc.ca.gov](mailto:Kim.Lunetta@slc.ca.gov)



---

**From:** Francis Coats  
**Sent:** Saturday, August 17, 2024 10:57 AM  
**To:** CSLC CommissionMeetings <[CSLC.CommissionMeetings@slc.ca.gov](mailto:CSLC.CommissionMeetings@slc.ca.gov)>  
**Subject:** email address for comments to be submitted?

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

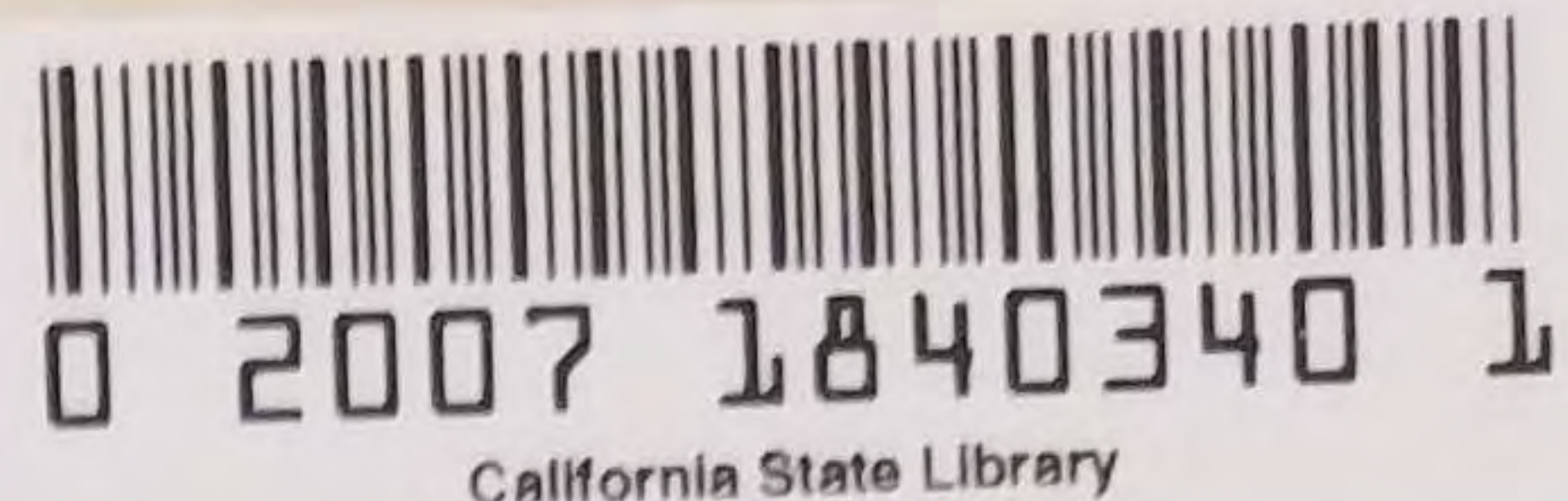
is this the correct email address for submitting comments for the August 29, 2024 meeting of the California State Lands

Commission?

L400  
.L57  
1915  
c.2

L400  
.L57  
1915  
c.2

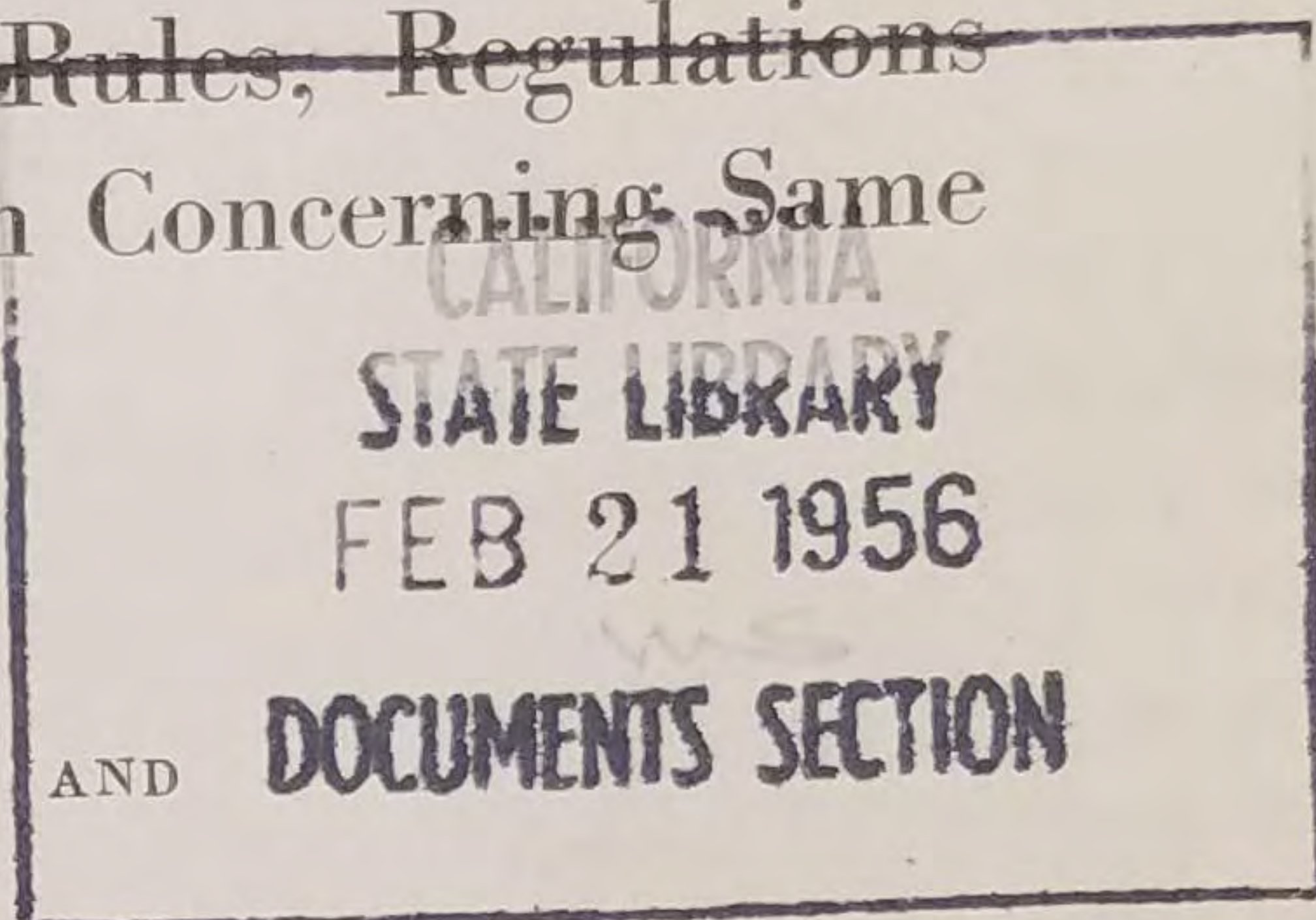
*California*



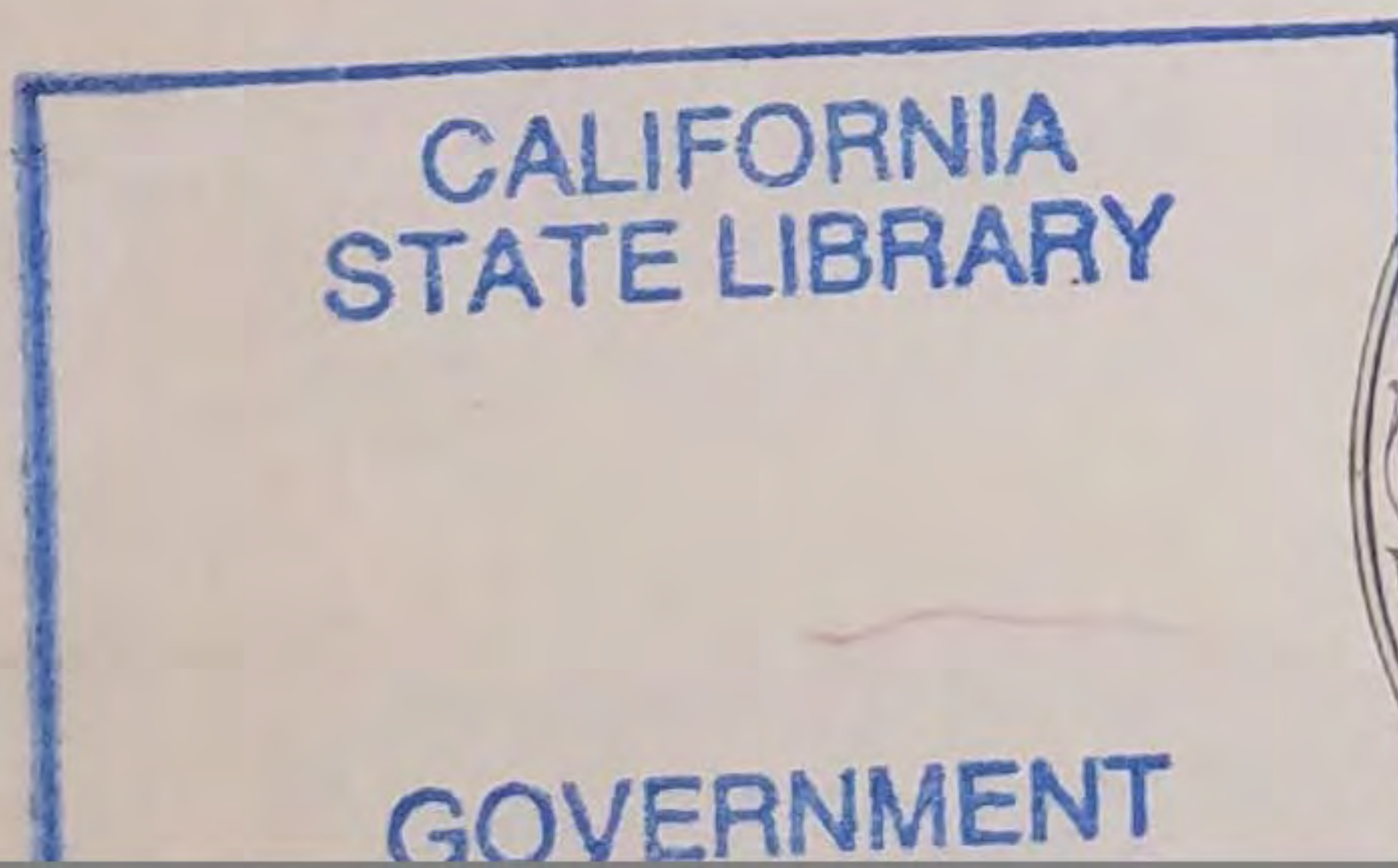
STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

# Laws Governing the Sale of School Lands in the State of California

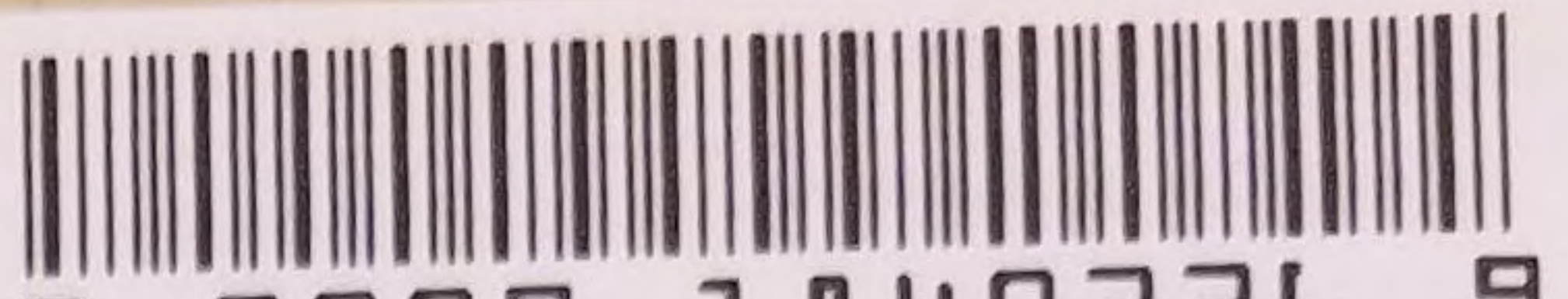
Together with ~~Rules, Regulations~~  
and Information Concerning ~~Same~~



List of the Vacant Lands on September 1, 1915



L400  
.L57  
1916  
c.2



0 2007 1840336 9

California State Library

STATE OF CALIFORNIA *Laws, Statutes, etc.*  
OFFICE OF SURVEYOR GENERAL

# Laws Governing the Sale of School Lands in the State of California

Together with Rules, Regulations  
and Information Concerning Same

AND

List of the Vacant School Lands on September 1, 1916

CALIFORNIA  
STATE LIBRARY

GOVERNMENT  
PUBLICATIONS



L400

L400

.L57

1919

c.2



0 2007 1840338 5

California State Library

STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

Laws Governing the Sale of School  
Lands in the State of California

Together with Rules, Regulations  
and Information Concerning Same

AND

List of the Vacant School Lands on July 22, 1919

CALIFORNIA  
STATE LIBRARY

GOVERNMENT



L400  
.L57  
1921  
c.2

CALIFORNIA. LAWS, STATUTES, ETC



STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

# Laws Governing the Sale of School Lands in the State of California

Together with Rules, Regulations  
and Information Concerning Same

AND

List of the Vacant School Lands on July 29, 1921

CALIFORNIA  
STATE LIBRARY  
DEC 21 1953  
IMENTS SECTION

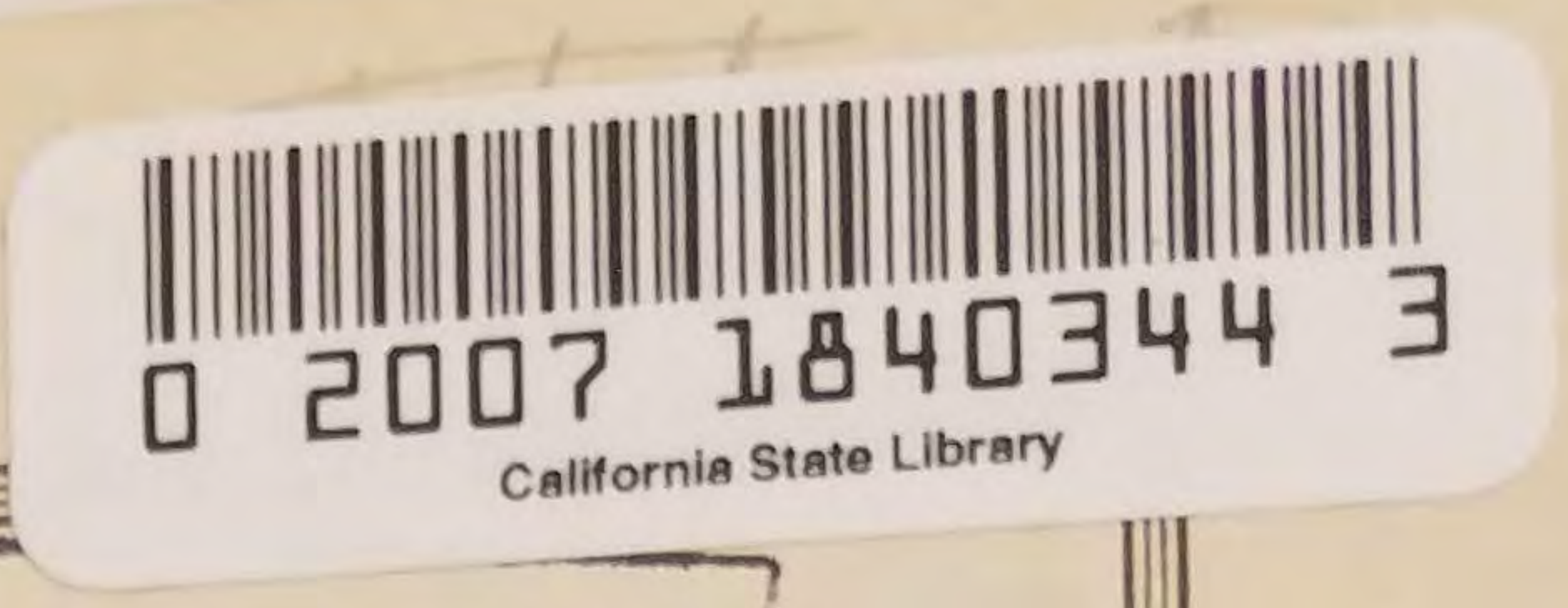


CALIFORNIA  
STATE LIBRARY  
GOVERNMENT  
PUBLICATIONS

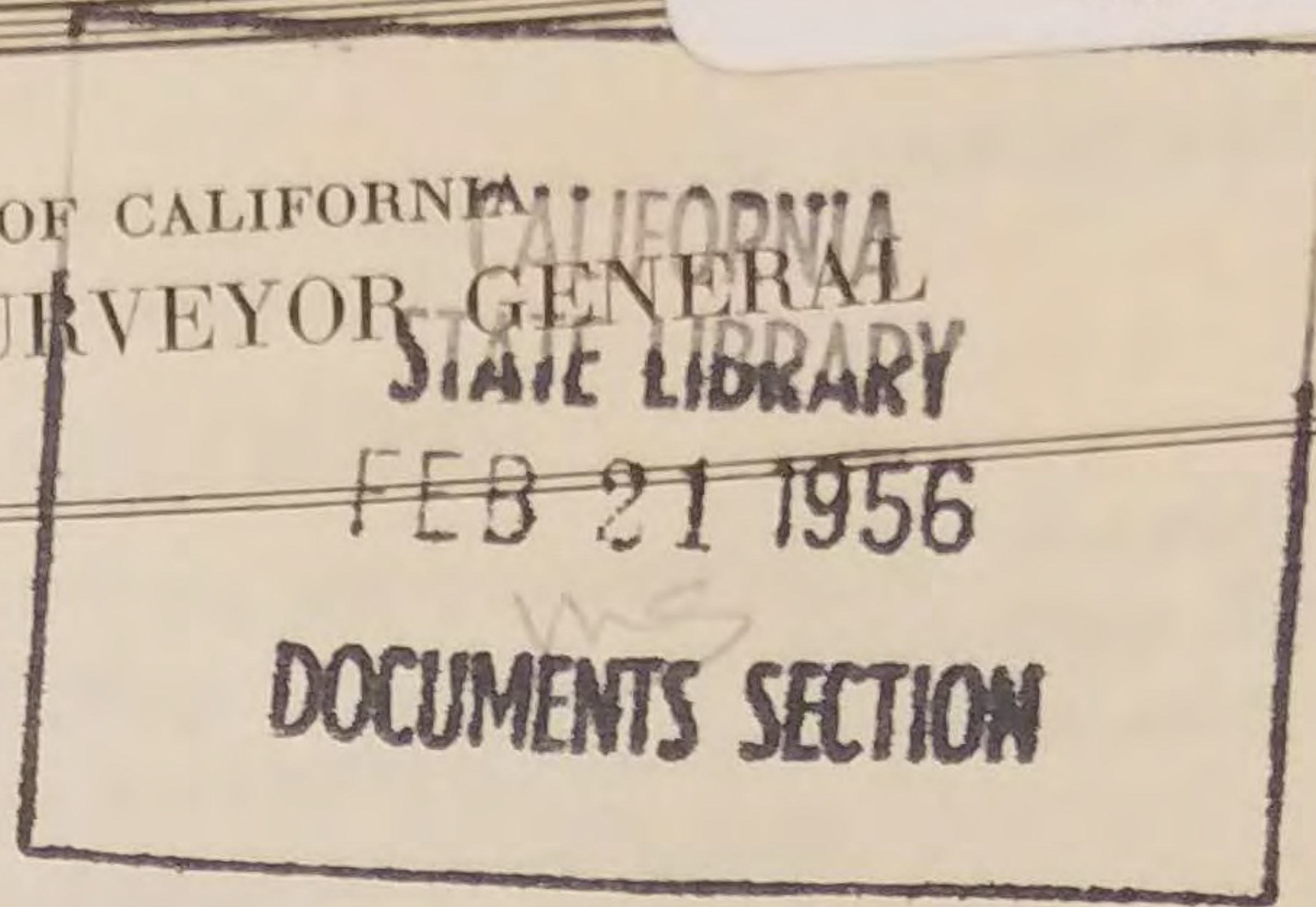
59  
927  
2

L400  
.L59  
1927  
c.2

*California Laws*



STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

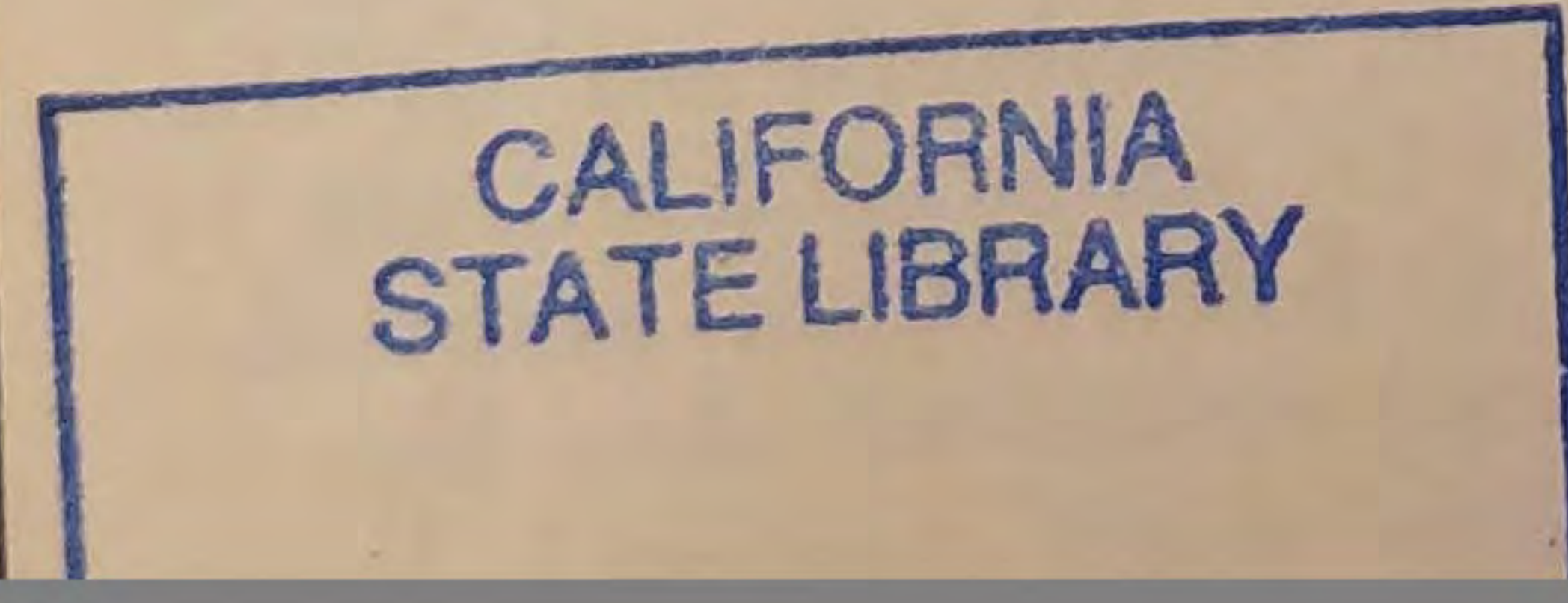


# Laws Governing the Sale of School Lands, and the Leasing of Lands, of the State of California

Together with Rules, Regulations  
and Information Concerning Same

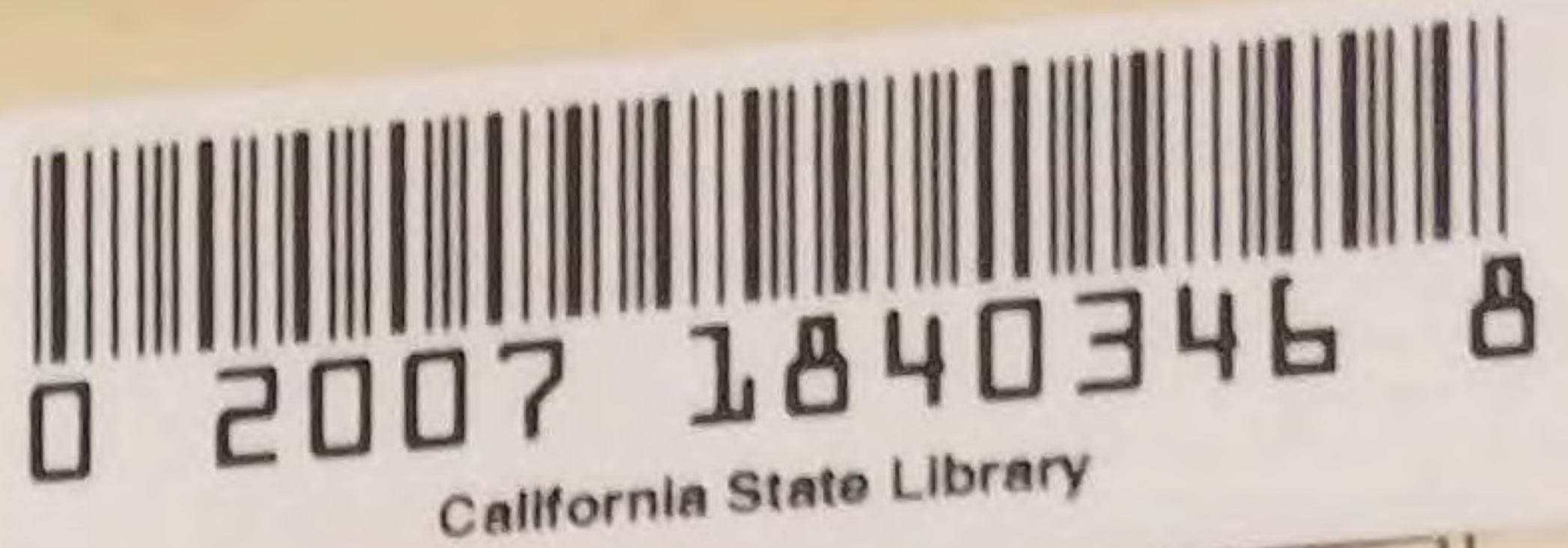
AND

List of the Vacant School Lands on June 1, 1927





L400  
.L59  
1929  
c.2



*California Law*

STATE OF CALIFORNIA  
DEPARTMENT OF FINANCE  
DIVISION OF STATE LANDS

# Laws Governing the Sale of School Lands, and the Leasing of Lands, of the State of California

Together with Rules, Regulations  
and Information Concerning Same

AND

List of Vacant School Lands on November 1, 1929

CALIFORNIA  
STATE LIBRARY  
FEB 21 1956  
DOCUMENTS SECTION



CALIFORNIA  
STATE LIBRARY

L400  
.L59  
1930

**NOT FOR CIRCULATION**

0 2007 1840347 6  
California State Library

STATE OF CALIFORNIA  
DEPARTMENT OF FINANCE  
DIVISION OF STATE LANDS

CALIFORNIA  
STATE  
LIBRARY  
DOCUMENTS DEPT.

Laws Governing the Sale of  
School Lands, and the Leas-  
ing of Lands, of the State of  
California

Together with Rules, Regulations  
and Information Concerning Same

— AND —

List of Vacant School Lands on November 1, 1930

CALIFORNIA  
STATE LIBRARY



L-400-259  
L-400-259  
L-400-259

HP Pavilion  
Works anywhere  
plays everywhere  
A compact laptop  
long battery  
HP Fast

L260

.S3

c.3

**of California  
Lands Commission**



**Draft: Feb. 3, 1975**

**INVENTORY OF UNCONVEYED STATE  
SCHOOL LANDS AND TIDE AND  
SUBMERGED LANDS POSSESSING  
SIGNIFICANT ENVIRONMENTAL VALUES.**

4  
36000  
S3L  
Cv2

STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

LIST of VACANT  
STATE SCHOOL LANDS

in

LASSEN, MODOC, DEL NORTE, HUMBOLDT  
AND MENDOCINO COUNTIES

MAY 1, 1924

CALIFORNIA  
STATE LIBRARY  
FEB 21 1956  
DOCUMENTS SECTION



STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

LIST of VACANT  
STATE SCHOOL LANDS

*in*

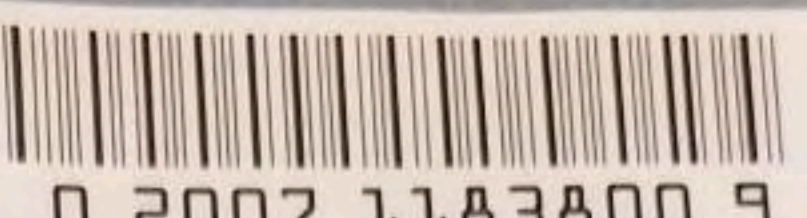
LASSEN, MODOC, DEL NORTE, HUMBOLDT  
AND MENDOCINO COUNTIES

MAY 1, 1924

CALIFORNIA  
STATE LIBRARY  
FEB 21 1956  
DOCUMENTS SECTION



F525  
S3  
c.2



0 2007 1183800 9  
California State Library

DOCUMENTS  
CALIFORNIA STATE PLANNING BOARD  
IF THIS DOCUMENT  
IS REMOVED FROM THE FILES  
A PROPER NOTE MUST BE LEFT  
AND THE ITEM RETURNED WHEN  
NO LONGER IN USE.

VACANT STATE SCHOOL LANDS

~~JUNE 20, 1936~~  
~~FEB 18, 1937~~  
February 13, 1936.

CALIFORNIA  
STATE LIBRARY

JUN 26 1945

DIVISION OF STATE LANDS DOCUMENTS SECTION

STATE CAPITOL

SACRAMENTO, CALIFORNIA

RETURN AFTER FIVE DAYS TO

STATE OF CALIFORNIA  
DEPARTMENT OF FINANCE  
DIVISION OF STATE LANDS  
SACRAMENTO

for Mr. L. Deming Tilton,  
Director of Planning,  
Calif. State Planning Board,  
434 Chamber of Commerce Bldg.  
Los Angeles, California.

L400  
.L57  
1921



0 2007 1840341 9

California State Library

STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

Laws Governing the Sale of School  
Lands in the State of California

Together with Rules, Regulations  
and Information Concerning Same

AND

List of the Vacant School Lands on July 29, 1921

CALIFORNIA  
STATE LIBRARY



L400

.L57

1919



0 2007 1840337 7

California State Library

STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

CALIFORNIA  
STATE  
LIBRARY  
DOCUMENTS DEPT.

# Laws Governing the Sale of School Lands in the State of California

Together with Rules, Regulations  
and Information Concerning Same

AND

List of the Vacant School Lands on July 22, 1919

CALIFORNIA  
STATE LIBRARY

GOVERNMENT  
PUBLICATIONS



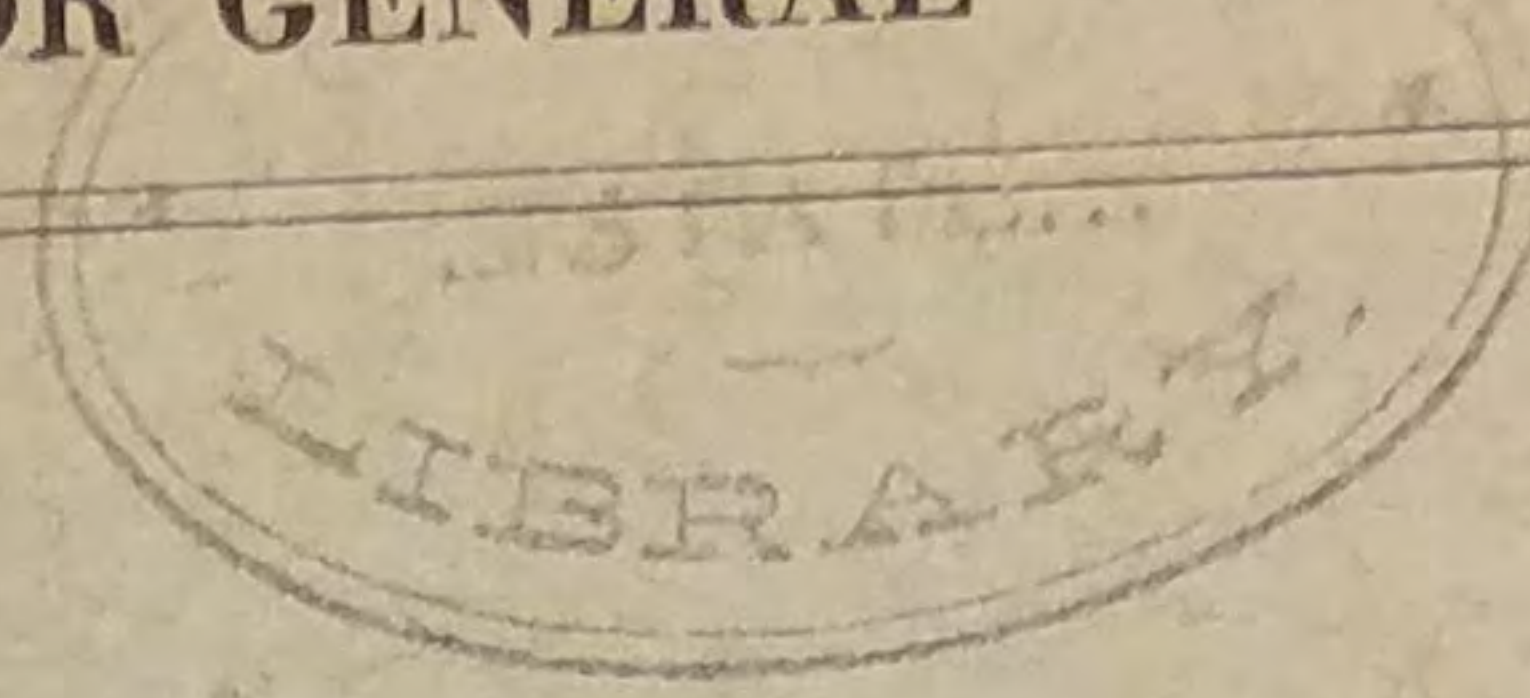
CALIFORNIA STATE PRINTING OFFICE  
SACRAMENTO



L400  
.L57  
1916



STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL



# Laws Governing the Sale of School Lands in the State of California

Together with Rules, Regulations  
and Information Concerning Same

AND

List of the Vacant School Lands on September 1, 1916

CALIFORNIA  
STATE LIBRARY

GOVERNMENT  
PUBLICATIONS



CIRCULATION

L400  
.L57  
1915

0 2007 1840339 3  
California State Library

STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

# Laws Governing the Sale of School Lands in the State of California

Together with Rules, Regulations  
and Information Concerning Same

AND

List of the Vacant Lands on September 1, 1915

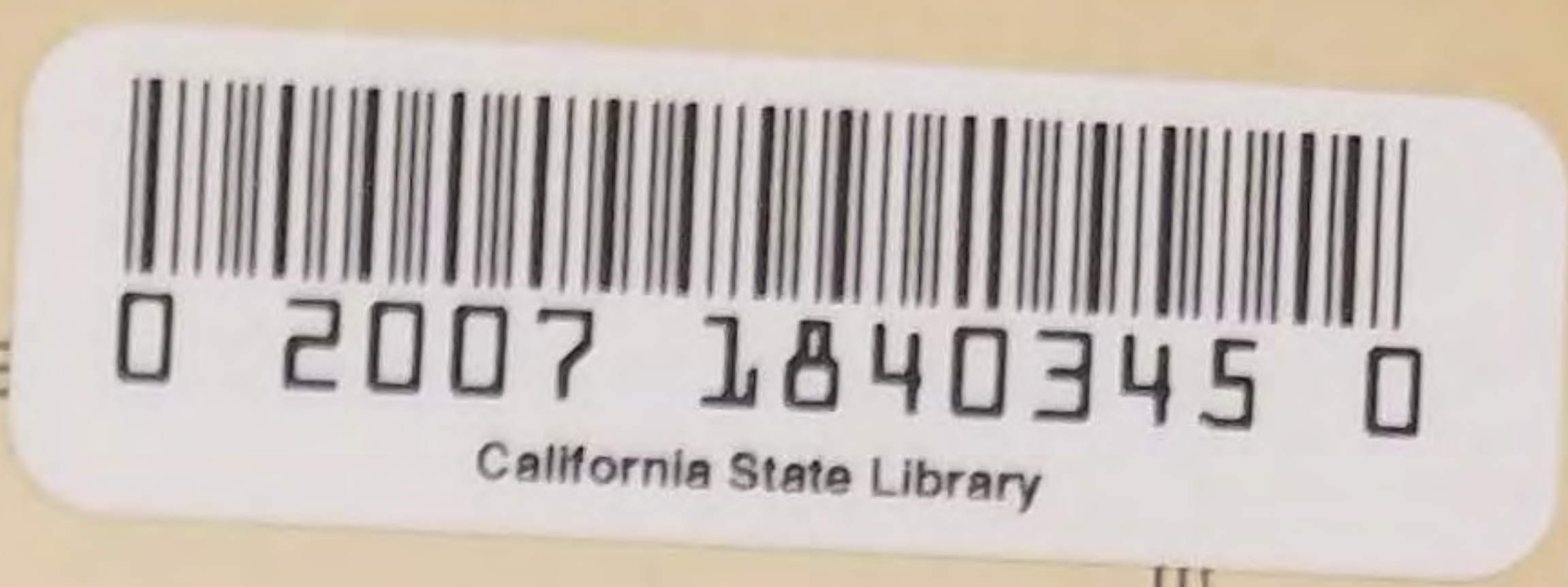


CALIFORNIA  
STATE LIBRARY

L59  
929

T FOR C

L400  
.L59  
1929



STATE OF CALIFORNIA  
DEPARTMENT OF FINANCE  
DIVISION OF STATE LANDS

CALIFORNIA  
STATE  
LIBRARY  
DOCUMENTS DEPT.

# Laws Governing the Sale of School Lands, and the Leasing of Lands, of the State of California

Together with Rules, Regulations  
and Information Concerning Same

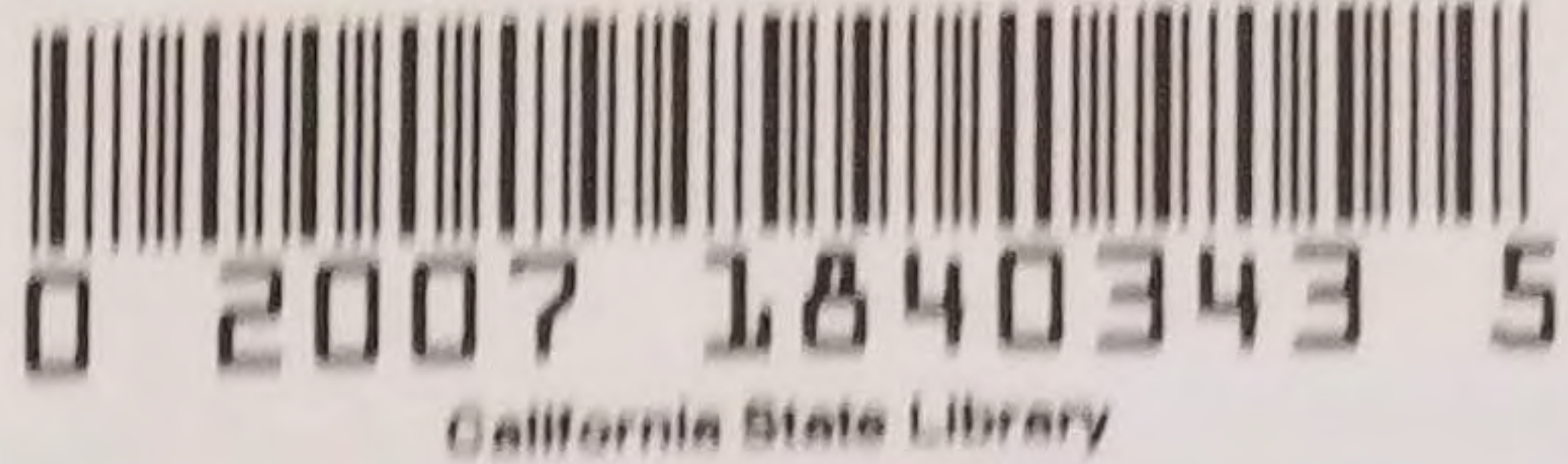
AND

List of Vacant School Lands on November 1, 1929



CALIFORNIA  
STATE LIBRARY

L400  
.L59  
1927



STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

CALIFORNIA  
STATE  
LIBRARY  
DOCUMENTS DEPT.

Laws Governing the Sale of  
School Lands, and the  
Leasing of Lands,  
of the State of  
California

Together with Rules, Regulations  
and Information Concerning Same

AND

List of the Vacant School Lands on June 1, 1927

CALIFORNIA  
STATE LIBRARY





0 2007 1836126 0

California State Library

STATE OF CALIFORNIA  
SURVEYOR GENERAL'S OFFICE  
AND  
STATE LAND OFFICE



SEPTEMBER 1, 1917.

Law Governing the Leasing of  
Certain State Lands of the  
State of California

AND

LIST OF STATE LANDS  
SUBJECT TO LEASE



3301  
L29

LIST OF VACANT STATE (SCHOOL LANDS  
UNDER THE JURISDICTION OF THE STATE LANDS COMMISSION



33 /  
L 79

LIST OF VACANT STATE (SCHOOL LANDS  
UNDER THE JURISDICTION OF THE STATE LANDS COMMISSION



Δ  
S6000  
S36  
C.2

STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

LIST of VACANT  
STATE SCHOOL LANDS

*in*

IMPERIAL, KERN, RIVERSIDE, SAN BERNARDINO  
AND SAN LUIS OBISPO COUNTIES

APRIL 1, 1926

TOGETHER WITH RULES, REGULATIONS AND INFORMA-  
TION CONCERNING SAME

And

LAW GOVERNING THE SALE OF SCHOOL  
LANDS AT PUBLIC AUCTION

CALIFORNIA  
STATE LIBRARY  
FEB 21 1956  
DOCUMENTS SECTION



CALIFORNIA STATE PRINTING OFFICE  
JOHN E. KING, STATE PRINTER



5360

STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

CALIFORNIA  
STATE  
LIBRARY  
DOCUMENTS DEPT.

LIST of VACANT  
STATE SCHOOL LANDS

*in*

LOS ANGELES, TEHAMA, LAKE  
AND MENDOCINO COUNTIES

MAY 1, 1925

TOGETHER WITH RULES AND REGULATIONS



6000  
3m

STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

CALIFORNIA  
STATE  
LIBRARY  
DOCUMENTS DEPT.

LIST of VACANT  
STATE SCHOOL LANDS

and

DATES OF SALES

in

MONTEREY, SANTA CLARA, LASSEN, MONO

AND INYO COUNTIES

TOGETHER WITH RULES AND REGULATIONS



56000  
53n  
c.2

STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

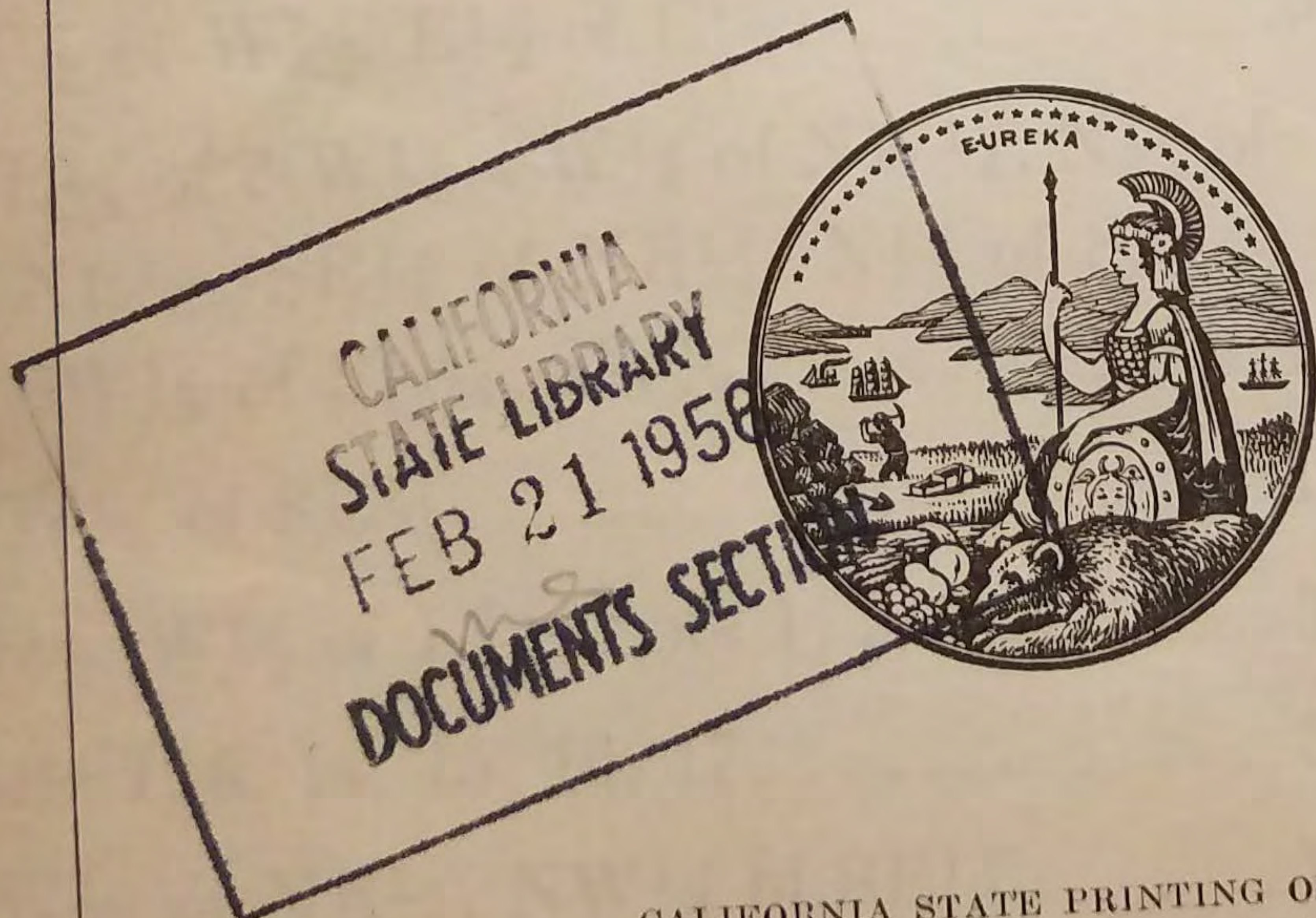
CALIFORNIA  
STATE  
LIBRARY  
DOCUMENTS DEPT

LIST of VACANT  
STATE SCHOOL LANDS

in

NAPA, SOLANO, SONOMA  
AND YOLO COUNTIES

MAY 1, 1924



CALIFORNIA STATE PRINTING OFFICE  
FRANK J. SMITH, Superintendent  
SACRAMENTO, 1924

6000  
3r

STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

*Only copy*

LIST of VACANT  
STATE SCHOOL LAND

in

RIVERSIDE COUNTY

JANUARY 1, 1924



CALIFORNIA STATE PRINTING OFFICE  
FRANK J. SMITH, Superintendent  
SACRAMENTO, 1924

30157

S  
6000  
S3s  
c.2



0 2007 0706200  
California State Library

STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

STATE  
LIBRARY  
DOCUMENTS

LIST of VACANT  
STATE SCHOOL LANDS

*in*

SAN BERNARDINO COUNTY

JANUARY 1, 1924



CALIFORNIA  
STATE LIBRARY  
FEB 21 1956  
DOCUMENTS SECTION

CALIFORNIA STATE PRINTING OFFICE  
FRANK J. SMITH, Superintendent  
SACRAMENTO, 1924

c. 2  
STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

LIST of VACANT  
STATE SCHOOL LANDS

*in*

SAN DIEGO AND  
IMPERIAL COUNTIES

MARCH 1, 1924

CALIFORNIA  
STATE LIBRARY  
FEB 21 1956



DOCUMENTS SECTION

000  
350

CALIFORNIA  
STATE  
LIBRARY  
DOCUMENTS DEPT.

STATE OF CALIFORNIA  
OFFICE OF SURVEYOR GENERAL

LIST *of* VACANT  
STATE SCHOOL LANDS

*in*

SIERRA, NEVADA, PLUMAS  
AND ALPINE COUNTIES

JUNE 1, 1924



**From:** [Janet Rogers](#)  
**To:** [CSLC CommissionMeetings](#)  
**Subject:** public comment for non-agenda item for Aug 2024  
**Date:** Tuesday, August 27, 2024 11:22:08 AM  
**Attachments:** [Governance of San Diego Bay and its Tidal Lands and Regions.pdf](#)

---

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

SLC Commissioners,

I am Janet Rogers, Co-Chair of the Embarcadero Coalition in San Diego.

I will be speaking on Thursday during non-agenda public comments.

Supplemental to my comments is the attached Grand Jury report about the Port of San Diego. Please take the time to read the report if you haven't already.

Thank you,

Janet Rogers



# ***GOVERNANCE OF SAN DIEGO BAY AND ITS TIDAL LANDS AND REGIONS***

## ***SUMMARY***

The 2022/2023 Grand Jury (Grand Jury) undertook an investigation of the San Diego Unified Port District (Port District), the County of San Diego and the five Port Cities of Chula Vista, Imperial Beach, Coronado, San Diego and National City to assess how these organizations interact around the governance of San Diego Bay tidal lands and resources. This assessment was undertaken in response to a perception that the Port of San Diego and its unelected seven-member Board of Commissioners is not accountable to either the elected officials or the electorate of its five member cities or the County of San Diego, especially in the planning, development and implementation of projects in those cities. The Port District is an independent governmental agency created by the State of California and approved by voters in Chula Vista, Coronado,<sup>1</sup> Imperial Beach, National City and San Diego in 1962 to manage the tidelands and submerged lands of San Diego Bay.

This report will briefly review previous Grand Jury reports on the Port District and look at its creation, governance, relation to State agencies, and funding. The Grand Jury will also investigate conflicts and issues surrounding the Port District's operations in regard to the equitable representation of residents of the five Port Cities and their governing bodies, as well as the residents of the County of San Diego and its residents. Finally, the Grand Jury will also discuss the Port District's planning process and how its proposed projects have affected the five Port Cities, the County of San Diego and residents of these regions.

The report's recommendations include increasing the Port District's public participation and transparency by:

- Scheduling regular updates and presentations at publicly noticed open meetings of the city councils of its member cities;
- Simplification of the Port Master Plans around the Port District Planning Districts falling within each of the Port City's jurisdictional boundaries and three of the County's supervisorial districts;
- Submitting the Port Master Plan, and all future updates and amendments, to the relevant city council and County Supervisor for discussion and ratification;
- Lobbying the California State Legislature to introduce legislation enabling the County of San Diego to assume oversight of the activities of the San Diego Unified Port District and decisions of the Board of Port Commissioners, and share in the Port District's duty as guardian of the public trust in the tidal and submerged lands of San Diego Bay;
- Depending on the outcome of the legislation recommended above, exploring an alternate form of governance for the Port District, with participation from the County Board of Supervisors and elected officials of the five member cities;
- Encourage a limit of two four-year terms that a Port Commissioner can serve;
- Include staff from each of the five cities on each of the Port District's advisory committees; and
- Post meeting minutes and agendas of each of the Port District's advisory committees on-line.

---

<sup>1</sup> While the 1962 vote to approve creation of the Port involved tallying the combined votes of the five port cities, voters in the City of Coronado voted against Proposition D by a margin of 3 to 1.

## ***INTRODUCTION***

“We can do whatever we want, right?”<sup>2</sup> The words were spoken – and repeated several times-- by a commissioner of the San Diego Unified Port District during a public meeting of the Board of Port Commissioners. A Commissioner went on to describe what was believed to be “the absolute sovereignty of this board to make any decision that we want from this dais at any time.”<sup>3</sup> The comment was made during a discussion of the changes proposed for the Port District’s policy on Capital Improvement Projects, and while made in the specific context of achieving greater flexibility for capital project funding, inadvertently characterized the broad authority and perceived nature of this organization – led by a seven-member unelected board of commissioners, largely autonomous, self-governing, self-funded and independent of oversight by local elected officials.

The 2022-23 San Diego County Grand Jury (Grand Jury) is not alone in its concern over the lack of oversight, transparency and accountability of an organization with such far reaching power and jurisdiction. Over the last several decades, two separate San Diego County Grand Juries have reached similar conclusions, the earliest being the 1986-87 Grand Jury and more recently the 1997-98 Grand Jury.

The 1986-87 Grand Jury Report concluded, “An enterprise of the scope and importance of the Port District must include a strong concern for community relations, public input and accountability ... yet, in the public’s mind, it conducts itself as does a private company, responsible only to its stockholders. The fact is that it is a public corporation, guarding a public trust and spending public money.”<sup>4</sup> Similarly, the synopsis of the 1997-98 Grand Jury report concluded that the seven commissioners of the Port District “are viewed as operating with almost unlimited discretion regarding how they spend money with minimal accountability. Commissioners are not required to gain approval for their actions from the voting public or even from the city councils which appoint them.”<sup>5</sup>

In practice, the Port District requires a fiduciary oath of its commissioners to act in the best interests of the Port District, and in its role as guardian of the public trust, to the benefit of the residents of California. As appointees of one of five Port District cities, each commissioner must also represent the perspectives of the city appointing them as commissioner.

In representing the *interests* of the Port District but only the *perspectives* of the port cities appointing them, a dichotomy is created. The dichotomy allows port commissioners to manage the valuable resources of San Diego Bay in a unified, comprehensive manner but limits elected governments of the Port Cities and their constituents in making their views known or in determining the actions that are in their best interests. As a result, this dichotomy leads not only to voter disenfranchisement, but to a disconnection between elected municipal governments and their constituents, who must subordinate and subject their interests to the interpretations of the unelected Board of Port Commissioners.

---

<sup>2</sup> San Diego Unified Port District Port Commissioners Meeting, September 13, 2022, video recording @ 1:14:25. [Board of Port Commissioners on 2022-09-13 1:00 PM \(granicus.com\)](#)

<sup>3</sup> San Diego Unified Port District Port Commissioners Meeting, September 13, 2022, video recording @ 1:15:50. [Board of Port Commissioners on 2022-09-13 1:00 PM \(granicus.com\)](#)

<sup>4</sup> 1986-87 San Diego County Grand Jury, The County of San Diego and The San Diego Unified Port District Report No. 15, June 30, 1987, page 5-6.

<sup>5</sup> 1997-98 San Diego County Grand Jury, The San Diego Unified Port District: It’s Time for Taxpayers and Citizens to Have a Direct Say, Final Report, June 30, 1998, page 103.

Severe as these assessments are, they are rooted in the San Diego Unified Port District Act (Port Act)<sup>6</sup>, enacted by the California Legislature in 1962, through which the State of California delegates the power and responsibility for management of the tidelands and submerged lands of San Diego Bay. The Port Act delegates these powers to the Port District from the California State Lands Commission (SLC) as guardian of these tidelands and submerged lands through the public trust doctrine. This doctrine “provides that tide and submerged lands and the beds of lakes, streams and other navigable waterways are to be held in trust by the State for the benefit of the people of California.”<sup>7</sup> The Port District acts in this capacity as an independent governmental special district without direct oversight of its seven commissioners by other local city or county agencies. The unsalaried commissioners are appointed to four-year terms by city councils of each of the five cities that border San Diego Bay, (San Diego, Chula Vista, Coronado, Imperial Beach, and National City). While the commissioners must reside in the city that appointed them, they can serve an unlimited number of four-year terms, except in the City of Coronado which limits its port commissioners to two terms. Port commissioners may be recalled by majority vote of the city council which appointed them. Other than these limitations, no oversight by local governmental bodies is authorized by the Port Act, and decisions by the Board of Port Commissioners are not subject to approval, veto or appeal by city councils or voters of the five Port Cities or the county.<sup>8,9</sup>

Democratic theory equates responsible government with popular participation in and control over policy formulation, political equality for the individual, deciding divisions of opinion by majority rule with complete freedom of discussion, and periodically holding free and meaningful elections.<sup>10</sup> Yet by virtue of the legislation that created the San Diego Unified Port District, values such as these that citizens have come to expect in our governmental legislative, regulatory and judicial institutions have not been embraced.

## ***METHODOLOGY***

The Grand Jury conducted interviews and requested information from municipal and county governmental organizations affected by the Port Act.

The Grand Jury researched and reviewed these documents:

- California Harbors and Navigation Code, Appendix I, also known as the San Diego Unified Port District Act (Port Act)
- The 1986-1987 Grand Jury report: “The County of San Diego and the San Diego Unified Port District, Report No. 15” and responses
- The 1997-1998 Grand Jury report: “The San Diego Unified Port District: It’s Time for Taxpayers and Citizens to Have a Direct Say” and responses from the cities of San Diego, Chula Vista, Coronado, Imperial Beach, and National City
- Meeting Minutes and Agendas from the cities of San Diego, Chula Vista, Coronado, Imperial Beach, and National City as well as the San Diego Unified Port District
- Historical records and articles relating to formation of the Port District (per footnotes)
- Grand Jury Reports on Ports in other California Counties

---

<sup>6</sup> California Harbors and Navigation Code, Appendix 1, San Diego Port District Act, Document no. 70987, filed March 3, 2020, Office of the District Clerk.

<sup>7</sup> <https://www.slc.ca.gov/public-engagement/>

<sup>8</sup> California Harbors and Navigation Code, Appendix 1, San Diego Port District Act

<sup>9</sup> The City of Coronado limits the number of terms served by Port Commissioners to two terms

<sup>10</sup> Bachrach, Peter. The Theory of Democratic Elitism (Chicago, 1962), p. 94.

- San Diego Unified Port District Website: [www.portofsandiego.org](http://www.portofsandiego.org)
- Detailed electronic maps showing specific boundaries and areas within the San Diego Unified Port District

## ***DISCUSSION***

### ***Creation of the San Diego Unified Port District***

When California became a state in 1850, it acquired title to navigable waterways as trustee for the protection of public lands, streams, lakes, marshlands, and tidelands. This is referred to as common law public trust doctrine. Per the State of California State Lands Commission (SLC), “The public’s right to use California’s waterways for navigation, fishing, boating, natural habitat protection and other water-oriented activities is protected by the Common Law doctrine of the Public Trust.” Historically, the Public Trust has referred to the basic right of the public to use its waterways to engage in “commerce, navigation, and fisheries.” The SLC further states that the “Public Trust provides that tide and submerged lands and the beds of lakes, streams and other navigable waterways are to be held in trust by the State for the benefit of the people of California.”<sup>11</sup>

### ***San Diego Unified Port District: Unique Among California Ports***

The San Diego Unified Port District is unique among California’s 12 ports in its establishment by state law. According to the Port Act, this was necessary because of the geography and other special characteristics of the locale:

It is hereby declared to be the policy of the State of California to develop the harbors and ports of this State for multiple purpose use for the benefit of the people. A necessity exists within San Diego County for such development. Because of the several separate cities and unincorporated populated areas in the area hereinafter described, only a specially created district can operate effectively in developing the harbors and port facilities. Because of the unique problems presented by this area, and the facts and circumstance relative to the development of harbor and port facilities, the adoption of a special act and the creation of a special district is required.<sup>12</sup>

With passage of the enabling Proposition D in November 1962, the SLC granted regulation and control of the tidelands and submerged lands of San Diego Bay to the newly created Port District. Following passage of San Diego County’s Proposition D, the cities of San Diego, Chula Vista, Coronado, Imperial Beach, and National City were to transfer the management of state tidal and submerged lands in San Diego Bay to the jurisdiction of a newly formed San Diego Unified Port District.

### ***Proposition D Controversy***

Passage of Proposition D was not obtained without controversy. Prior to the election, the city councils of Coronado, Imperial Beach and Chula Vista opposed formation of the Port District. Supporters of the proposition focused on the economic benefits made possible by the combined efforts of Port Cities on such projects as construction of South Bay channel and the resulting job growth from expansion of industrial development and maritime activities. Opponents of the proposition focused primarily on the potential control wielded by an unelected board of port commissioners who would have the power to

---

<sup>11</sup> <https://www.slc.ca.gov/public-engagement/>

<sup>12</sup> California Harbors and Navigation Code, Appendix 1, San Diego Port District Act, §2, pg 7. <https://pantheonstorage.blob.core.windows.net/administration/San-Diego-Unified-Port-District-Act.pdf>, March 3, 2020.

issue bonds, levy taxes and develop local tideland resources without input from individual Port Cities. Another concern was the unequal number of commissioners allocated to each of the Port Cities; the City of San Diego would get three commissioners while each of the remaining four Port Cities would get one commissioner each, potentially allowing San Diego to exert dominance over Port Commission resources and priorities.<sup>13</sup>

A study commissioned by the Coronado Chamber of Commerce three months prior to the 1962 election suggested that instead of the simple majority required by the Port Act to constitute a quorum for Commissioners to conduct business, the act be amended to require a quorum of at least two commissioners from the four Port Cities of Coronado, Imperial Beach, Chula Vista and National City. An additional change in the make-up of the port commission was also suggested to include only two San Diego Commissioners, one commissioner from San Diego County, and one each from the four other Port Cities, allowing appointment of a commissioner representing interests of unincorporated bay front areas of the county.<sup>14</sup>

While Proposition D was approved by a majority of voters in the cities of San Diego, Chula Vista, Imperial Beach and National City, the proposition was defeated in Coronado by a 3 to 1 margin. An unsuccessful lawsuit filed by Coronado, Imperial Beach and Chula Vista attempted to make acceptance of membership in the Port District optional, resulting in a temporary delay, but formation of the Port District was completed on December 18, 1963, following certification of the votes cast for Proposition D in the November 6, 1962 election.<sup>15</sup>

### ***Port District Funding of Operations***

Port District operations are financed primarily through leases and fees generated through its real estate operations, parking, harbor police and other services or fees provided to public or commercial customers of the Port District. As a landlord, the Port District generates most of its revenue from tenants and subtenants who pay rent or fees to conduct business on tidelands. The list includes hotels, restaurants, retail shops, marinas, landings, yacht clubs, shipyards, cargo operators, aerospace firms and cruise ships. While allowed by the Port Act to do so, the Port District does not collect taxes. Various provisions of the Port Act also allow the Port District to issue general obligation, revenue bonds or levy property or other forms of taxation.

In the Fiscal Year ending June 30, 2022, over \$90 million, or 55% of the Port District's operating revenue were generated by leases and other Real Estate revenue, while parking, maritime and other fees provided another \$77 million in operating revenue, or approximately 45% of operating revenues.

Like commercial business entities that are dependent on revenue streams to remain viable, economic activities that support the Port District's operations have also represented a significant source of economic risk. Recently, impacts of the COVID-19 pandemic on Port District operations severely limited most revenue generating Port District activities, resulting in a \$19.3 million loss in the fiscal year ending June 2021 and prompting one Port Commissioner to consider the need to "analyze and

---

<sup>13</sup> San Diego County Registrar of Voters, Arguments for and Against Proposition D, San Diego County General Election, November 7, 1962.

<sup>14</sup> The Wyatt Report: Here's Text of Advisory on United Port, San Diego Evening Tribune, August 22, 1962, A14-A15.

<sup>15</sup> Ibid.

understand options for potential taxation.”<sup>16</sup> However, the Port District qualified for \$29 million in stimulus fund assistance in the following year, leading to the generation of a \$68.3 million income in the fiscal year ending June 2022.<sup>17</sup>

While these tidelands-associated revenue streams allow the Port District to operate free of budget constraints typical of other state or local government agencies, the need to generate such revenue can lead to a significant source of bias in the deliberations of Port Commissioners and obscure motives and objectives of staff at all levels of the organization. In a recent informal briefing by the Port District, a sizeable, expected return on investment from a proposed project was praised as a justification for the large public investment of tax dollars needed to fund the project, with less emphasis placed on the project’s other characteristics.

### ***Balanced Interests?***

The Grand Jury investigation revealed many concerns by the Port District’s stakeholders. Smaller Port Cities reported a lack of follow through or investment in their cities proportional to the revenue generated for the Port District by tidelands activities occurring in their municipal boundaries. Others cite a lack of prioritization for projects not associated with lucrative leasing contracts or other significant revenue sources. The Grand Jury acknowledges such views, and sees the dilemma faced by the Port District in balancing the many diverse and potentially competing municipal, state and public interests it must manage as both nuanced and complex in ways less understood by the public in general, and in some cases by the city and county governments it serves.

How does a port commissioner balance or prioritize the needs or interests of separate communities, neighborhoods or municipalities against one another or against the interests of the Port District itself? As the adage goes, actions speak louder than words; perhaps recent activities by the Port District and votes by the Board of Port Commissioners can help to answer such questions.

### ***Chula Vista Hotel and Convention Center***

The key piece of the Chula Vista Bayfront Master Plan is the Gaylord Pacific Resort and Convention Center, a \$1.1 billion project that broke ground in 2022 for a 1,600-room hotel alongside a 275,000 square foot convention center on a 36.5-acre site. In 2012, after almost a decade of planning, the City of Chula Vista and the Port District received approval from the California Coastal Commission for this project allowing for the conversion of 535 acres of vacant and industrial property into a Resort Hotel and Convention Center, RV Park, and parking structure. An existing motel, also part of the project sits on land adjacent to Port District boundaries.

The project is important because both the City of Chula Vista and the Port District collaborated on the Master Plan and were involved in seeking its approval, and both parties consider the development project a great success. The Grand Jury investigation revealed an alignment of interests of both parties centered on the regional economic benefits from development of these underused and undervalued tideland assets. Both parties were fully engaged, fully committed and enjoyed the support of the community during all phases of the project, from the initial master plan approval to selection of the

---

<sup>16</sup> Jennifer Van Grove, San Diego’s Bayfront is Controlled by a Little-understood Agency With Power That Will Be Tested in The New Year, February 5, 2021, page 13; [San Diego's bayfront is controlled by a little-understood agency with power that will be tested in new year - The San Diego Union-Tribune \(sandiegouniontribune.com\)](https://www.sandiegouniontribune.com)

<sup>17</sup> San Diego Unified Port District, Annual Comprehensive Financial Report, Fiscal Years Ended June 30 2022 and 2021. Page 48, [CAFR-2022 \(window https://pantheonstorage.blob.core.windows.net/administration/2022-ACFR-final.pdf\)](https://pantheonstorage.blob.core.windows.net/administration/2022-ACFR-final.pdf)

operator and developer, as well as the formation of multiple financing agreements. Both parties are to share in the public infrastructure costs expected to approach \$370 million, but also retain shares of excess revenues.

### ***Dole Fruit Company Contract***

First signed in 2002, this agreement leased portions of San Diego’s 10<sup>th</sup> Avenue terminal to Dole Fruit Company for imports of fruit into the U.S. west coast market. Primary operations centered on long-haul trucking operations delivering fruit to many sites in the Southern California region, as well as short-haul trucking operations to sites in San Diego County. The short-haul local operations involved many more trips by smaller-sized trucks and were perceived to create a more significant source of air pollution than long-haul operations which involved larger loads and fewer trips on semi-trailer trucks.

Following negotiation for a 25-year lease extension through 2036, terms were not released until three days prior to the proposal’s approval by the Board of Port Commissioners on August 14, 2012. The agreement not only extended Dole’s lease, but also moved its short-haul trucking operation out of San Diego’s Barrio Logan neighborhood. This move was perceived to reduce pollution in an area already affected by significant pollution from the nearby freeway and industrial maritime and manufacturing activities. However, the short-haul trucking operation was only relocated to a location in the neighboring city of National City, thereby increasing pollution that potentially affected the health and well-being of nearby residents of that city.

The actions taken by the Port District in approving the Dole Fruit Company lease, reduced potential health hazards for residents of San Diego’s Barrio Logan neighborhood at the expense of the health of National City residents.

### ***Mitsubishi Cement Factory***

The Port District recently considered an application by Mitsubishi Cement Corporation (Mitsubishi) for a Coastal Development Permit (CDP) that would allow Mitsubishi to construct and operate a cement import, storage, loading and distribution facility within the Tenth Avenue Marine Terminal.<sup>18</sup>

Beginning in 2015, Mitsubishi had been negotiating with the Port District to ship cement-making materials to the Port-operated Tenth Avenue Marine Terminal warehouse for storage and shipment to Southern California construction sites. Nearby residents perceived the project would have introduced a new significant source of pollution to surrounding neighborhoods already experiencing pollution from maritime and industrial activities and freeways in the area.

While the Port District has approved a Maritime Clean Air Strategy (MCAS) to replace diesel fuel burning trucks with electric vehicles by 2030, the technology supporting zero emission electric power for vehicles the size of cement trucks was not yet available, and the Port District announced in a press release that negotiations with Mitsubishi “were not moving forward,” but expressed a willingness to re-consider the proposal, “should the day come when they want to re-open negotiations.”<sup>19</sup>

---

<sup>18</sup> San Diego Unified Port District, Ordinance 2936, February 25, 2019, <https://pantheonstorage.blob.core.windows.net/administration/Ordinance-No-2936.pdf>

<sup>19</sup> San Diego Unified Port District, Port of San Diego Issues Statement on Mitsubishi Cement Proposal, General Press Release, February 1, 2023, <https://www.portofsandiego.org/press-releases/general-press-releases/port-san-diego-issues-statement-mitsubishi-cement-proposal>

The process for evaluation of such projects by the Port District is well established and logical in its progression from the proposal, preliminary approval, planning, development, environmental and coastal commission review phases. Yet consideration of the project by a local elected governmental entity might have given greater priority to the health concerns of community members and resulted in a more equitable balance between economic and health concerns earlier in the project's evaluation process.

### ***Coronado Cottages at the Cays***

Recent decisions by the Port District surrounding the proposed Cottages at the Cays Project on Coronado's North Grand Caribe Isle exemplify the disconnection and disenfranchisement of the voting public and elected governmental bodies resulting from the Port District's independence from local governmental oversight. The Port District had considered a development application from a lessee of property on Coronado's North Grand Caribe Island to build 41 two-bedroom short stay units limited to six guests per unit. In a letter addressed to the Board of Port Commissioners dated December 23, 2022, the Mayor of Coronado expressed strong opposition to the project, stating, "this project does not reflect the will of the community or the Coronado City Council." Specific objections to the project cited in the letter included:<sup>20</sup>

- A unanimous vote by the Coronado City Council in opposition to the proposed project.
- Opposition from community groups such as the Coronado Cays Homeowner's Association and community members who provided petitions in opposition.
- Reversal of the Port District policy refined in the 2021 Port Master Plan Update (PMPU) to "expressly disallow the development of more hotel rooms and to convert the land use designation to Recreational Open Space, which preserves the area for environmental preservation and complete public access."
- The project would create "preferential access to those that can afford what will most likely be costly room rates similar to other hotel rates in the area."
- The project contravenes the PMPU commitment for the "protection and management of natural resources that best reflect environmental stewardship for present and future generations", on property expected to be highly vulnerable to sea level rise in the decades to come.
- The project would "create a hotel use which is not compatible with the surrounding residential area..." posing significant traffic impacts and safety concerns on the community of approximately 1,200 homes which can only be accessed through a single entrance.

Due to policies governing the rights of lessees, The Port District was obligated to present this development proposal for a vote to the Board of Port Commissioners. In addition, the Port District viewed the land use designation of Recreational Open Space for the parcel reflected in the 2021 Port Master Plan Update as being unbinding and preliminary, pending approval by the California Coastal Commission. Had it been approved, this land use would have represented a land use inconsistent with the Coronado Cays development proposal which required a Commercial Open Space designation currently in place for the property. On February 14, 2023, the Board of Port Commissioners approved the Cottages at the Cays Project by a vote of 4-3 in favor of initiating a California Environmental Quality Act (CEQA) review, followed by consideration of a Port Master Plan Amendment to add the project to the Port Master Plan, prior to application by the developer for a coastal development permit.

---

<sup>20</sup> Mayor Richard Bailey, Letter of Opposition to Cottages at the Cays Development Project Proposal, December 23, 2022.



### ***Who Watches the Watchers? California Coastal Commission and State Lands Commission***

In response to the Grand Jury's concern that the Port District is largely autonomous, self-governing, self-funded and independent of oversight by local elected officials, the Port District views the oversight of its decisions and activities provided by the California State Lands Commission (SLC) and the California Coastal Commission as more than adequate.

The SLC oversight is to ensure Port District activities are consistent with the public trust doctrine. In this role the Port District consults with the SLC on an as needed basis, to seek clarification, advice and guidance in matters affecting the Port District's role as guardian of the public trust for San Diego Bay. If determined to be inconsistent with this doctrine, the SLC could direct the Port District to stop, discuss and resolve the issues causing such concern.

In addition to the State Lands Commission and California Coastal Commission approvals, the CEQA requires that "state and local agencies consider environmental protection in regulating public and private activities and should not approve projects for which there exist feasible and environmentally superior mitigation measures or alternatives." In the absence of any documented exemptions provided for in the act, CEQA requires the publication of detailed Environmental Impact Reports for projects approved by the Port District for public review and comment.<sup>21</sup>

Requirements of the California Coastal Commission and CEQA also affect Port District activities relating to the approval of the Port Master Plan, Master Plan Updates or Amendments. In addition, Port District approved projects often require a coastal development permit from the California Coastal Commission.

While members of port city councils or San Diego County Supervisors have no direct oversight of Port District activities or ability to appeal decisions of the Board of Port Commissioners, the Port District indicated the existence of multiple venues to make their views known, and commissioners as a whole place a very high value on the desires of member cities. In addition, the public has access to most of the public meetings of the SLC, California Coastal Commission and also to regular meetings of the Board of Port Commissioners, as well as access to the public websites of these organizations. Also, decisions of the three-member California Coastal Commission can be appealed with the agreement of two of three commissioners to first hear the appeal and then vote to reverse their decision.

### ***Public Participation and the Port District of San Diego***

The Grand Jury noted meetings of the Board of Commissioners are posted on the Port District's website and that public participation is allowed. Meeting agendas are posted, and minutes are made available. In addition, the Board of Port Commissioner meetings are recorded, and recordings are available for public viewing. The Port District's policy regarding public participation is spelled out in Board of Port Commissioners Policy 060 which was adopted June 10, 2008.<sup>22</sup>

The Board of Port Commissioners also formed several subcommittees, forums, or working groups to solicit public input in the Board's decision-making process. "In setting policies for our dynamic waterfront, the Port District of San Diego seeks to make decisions that are in the public interest. To that end, the Board of Port Commissioners has formed various committees, forums and working

---

<sup>21</sup> California Environmental Quality Act, Chapter 1: Policy (archive.org)

<sup>22</sup> BPC-Policy-No-060-Public-Participation-in-Board-of-Port-Commissioners-Board-Meetings.pdf.  
<https://pantheonstorage.blob.core.windows.net/administration/>

groups to discuss current issues. These meetings are an important tool for gathering information, exploring ideas, and obtaining feedback for use in decision making by the Board.”<sup>23</sup>

These groups include the Accessibility Advisory Committee; Arts, Culture, and Design Committee; Audit Oversight Committee; Bayfront Cultural and Design Committee Chula Vista; Chula Vista Bayfront Facilities Financing Authority; Environmental Advisory Committee; Maritime Forum; San Diego Harbor Safety Committee; Wildlife Advisory Group; and World Trade Center San Diego.

Researching information available on the Port District’s website, the Grand Jury notes that agendas and meeting minutes for some but not all the advisory committees are available. The screenshot below documenting the information concerning the Port’s Environmental Advisory Committee for all years available.<sup>24</sup>

**All Meetings**

List View **Calendar View**

Search:  All Years  Environmental Advisory Committee  notes  closed captions

Search Calendar  Help

10 records  Group  Export

Name	Meeting Date	Meeting Time	Meeting Location	Meeting Details	Agenda	Accessible Agenda	Agenda Packet	Minutes	Accessible Minutes	Video	eComment
<a href="#">Environmental Advisory Committee</a>	9/14/2022	9:30 AM	Virtual Meeting REVISED AGENDA	<a href="#">Meeting details</a>	<a href="#">Agenda</a>	<a href="#">Accessible Agenda</a>	Not available	Not available	Not available	Not available	Not available
<a href="#">Environmental Advisory Committee</a>	6/8/2022	9:30 AM	Virtual Meeting	<a href="#">Meeting details</a>	<a href="#">Agenda</a>	<a href="#">Accessible Agenda</a>	Not available	Not available	Not available	Not available	Not available
<a href="#">Environmental Advisory Committee</a>	3/16/2022	9:00 AM	Virtual Meeting	<a href="#">Meeting details</a>	<a href="#">Agenda</a>	<a href="#">Accessible Agenda</a>	Not available	Not available	Not available	Not available	Not available
<a href="#">Environmental Advisory Committee</a>	12/1/2021	9:30 AM	Virtual Meeting	<a href="#">Meeting details</a>	<a href="#">Agenda</a>	<a href="#">Accessible Agenda</a>	Not available	Not available	Not available	Not available	Not available
<a href="#">Environmental Advisory Committee</a>	9/22/2021	9:30 AM	Virtual Meeting	<a href="#">Meeting details</a>	<a href="#">Agenda</a>	Not available	Not available	Not available	Not available	Not available	Not available
<a href="#">Environmental Advisory Committee</a>	6/2/2021	9:30 AM	Virtual Meeting	<a href="#">Meeting details</a>	<a href="#">Agenda</a>	Not available	Not available	Not available	Not available	Not available	Not available
<a href="#">Environmental Advisory Committee</a>	3/17/2021	9:30 AM	Virtual Meeting	<a href="#">Meeting details</a>	<a href="#">Agenda</a>	Not available	Not available	Not available	Not available	Not available	Not available
<a href="#">Environmental Advisory Committee</a>	12/2/2020	9:30 AM	Virtual Meeting	<a href="#">Meeting details</a>	<a href="#">Agenda</a>	Not available	Not available	Not available	Not available	Not available	Not available
<a href="#">Environmental Advisory Committee</a>	9/16/2020	9:30 AM	Virtual Meeting	<a href="#">Meeting details</a>	<a href="#">Agenda</a>	Not available	Not available	Not available	Not available	Not available	Not available
<a href="#">Environmental Advisory Committee</a>	6/3/2020	9:30 AM	Virtual Meeting	<a href="#">Meeting details</a>	<a href="#">Agenda</a>	Not available	Not available	Not available	Not available	Not available	Not available

The Grand Jury notes that only four of the eight meetings had “accessible” agendas, while none of the meetings had minutes posted online. According to the last posted agenda for the Environmental Advisory Committee, the agenda included a discussion with respect to the National City Balanced Plan portion of the proposed updated Master Plan. However, in reviewing the posted membership of the Environmental Advisory Committee there are no staff members listed from National City (nor any of the other Port Cities). This points to a lack of transparency with regards to the coordination of the Port District with the member cities.

<sup>23</sup> <https://www.portofsandiego.org/people/other-public-meetings>

<sup>24</sup> <https://portofsandiego.legistar.com/Calendar.aspx>

### ***Master Plan Documents and Updates***

Under Section 19 of the Port Act, the Port District was to “draft a master plan for harbor and port improvement and for the use of all of the tidelands and submerged lands which shall be conveyed to the district pursuant to the provisions of this act.” This Port Master Plan was approved by the Board of Port Commissioners in 1980 and later certified by the California Coastal Commission on January 21, 1981.<sup>25</sup> Subsequently the Port District approved 41 amendments to the 1980 Master Plan.

In 2019, SB 507 §5.7 was incorporated into the Port Act requiring Port District to “submit to the State Lands Commission a trust lands use plan for trust lands ...describing any proposed development, preservation, or other use of the trust lands.” Section 5.7 goes on to state that the “State Lands Commission, in its sole discretion, may consider whether the submission of the Port Master Plan...meets the requirements of ...a trust lands use plan.”<sup>26</sup>

Particular confusion exists among Port Cities leaders and residents regarding the provisions Port Master Plan that is periodically updated by the Port District. Much of the confusion is associated with the size and complexity of the Master Plan document itself—the most recent but-still-unapproved-update (2021) is well over 400 pages in length when including appendices, while the public comments alone comprise another 800 pages. As an indicator of the complexity of information contained in the Plan comments alone, the format for the comments received for the 2021 Master Plan Update was an electronic PDF flat file format comprising comments from 10 agencies, 19 organizations, 10 businesses or Port Tenants and individuals from all 10 planning districts. Questioned about how the Port District responded to comments, how the comments were used or acted upon, the Port District asserted that copies of the document were provided for public review and comment and multiple public workshops were held and questionnaires provided to collect public comments.

The plan is categorized into 10 geographical Port planning districts. Despite the fact that these planning districts could be organized around each of the Port Cities within which the smaller planning districts exist, this approach has not been used in the past. However, such an approach could foster greater understanding of these plans by residents and leaders alike while greatly simplifying the review and approval process for each Port city’s Master Plan.

While the Port Act identifies requirements for development of Port Master Plans and Trust Use Plans, the Grand Jury concluded that the Port Act does not preclude the Port Cities or the County of San Diego from requiring ratification by Port Cities or the county of such plans prior to submission to the appropriate state agency for approval. Further, such ratification by each Port City Council or the County Board of Supervisors would allow elected officials to ensure that these plans are in the best interest of their constituents and aligned with plans and objectives of these government bodies.

To that end, the Grand Jury will recommend that Port Cities and County Supervisors of supervisorial districts fronting San Diego Bay be required to ratify all port master plans, master plan updates, master plan amendments or trust use plans for Port District activities occurring within their boundaries; further, that such ratification be required prior to Port District proceeding with submission of such plans for approval by the California Coastal Commission, State Lands Commission or approval of

---

<sup>25</sup> California Harbors and Navigation Code, Appendix 1, San Diego Port District Act §19, San Diego Unified Port District, Document 70987, March 3, 2020, page 15.

<sup>26</sup> California Harbors and Navigation Code, Appendix 1, San Diego Port District Act §19, San Diego Unified Port District, Document 70987, March 3, 2020, page 10.

coastal development permits. Finally, once ratified by a Port City or County agency, each Port City’s master plan update would become the current Port Master Plan for project planning purposes.

***Options: Where to go from here? Port Commissioner Status Reports to City Councils***

The recommendations of the 1997-1998 Grand Jury report were directed to the city councils of the five cities affected by the Port District and to the County Board of Supervisors. Recommendation 98-50 to the five city councils were to “create and implement formal policies requiring their port commissioner representatives to report regularly to their respective city councils in a formal manner.” The City of San Diego responded to these recommendations saying that policies were already in place governing qualifications for port commissioners as well as formal reporting to the city council. The cities of Coronado and Imperial Beach reported that briefings from their Port Commissioners concerning Port District activities were scheduled as part of each regularly scheduled city council meeting. The City of Chula Vista reported the city council meets with their port commissioner “quarterly, or as often as needed,” while National City reported receiving periodic reports from their Port Commissioner on an informal basis.

The current Grand Jury investigated the current practices of the Port Cities in pursuing regular updates in regularly scheduled public forums such as City Council meetings. Communication with Port Commissioners was reported to occur regularly on an informal basis, but confirmation of such informal meetings proved impractical, and such informal meetings do not allow for transparent communications or public comment. As a result, the Grand Jury reviewed readily available public meeting agendas and minutes of the Port City councils during 2022. We discovered the following:

- San Diego: The Grand Jury could not find any minutes or agenda items recognizing that any of its Port Commissioners made presentations regarding Port District activities in public City Council meetings. However, an annual report to the committee on economic development and intergovernmental relations is required by San Diego City Council policy. The most recent report occurred on March 8, 2023.
- Chula Vista: on August 23, 2022, Port Commissioner Moore gave an update of the Chula Vista Bayfront development project at a special City Council meeting.<sup>27</sup>
- Coronado: According to reviewed minutes and agenda items, a single update from the city’s commissioner occurred on April 19, 2022.
- Imperial Beach: According to reviewed minutes and agenda items, only one update took place on January 19, 2022.<sup>28</sup>
- National City: An agenda item for reports from their commissioner is created for each City Council meeting. The Grand Jury was unable to learn if that was the result of a published council policy.

In view of the information provided through testimony and surveys of public records regarding Port Commissioner reports and briefings to their city councils on the activities of the Port District, the Grand Jury concluded that such reporting in publicly accessible venues such as city council meetings does not take place on a frequent or regular basis. Combined with a preference for informal channels of communication with their appointed representatives, these tendencies call into question whether Port Commissioners and Port City Councils maintain open and transparent relationships.

---

<sup>27</sup> Additional appearance by Port Commissioner Moore occurred on January 11, 2022, for reappointment as Port Commissioner, and on June 7, 2022 to receive a proclamation of Port Commissioner Ann Moore Day.

<sup>28</sup> City of Imperial Beach, City Council, Regular Meeting Minutes, January 19, 2022, 6:00 p.m., Virtual Meeting

### ***Re-engagement of Port Cities and County of San Diego***

The Grand Jury has concluded that because of the Port District's independence and autonomy from local governmental review or approval of its decisions, voters and elected representatives in the Port Cities and County of San Diego have become disenfranchised. Elected representatives cannot prevent or appeal Port District decisions that adversely affect their constituents, and as a result, voters cannot depend on their elected representatives to act in their best interests. As a result of such shortcomings, accountability of representatives to their constituents is limited when the normal expected prerogatives of elected office holders have been supplanted instead by an unelected entity such as the Port District.

Balancing the rights and interests of diverse coastal cities, communities and neighborhoods throughout the San Diego County region is a significant challenge, even for an elected governing body not motivated by economic incentives. Attempting this task through a largely independent and autonomous organization such as the Port District that is dependent on revenue from development projects and leasing activity may be too much to ask of the organization, especially without the guidance of deliberative elected city councils, county supervisors or other elected government bodies. The Grand Jury concludes that only with the re-engagement of the elected government bodies affected by Port District activities and lands within their jurisdictional boundaries can the interests of residents be equitably balanced with competing Port District goals and objectives.

### ***FACTS AND FINDINGS***

#### **Duties, Responsibilities and Powers**

**Fact:** The public trust doctrine provides that tidal and submerged lands, beds of lakes, streams and other navigable waterways are to be held in trust by the State for the benefit of the people of California.

**Fact:** The Port District Act delegates the power and responsibility for management of the tidelands and submerged lands of San Diego Bay from the State of California to the San Diego Unified Port District.

**Fact:** Many elected officials of Port Cities believe Port Commissioners are to act in the best interest of the cities appointing them.

**Fact:** The Port Act limits the ability of elected officials to represent the interests of the voters who elect them.

**Fact:** It is the duty of each Port Commissioner to act as a guardian of the public trust for tidal and submerged lands of San Diego Bay in the interests of all California residents.

**Fact:** Port Commissioners take a fiduciary oath to act in the best interests of the Port District.

**Finding 01:** Port Commissioners are only required to represent the perspectives, not the interests of the Port City appointing them to the Board of Port Commissioners.

**Finding 02:** The Port District acts as an independent special district without direct oversight from local city or county governments.

**Fact:** The oversight provided by the State Lands Commission and California Coastal Commission of Port District activities is viewed by the Port District as more than sufficient.

**Fact:** Port Commissioners must live in the Port City appointing them.

**Fact:** Port Commissioners may be recalled by a majority vote of the city council appointing them.

**Fact:** Port Commissioners can serve an unlimited number of four-year terms, except in the City of Coronado in which Commissioners can serve a maximum of two terms.

**Finding 03:** Because the interests of residents of Port Cities and the County of San Diego are subject to the interpretations of the unelected Board of Port Commissioners, their interests may not be heard, prioritized or represented accurately.

**Finding 04:** Briefings by Port Commissioners to Port City Councils in noticed public meetings regarding issues affecting their jurisdictions, will increase the level of public participation and knowledge regarding Port District activities, Port Master Plans, Master Plan Updates, Port Master Plan amendments or additions.

**Finding 05:** Currently, the Board of Port Commissioners does not have term limits. Considering term limits would foster democratic principles by providing more opportunities for diverse and talented individuals to serve, prevent the accumulation of influence, and uphold the public trust by keeping the Board representative responsive to its community.

#### **Initial Opposition to Port District Formation**

**Fact:** The City Councils of the cities of Coronado, Imperial Beach and Chula Vista initially opposed formation of the Port District in 1962.

**Fact:** Formation of the Port District in 1962 occurred despite concerns that an unelected board of Port Commissioners would have the power to issue bonds, levy taxes and develop local tideland resources without input or approval of individual Port Cities.

**Fact:** Opposition to the formation of the Port District in 1962 involved the unequal number of commissioners allocated to each of the Port Cities; the City of San Diego would get three commissioners while each of the remaining four Port Cities would get one commissioner each, potentially allowing San Diego to exert dominance over the resources, priorities and decisions of the Port District.

**Finding 06:** With three of seven port commissioners appointed to the Board of Port Commissioners by the City of San Diego, the potential exists for the City of San Diego to exert dominance over the priorities, resources and decisions of the Port District.

#### **Port District Potential Source of Bias**

**Fact:** Port District operations are financed primarily through leases and fees generated through its real estate operations, parking, harbor police and other fees provided by customers of the Port District.

***Finding 07:*** The Port District is incentivized to maximize revenue to fund its operations, a goal that may create conflicts of interest in the priorities, allocation of resources and other decisions made by the Port Commission.

### **Chula Vista Convention Center and Hotel**

**Fact:** The \$1.1 billion Chula Vista Hotel and Convention Center broke ground in 2022.

***Finding 08:*** Success in the development of the Chula Vista Hotel and Convention Center has been obtained because of a close collaboration and alignment of interests between the Port District and the City of Chula Vista.

### **Dole Fruit Company Proposal**

**Fact:** A 2012 approval of the Board of Port Commissioners for a lease of warehouse space on the Port District's Tenth Avenue Terminal to Dole Fruit Company also moved a staging area for short-haul trucking to the National City area.

***Finding 09:*** The Port Commissioners decision to move short-haul truck staging for local deliveries of Dole Fruit products relocated a source of pollution from the Barrio Logan community to communities in National City.

### **Mitsubishi Cement Corporation Proposal**

**Fact:** Mitsubishi Cement Corporation's proposal for storage and shipment by truck of cement products to construction sites in the region generated controversy and negative publicity among residents of nearby neighborhoods affected by potential health risks.

**Fact:** Consideration of the Mitsubishi Cement Corporation project was terminated by mutual agreement of the Port District and Mitsubishi Cement Corporation.

**Fact:** In its public statement, the Port District expressed a willingness to re-open negotiations related to this proposal with Mitsubishi Cement Corporation in the future.

**Fact:** The Mitsubishi Cement Corporation project was terminated due to technical concerns around the availability of zero emission trucks capable of the loads required for cement deliveries.

***Finding 10:*** The controversy surrounding the Mitsubishi Cement Corporation Project's potential health effects on the Barrio Logan neighborhood and other nearby residents damaged the Port District's community relations with these communities and contributed to the decision to discontinue the project.

***Finding 11:*** Oversight of the Mitsubishi Cement Corporation project by the City of San Diego or San Diego County governments might have given greater priority to the health concerns of community members and resulted in a more equitable balance between economic and health concerns earlier in the project's evaluation process.

### **Coronado Cottages at the Cays Proposal**

**Fact:** The Cottages at the Cays development proposal met with significant opposition not only from the Coronado mayor and city council, but also from residents and members of the Coronado Cays Homeowner's Association representing the community of 1,200 homes.

**Fact:** Maintaining free access by California residents to San Diego Bay for recreational use is often cited as an obligation of the public trust by the Port District.

**Fact:** Three of seven Port Commissioners voted to oppose the Cottages at the Cays development proposal, including the City of Coronado's Port Commissioner, the National City Port Commissioner as well as one of three San Diego Port Commissioners.

**Fact:** The Cottages at the Cays development proposal was consistent with the property's designation in the Port Master Plan as commercial recreation space as approved by the California Coastal Commission.

**Fact:** The Cottages at the Cays development proposal was not consistent with the property's designation as recreational open space in the more recent California Coastal Commission-unapproved Port Master Plan Update.

**Fact:** Without the approval of the California Coastal Commission, the Port District viewed the Coronado Cays Port Master Plan Update land use designation of recreational open space as non-binding and preliminary.

**Fact:** The Coronado Mayor, City Council members and residents of Coronado affected by the Cottages at the Cays development proposal relied on the property use designation for recreational open space adopted most recently in the Port Master Plan Update document, believing this document should control use of property proposed for the Cottages at the Cays development.

**Finding 12:** The Port's decision to approve the Cottages at the Cays development proposal could negatively impact access to San Diego Bay and approving the plan favors those willing or able to pay costly hotel rates typical of the Coronado area.

### ***Public Participation***

**Fact:** Port Commissioner reports and briefings to their city councils on the activities of the Port District, in publicly accessible venues such as city council meetings do not take place on a frequent or regular basis.

**Finding 13:** Given a preference for informal channels of communication by Port City councils and mayors with their appointed Port District representatives, neither Port Commissioners nor Port City Councils maintain completely open and transparent relationships allowing for public involvement or awareness of Port District activities.

### ***Master Plan Documents and Updates***

**Fact:** Ratification of Port Master Plans, Master Plan Updates or Master Plan Amendments by Port Cities or County of San Diego for planning districts with their jurisdiction is not prohibited by the Port Act.

**Finding 14:** In its current form, the Port Master Plan and Master Plan Update documents published by the Port District are overly complex, difficult to understand and too broad in scope to foster meaningful comprehension by Port City residents, elected municipal or county officials.



***Finding 15:*** Ratification of Port Master Plans, Master Plan Updates or Master Plan Amendments would allow residents of Port City Planning districts and San Diego County to acknowledge and confirm their understanding of Port District development plans and projects within their municipal and county boundaries and provide reliable documents for communities to plan for the future.

### ***RECOMMENDATIONS***

**The 2022/2023 San Diego County Grand Jury recommends that the City Councils of the cities of San Diego, Chula Vista, Coronado, Imperial Beach, and National City:**

- 23-90:** Enact ordinances or policies placing a two-term limit on the number of terms that a Port Commissioner can serve (as already enacted for the City of Coronado).
- 23-91:** Institute ordinances or formal policies requiring the appointed Commissioners from each city be required to give at a minimum, quarterly updates to the City Councils at officially scheduled city council meetings open to the public.
- 23-92:** Institute ordinances or formal policies that require ratification of the Port Master Plans, proposed Port Master Plan Updates or amendments to the Port Master Plan for Port District planning districts within each city's boundaries.
- 23-93:** In consultation with the San Diego County Board of Supervisors, explore and implement an alternate form of governance for the Port District allowing for participation in, and oversight of Port District activities and decision by the San Diego County Board of Supervisors and the elected city councils of the five Port Cities.

**The 2022/2023 San Diego County Grand Jury recommends that the County of San Diego Board of Supervisors:**

- 23-94:** Institute ordinances or formal policies that require ratification of the Port Master Plans, proposed Port Master Plan Updates or amendments to the Port Master Plan by each of three county supervisors for Port District planning districts within each of three county supervisorial district boundaries.
- 23-95:** Direct the County Office of Intergovernmental Relations to lobby California State legislators to introduce legislation enabling the County of San Diego to assume oversight of the activities of the San Diego Unified Port District or decisions of the Board of Port Commissioners and share in the Port District's duty as guardian of the public trust in the tidal and submerged lands of San Diego Bay.
- 23-96:** Depending on the outcome of Recommendation (23-XX, above), consider exploring and implementing an alternate form of governance for the Port

**District allowing for participation in, and oversight by the San Diego County Board of Supervisors and the elected city councils of the five port cities.**

**The 2022/2023 San Diego County Grand Jury recommends that San Diego Unified Port District Board of Commissioners:**

- 23-97: Institute formal policies or procedures allowing for appeal of any action taken by the Board of Port Commissioners, including decisions, ordinances, or project approvals.**
- 23-98: Institute formal policies to enable Port Cities and County of San Diego to ratify the Port Master Plans, proposed Port Master Plan Updates or amendments to the Port Master Plan for Port District planning districts within each city's and county boundaries.**
- 23-99: Directly inform each of the five City Councils at officially scheduled City Council meetings open to the public how the proposed updated Port Master Plan affects areas within their jurisdictional boundaries.**
- 23-100: To increase the coordination of Port District activities with the Port Cities and their staffs, institute a policy of including staff from each of the five Port Cities and County of San Diego on each of the Port District's advisory committees.**
- 23-101: Post meeting minutes and agendas of each of the Port District's advisory committees.**
- 23-102: In consultation with the City Councils of San Diego, Chula Vista, Coronado, Imperial Beach and National City, consider placing a two-term limit on the number of terms that a Port Commissioner can serve (as already enacted for the City of Coronado).**
- 23-103: Institute ordinances or formal policies requiring the appointed Commissioners from each city be required to give at a minimum, quarterly updates to the City Councils at officially scheduled city council meetings open to the public.**
- 23-104: In consultation with the San Diego County Board of Supervisors, explore an alternate form of governance for the Port District allowing for participation in, and oversight of Port District activities and decision by the San Diego County Board of Supervisors and the elected city councils of the five Port Cities.**

### ***REQUIREMENTS AND INSTRUCTIONS***

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court

on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding
  - (2) The respondent disagrees wholly or partially with the finding; in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
  - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<b>Responding Agency</b>	<b>Recommendations</b>	<b>Date</b>
<b>City of San Diego, City Council</b>	<b>23-90 through 23-93</b>	<b>8/28/2023</b>
<b>City of Chula Vista, City Council</b>	<b>23-90 through 23-93</b>	<b>8/28/2023</b>
<b>City of Imperial Beach, City Council</b>	<b>23-90 through 23-93</b>	<b>8/28/2023</b>
<b>City of Coronado, City Council</b>	<b>23-90 through 23-93</b>	<b>8/28/2023</b>

<b>City of National City, City Council</b>	<b>23-90 through 23-93</b>	<b>8/28/2023</b>
<b>County of San Diego, Board of Supervisors</b>	<b>23-94 through 23-96</b>	<b>8/28/2023</b>
<b>San Diego Unified Port District, Board of Port Commissioners</b>	<b>23-97 through 23-104</b>	<b>8/28/2023</b>

Results of the investigation by the attorney's for THE STEWARDS OF THE HARBOR regarding a pending lawsuit with the City of Newport Beach regarding the DECADES LONG GROSS AND WILLFUL MISMANAGEMENT of the California Tidelands. ([www.thesoth.com](http://www.thesoth.com))

Compiled at a cost of tens of thousands of dollars

Copies to:

1. The CA STATE LANDS COMMISSION: Lt. Gov. Eleni Kounalakis (916-574-1800)
2. The CA STATE LANDS COMMISSION: Ex. Dir. Jennifer Lucchesi (916-574-1800)
3. The CA COASTAL COMMISSION: Chair. Caryl Hart (415-904-5202)
4. The CA COASTAL COMMISSION: Dr. Kate Hucklebridge (415-396-9708)
5. The CA NATURAL RESOURCES AGENCY: Wade Crowfoot (916-653-5656)
6. The CA STATE AUDITOR: Gen. Mngr. Grant Parks (916-445-0255)
7. The CA INSPECTOR GENERAL: Insp. Gen. Amarik K. Singh (916-288-4212)
8. The State of CA Dept of Justice: Att. Yana Garcia (916-210-6276)
9. The State of CA Dept of Justice: Att. Gen. Rob Bonta (916-210-6276)

Originals in Color

July 9, 2024

**VIA E-MAIL**

Mr. Joe Stapleton  
District 1 - Mayor Pro Tem  
Newport Beach City Council  
100 Civic Center Drive  
Newport Beach, California 92660  
**Email: jstapleton@newportbeachca.gov**

Mr. Brad Avery  
District 2 - Councilmember  
Newport Beach City Council  
100 Civic Center Drive  
Newport Beach, California  
**Email: bavery@newportbeachca.gov**

Mr. Erik Weigand  
District 3 - Councilmember  
Newport Beach City Council  
100 Civic Center Drive  
Newport Beach, California 92660  
**Email: eweigand@newportbeachca.gov**

Ms. Robyn Grant  
District 4 - Councilmember  
Newport Beach City Council  
100 Civic Center Drive  
Newport Beach, California 92660  
**Email: rgrant@newportbeachca.gov**

Mr. Noah Blom  
District 5 - Councilmember  
Newport Beach City Council  
100 Civic Center Drive  
Newport Beach, California 92660  
**Email: nblom@newportbeachca.gov**

Ms. Lauren Kleiman  
District 6 - Councilmember  
100 Civic Center Drive  
Newport Beach, California 92660  
**Email: lkleiman@newportbeachca.gov**

Mr. Will O'Neill  
District 7 - Mayor, 2020 Mayor  
Newport Beach City Council  
100 Civic Center Drive  
Newport Beach, California 92660  
**Email: woneill@newportbeachca.gov**

Ms. Grace K. Leung, City Manager  
City of Newport Beach  
100 Civic Center Drive, Second Floor, Bay E  
Newport Beach, California 92660  
**Email: citycouncil@newportbeachca.gov**

Re: Objections to City's Proposed Actions Regarding Mooring Rates

Dear Newport Beach City Council:

We are hereby submitting objections to the City of Newport Beach's (the "City") expressed intention to adopt the Harbor Commission's recommendation or the "alternative." The City's recent posting of the agenda and staff report is unclear, deficient, and contradictory in material aspects. The general thrust of the City's agenda packet is that the City intends to act unlawfully toward offshore boat docking in the harbor—commonly referred to as offshore

Newport Beach City Council Members  
Page 2

moorings. The City's proposed acts concerning offshore moorings also reflect the City's improper conduct as to other activities relating to the harbor.

The City has a duty to comply with its legal obligations as pertains to the City's tidelands (including but not limited to the City's obligation to fulfill its fiduciary duties by, among other things, assessing tideland user fees in a fair and non-discriminatory manner). City staff and officials are furthermore obliged to comply with legal requirements imposed by statute and by common law to refrain from violating conflict of interest laws. Moreover, the City has due process and other obligations as relates to tideland users, including permittees. Aspects of the proposed City actions constitute improper takings of property. And, despite the City's assertions to the contrary, the City's proposed action(s) are not exempt from CEQA because they will directly or indirectly impact the environment.

**I. THE CITY'S ACTIONS ARE DISCRIMINATORY AND VIOLATE THE PROHIBITIONS OF THE BEACON BAY BILL**

The City admits that it is bound by the provisions of the Beacon Bay Bill. The Beacon Bay Bill expressly prohibits the City from discriminating "*in rates, tolls, or charges...for any use or service...*" with respect to the City's management, conduct, operation and control of the tidelands. The Beacon Bay Bill states, in pertinent part:

"(d) In the management, conduct, operation, and control of the lands or any improvements, betterments, or structures thereon, the City or its successors shall make no discrimination in rates, tolls, or charges for any use or service in connection therewith. [emphasis added]."

Section 17.60.040 of the Newport Beach Municipal Code (which governs mooring permit requirements) states that the mooring fees are to be based "...on a rent schedule established by the Harbormaster, which shall be similar to the schedule used to collect rent from other tidelands users in Newport Harbor." (NBMC § 17.60.040(h) [emphasis added].)

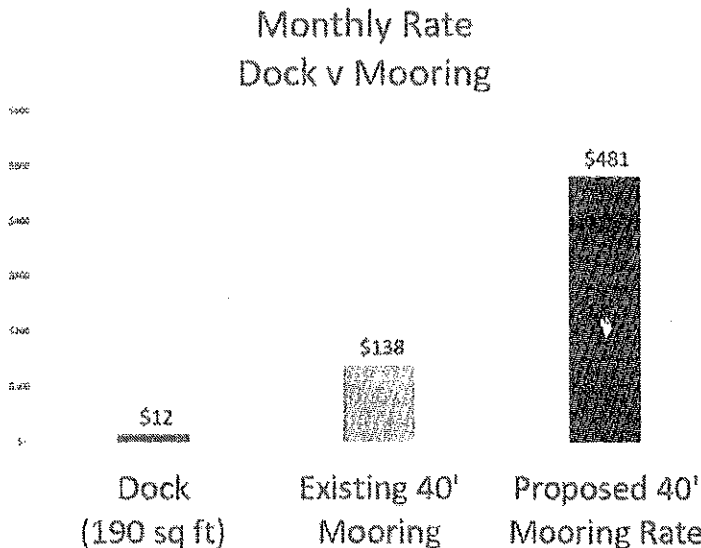
The City's proposed rate increase would result in not only one type, but at least three types, of discrimination concerning tidelands users: (1) price or term discrimination; (2) use discrimination; and (3) political or socioeconomic discrimination.

**A. PRICE DISCRIMINATION**

The evidence of discrimination concerning price and/or terms is overwhelming. A boat can be docked to a mooring. It can also be docked to a pier. As conceded by the City staff

Newport Beach City Council Members  
Page 3

report, they are both forms of docking over tidelands.<sup>1</sup> Docking to a pier is a clearly superior form of boat storage on the tidelands. Yet, the City charges much less for this vastly superior boat storage option. The average dock permittee pays approximately \$12-\$30/month while the average mooring permittee pays approximately \$133-\$138/month for a 40' mooring. Indeed, the April 9, 2024 letter recently sent by the California State Lands Commission Staff to the City ("SLC staff letter") echoes the objections that have already been raised by existing and potential mooring permittees. The SLC staff remarked in its letter: "*Staff also observes a significant disparity between the City's residential pier rates and mooring rates.*" "Disparity" is tantamount to "discrimination" in this context.



The City has set the mooring and dock rates at different times, making different arguments, and reflecting different economic conditions. Non-discriminatory conduct and fairness dictate that tidelands uses be appraised in the same economic time periods using the same (or nearly the same) date of value. Did the City do so? No. The City has instead strategically picked and chosen the valuation of and the setting of charges for docking in different economic periods for supposed different groups of users who dock boats in the same tidelands. The City's approach has resulted in improper "disparities"—in other words, discrimination. In addition, the City now intends to cause further disparities between those who have a permit to dock their boats offshore as compared to those who dock their boats on a pier.

---

<sup>1</sup> In its staff report, the City recognizes the obvious: Docking a boat is docking, regardless of whether the boat is docked to a floating metal ball in the channel or to a pier. (See, City's RFP No. 21-53 characterizing a mooring as a type of "boat storage.")



Newport Beach City Council Members  
Page 4

The resulting disparate impact on certain tideland users (i.e., dock rates as compared to offshore mooring rates) is “use” discrimination. The City is playing a shell game where it is selectively picking and choosing different criteria at different time points to rig the discriminatory results.

The City’s discriminatory conduct is further manifested in its treatment of individual mooring permittees as opposed to its treatment of certain favored mooring groups. While the majority of mooring permittees are individuals, there are two yacht clubs (the Balboa Yacht Club and the Newport Harbor Yacht Club) as well the Lido Island Community Association who provide moorings to their members or residents. The City discriminates concerning terms of use. For example, unlike the individual mooring permittees, these organizations are allowed to sublease their moorings to members.<sup>2</sup>

Despite the City’s attempts to conceal this information from the public, a public records request recently uncovered a June 13, 2024 email in which the City’s Harbor Commissioner confirmed that the Lido Island Community Association, the Balboa Yacht Club and the Newport Harbor Yacht Club will be exempted from the anticipated rate hikes. This clear evidence of discrimination runs squarely afoul of Beacon Bay Act’s prohibition against discrimination “in rates, tolls, or charges...for any use or service...” of the tidelands. As proposed, the yacht clubs and Lido Island Community Association will receive discriminatory advantageous treatment by the City.

The City’s decision to discriminate in favor of dock owners and other groups via rate and terms is unlawful. The SLC staff warned the City in a recent letter that: “Charging less than fair market rates for the use and occupation of granted sovereign land may constitute an unconstitutional gift of public funds and a violation of the City’s fiduciary duties....” The City uses this threat as a sword in its proposed action with moorings. It also hypocritically uses its position as tidelands manager as a shield when convenient to justify its discriminatory favoritism. The City cannot have it both ways.

## **B. USE DISCRIMINATION**

Starting with some fundamentals, the dock “owners” are tideland users just as offshore mooring permittees are tideland users. They both dock boats by tying them over the submerged tidelands. The tidelands are owned by the State and not the City, as the City merely acts as a trustee for the public over these tidelands.

---

<sup>2</sup> It is estimated that the Balboa Yacht Club obtains approximately \$400,000 to half a million dollars annually, and the Newport Harbor Yacht Club generates approximately \$400,000 to \$600,000 annually in profits from their moorings.

Newport Beach City Council Members  
Page 5

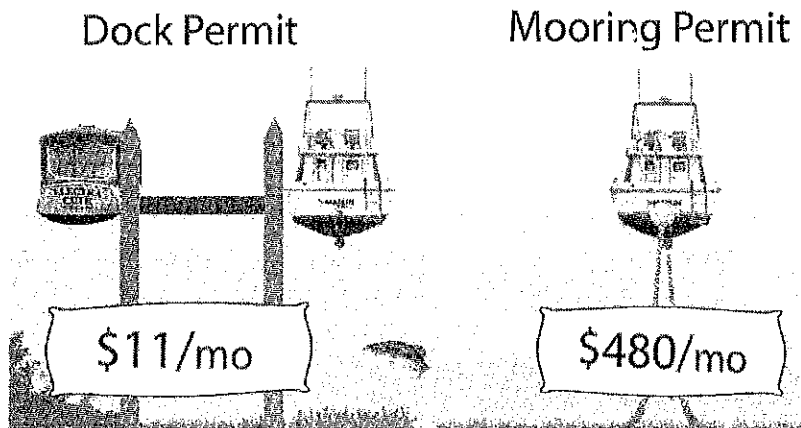
A docking on a pier is a far superior form of boat storage as compared to docking offshore to a mooring in the bay. There are intrinsic benefits that are incidental to ownership and value of the adjacent above-ground fee land with a dock on a pier. Such a dock benefits the adjacent land and home and vice versa. It is also easier to dock a boat to a dock on a pier than it is to dock a boat to an offshore mooring. The dock owner merely needs to walk across his dock to enter the docked boat, as opposed to the mooring permittee who must traverse open water to access his or her boat. Additionally, a dock adjacent to a bayfront home has readily available access to restrooms, fresh water and electricity.

Not only does the City inexplicably charge much less for docks, but the mooring permittees are also subject to certain significant use restrictions that are not imposed on dock owners. A mooring consists of little more than an anchor to the submerged tidelands and a line to the mooring ball or balls. Thus, mooring permittees cannot construct piers and wooden docks in the bay. And, unlike the dock owner (who pays much less with many less restrictions and many more benefits), the mooring permittee is prohibited from leasing to a third party

It should also be noted that the costs incurred by the City in administering moorings are low since the mooring permittee is required to bear the majority of those costs (e.g., buoys and related equipment). This disparity is exacerbated when comparing the superiority of dock tidelands usage in comparison to tidelands usage involving docking to moorings.

Notwithstanding the vast benefits enjoyed by dock tidelands usage, dock permittees pay far less:

## Boat Storage



Newport Beach City Council Members

Page 6

A mooring user who docks to a metal ball in the harbor is using and getting much less but will pay astronomically more. The City has apparently concluded that a vastly inferior type of boat storage (i.e., a mooring), should command more money than a vastly superior form of boat storage (i.e., a dock).

The City's indefensible position begins from the City's instruction to its real estate appraiser that submerged, undevelopable tidelands should be (in fact must be) compared to and predicated upon the value of bayfront residential land in Newport Beach. The City's appraiser utilized this approach.<sup>3</sup> Establishing mooring rates based on the value of Newport bayfront real estate is untenable for many reasons. A mooring permit, as configured by the City, is not a property right. The SLC staff agrees that such an approach is incorrect. The SLC has explicitly warned the City that: "... *staff disagrees that residential land values should be used as a basis for valuing the offshore moorings, because the moorings' use is not connected with the residential use.*" (4/9/24 letter from SLC to City.). Yet, obviously docks situated in front of bayfront homes are frequently physically connected to the residential use. The City cannot assess the "fair market value" of the offshore moorings based on the value of such real property especially when the offshore mooring is unconnected with the residential use. The City sanctions a valuation predicate which is prohibited **and** discriminatory. Value cannot be based on a use which the mooring permittees cannot make. California law prohibits such a valuation. (See, e.g., *Wu v. Interstate Consolidated Industries* (1991) 226 Cal. App. 3d 1511; *Humphries Investments, Inc. v. Walsh* (1988) 202 Cal.App.3d 766.)

The City has not, and cannot, justify its inequitable disparity in boat storage treatment, fees or fee increases.

### C. POLITICAL AND SOCIOECONOMIC DISCRIMINATION

The City appears to concede that the majority of the mooring permits are currently held by individuals who lack voting rights in Newport Beach. It is our understanding that only approximately 42% of the mooring permits are held by residents of the City who are afforded voting rights (and of that population, the number must be divided by the seven districts). The City Council has succinctly, and accurately, remarked, "the mooring people do not vote."

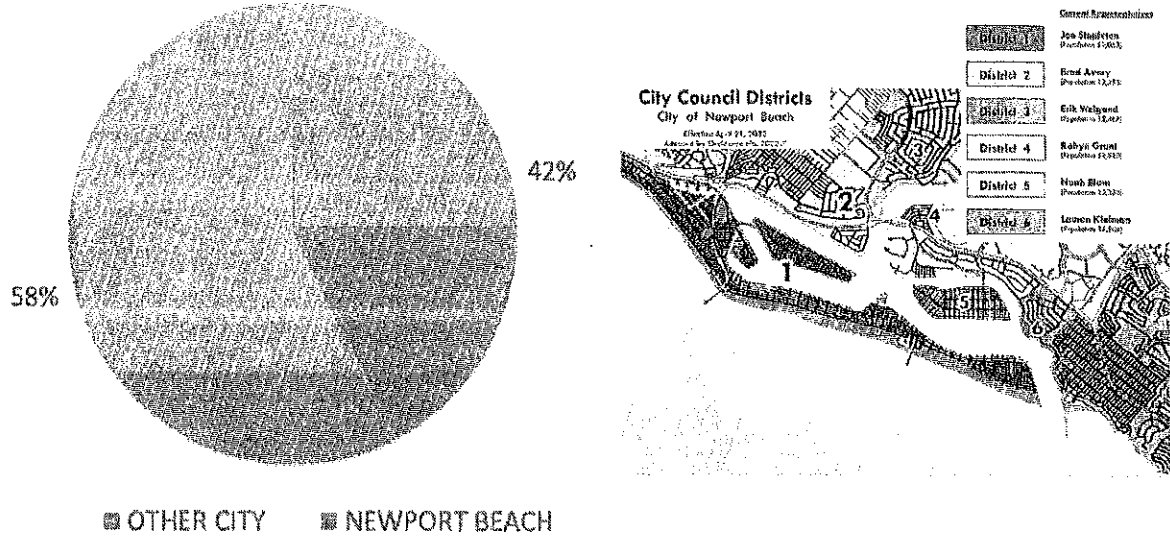
The pie chart below illustrates the discrepancy between mooring permit holders based on the city of residency.

---

<sup>3</sup> The appraiser also made clear that his appraisal cannot be used and is invalid without considering this approach.

Newport Beach City Council Members  
Page 7

Mooring Permit Holder City of Residence



Newport Beach residents are in the upper echelon of wealth and income levels, and only a select few members of the public are able to afford the prices commanded by the Newport Beach real estate market. Many of the mooring permittees are not Newport Beach residents. The large majority of dock owners live or appear to live, vote or could arrange to vote, in the City of Newport Beach.

Historically, moorings offer a more affordable option for members of the public living outside of the City limits who wish to enjoy recreational boating and access to the coast. The City is maintaining and creating barriers to the public's ability to access and utilize the State-owned tidelands. The City cannot discriminate against nonresidents. It cannot discriminate against perceived non-Newport Beach socioeconomic echelons.

Allowing this type of politically or socioeconomic based discrimination is not only inequitable but also runs afoul of the Beacon Bay Bill, the tenets of the California Coastal Commission Act and other applicable laws (See, e.g., Coastal Act § 30001, stating "The Legislature hereby finds and declares...the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people...." [emphasis added]; see also, City's General Plan R 8.6, R 9, R 9.1, et seq. confirming that the City is required to ensure that coastal access is accessible to the public regardless of socioeconomic status; *Illinois Central*

Newport Beach City Council Members  
Page 8

*Railroad v. Illinois* (1892) 146 U.S. 387, 452-453 [municipalities hold tidelands and submerged lands in trust for the benefit of the public at large].<sup>4</sup>

## **II. THE CITY'S APPRAISAL IS UNRELIABLE.**

An appraisal analysis which concludes that a rate for an inferior mooring should be greater than the fee charged for a dock is, to put it charitably, flawed and unreliable. In fact, it is absurd. Yet, this is precisely the scenario posed by the City's appraiser. The nonsensical conclusion reached by Mr. James Netzer should have caused the City to immediately recognize that the analysis was seriously flawed.

There are a myriad of other problems with Mr. Netzer's 2023 mooring appraisal. The defects in the City-directed report, include, but are not limited to, the following:

- **Use of Inappropriate Comparables:** Using sales of bayfront residential property as "comparables" for undevelopable submerged tidelands is ludicrous. This approach irreparably taints the entire appraisal analysis. At the very minimum, it shows that the City and the appraiser are biased.
- **Impact of Incorporating Non-Comparables in Appraisal:** Mr. Netzer's appraisal report concedes that his valuation conclusions are predicated the valuation methodologies which he chose to employ. (*See*, 2023 Appraisal Report, stating: "The reconciliation process involves a thorough review of the valuation process and supporting data used in each of the valuation approaches." [emphasis added].) All three of Mr. Netzer's appraisal approaches are tainted by his use of non-comparable real property and renders the entire appraisal report unreliable.
- **Inconsistent City Conduct as to Valuation Approaches:** In 2015, the City rejected the ratio analysis as a valid means of determining dock rates. Yet, the City has now reversed course and contends that the same ratio analysis should apply to moorings. The City cannot have it both ways – it cannot cherry-pick which methodologies it wants to apply in order to predetermine the discriminatory end result. This is particularly true where, as here, the City has already conceded that docking to a mooring and docking to a dock both constitute docking over the tidelands. Both to be treated as methods of boat storage.

---

<sup>4</sup> It should furthermore be noted that Harbors and Navigation Code § 40 requires that, "Facilities in harbors and connecting waterways established under the provisions of this division shall be open to all **on equal and reasonable terms.**" (Emphasis added.) The City has imposed unequal and unreasonable terms.

Newport Beach City Council Members  
Page 9

- Use of Inapplicable Rate of Return: Mr. Netzer’s appraisal report utilizes a rate of return which is applicable to income generating investments in **commercial** real estate improved properties, but which is inapplicable to tidelands usage. (See, 2023 Netzer Appraisal, p. 26.) There is also evidence that the City’s appraiser was directed to undertake such approach by City staff and/or Harbor Commission personnel.
- Failure to Take Into Account Mooring Permittees’ Capital Investment: The appraisal fails to take into account the capital investment (estimated at \$40,000 to \$60,000) made by a mooring permittee. Nor does the appraisal address biannual mooring maintenance fees. The City and its appraiser fail to take into consideration the mooring permittees’ investment in their boat which they presumably have nowhere else to store. A boat owner who has no real storage options becomes a boat seller—a seller in distress.
- Failure to Consider Termination Provision (Among Other Terms): The City and its appraiser ignore the City’s termination rights. The mooring permit allows the City to terminate the mooring permittee’s rights if the mooring is subleased without the written permission of the Harbormaster. (NBMC § 17.25.020(L); Mooring Permit, page 2, § 6.) In fact, the appraiser wrongfully considered illegal subleasing as a basis for his conclusion.
- Disregard of Historical Tideland User Rates: The appraisal conveniently ignores relevant past history as pertains to tideland user rates set by the City pursuant to its asserted obligations to do so. More specifically and stunningly, the City in 2015 set fair market rent and terms for docks. The dock is the superior, vastly superior, type of boat storage. It is the top of the market for tideland users. Here, the City directed its appraiser to turn the market upside down. The City is not excused from ignoring that absurd result.

**III. THE CITY’S APPRAISAL PROCESS HAS BEEN TAINTED BY THE CITY’S AND ITS APPRAISER’S IRREPARABLE CONFLICTS OF INTEREST**

**A. THE POLITICAL REFORM ACT AND THE NEWPORT HARBOR COMMISSION’S RULES OF PROCEDURE PROHIBIT INDIVIDUALS WITH A CONFLICT OF INTEREST FROM PARTICIPATING IN THE PROCESS.**

The Political Reform Act (“PRA”) prohibits City commissioners, employees, and consultants from influencing or participating in City decisions in which they have a material financial interest. (Gov. Code, §§ 82041, 82048, 87100; 2 Cal. Code Regs., tit. 2, § 18700.)

Newport Beach City Council Members  
Page 10

This includes but is not limited to any decision affecting business interests or real property worth at least \$2,000. (Gov. Code, § 87103.) The PRA further prohibits City commissioners, employees, and consultants from influencing or participating in City decisions materially affecting any business entity in which the disqualified individual is an officer, director, partner, trustee, manager, or employee. (Gov. Code, §§ 82033, 82035, 87103.) A decision made in violation of these prohibitions can be enjoined from taking effect. (Gov. Code, § 91003.)

Additionally, Section VIII.C. of the Newport Harbor Commission's Rules of Procedure expressly requires "[a]ny Commissioner who is disqualified from voting on a particular matter by reason of a conflict of interest shall publicly state or have the Chair state this determination and the nature of such disqualification in open meeting." Section VIII.C. further provides that "[a] Commissioner who is disqualified by reason of a conflict of interest in any matter shall not remain in the council chambers during the debate and vote on such matter and shall request permission of the Chair to depart until the item is closed."

**B. THE CITY'S APPRAISER HAS HAD A MATERIAL CONFLICT OF INTEREST.**

The City's valuation process has been tainted with numerous conflicts of interest. The City's selected appraiser is an officer and board member of the Newport Aquatic Center ("NAC"), which has a substantial financial interest at stake—its existence is dependent upon use of the tidelands. The NAC maintains a sizeable dock and fleet of small watercraft in Newport Harbor. The NAC was also expressly listed as a location for review comparison in the City's RFP for the mooring appraisal. The NAC also leases the land for its facility from the City.

Records show that the City's appraiser was directly involved on behalf of the NAC in lease negotiations with the City while he was simultaneously performing the City's mooring appraisal. In a June 26, 2023 email, Chris Blank (NAC President and brother of Harbormaster Paul Blank), informed the City that the City's appraiser would be attending a meeting on behalf of the NAC to discuss the NAC's ground lease with the City. The City went on to grant the NAC a generous, no-fee 30-year lease extension (with two additional 10-year extension options) less than three months before NAC's representative/City Appraiser provided the appraisal as directed by the City.

Yet, the City's appraiser purported to certify in his appraisal that "I have no present or prospective interest in the property that is the subject of this report and have no personal interest or bias with respect to the parties involved" and that "I have no bias with respect to the property that is the subject of this report or to the parties involved in the assignment." That was not the case. Any one of the conflicts above disqualified the City's appraiser.

Newport Beach City Council Members  
Page 11

**C. THE CITY ALLOWED HARBORMASTER PAUL BLANK TO PARTICIPATE IN THE RATE VALUATION PROCESS DESPITE HIS ADMITTED CONFLICT OF INTEREST.**

Harbormaster Paul Blank was conflicted the moment the City hired him in May 2021. During a Harbor Commission meeting in 2022, Mr. Blank represented that he is a mooring permittee who “does not participate in discussions or the development of recommendations related to use or financial arrangements associated with offshore moorings.” Mr. Blank further represented that this was disclosed and discussed with the City Attorney before he was hired:



CITY OF  
**NEWPORT BEACH**  
Harbor Commission Staff Report

May 11, 2022  
Agenda Item No. 9.5

**TO:** HARBOR COMMISSION  
**FROM:** Paul Blank, Harbormaster  
pblank@newportbeachca.gov  
(949) 273-3155  
**TITLE:** Harbormaster Update – April 2022 Activities

Harbormaster Update – April 2022 Activities  
May 11, 2022  
Page 5

- Initiatives were launched resulting in better data capture and statistics reporting. Future improvements will include customer satisfaction survey data analysis and calls for service location analysis
- Participated in the Emergency Operations Response to the following:
  - o Ely oil spill
  - o Tsunami warning
  - o Three severe weather occurrences
  - o Sewage spill into the harbor
  - o Out of control stater boat in the harbor

The Harbormaster has disclosed the arrangements made, at his own expense to alleviate any conflict of interest associated with his ongoing use of an offshore mooring permit. While undergoing the recruitment process, any and all known possible conflicts of interest were disclosed. Prior to the City making an offer of employment, all such possible conflicts were discussed with the City Attorney. Agreements and arrangements satisfactory to all relevant parties were made during that discussion. The Harbormaster was entrusted and empowered to make determinations going forward related to any conflict disclosures. In support of this arrangement, the Harbormaster

- does not participate in discussions or the development of recommendations related to use or financial arrangements associated with offshore moorings
- reminds anyone with an interest that input on recommendations related to offshore mooring permits are made by Real Property Administration staff
- does not deliberate or vote on any policy related matters before the Harbor Commission
- is expected to answer questions related to policy implementation and impacts on Harbor Department operations
- hereby discloses that the offshore mooring permit he enjoys is held in an irrevocable trust the beneficiary of which is the Balboa Yacht Club. The Balboa Yacht Club holds all the offshore mooring permits adjacent to the subject mooring
- hoping to avoid other conflict of interest concerns also hereby discloses any significant financial interests related to the Balboa Yacht Club including a membership certificate are held in the same irrevocable trust
- further discloses that all remaining financial interests in either the subject offshore mooring permit or membership in the Balboa Yacht Club are de minimis



Newport Beach City Council Members  
Page 12

First, “agreements and arrangements satisfactory to all relevant parties during that discussion” concerning the City’s hiring of the Harbormaster, does not in any way satisfy the public interest in avoiding the appearance of impropriety and conflict. Moreover, despite these representations, the City and the Harbormaster improperly involved the Harbormaster in the mooring valuation process for over two years. As proposed by the valuation process, the City intended to increase revenues enormously for itself. Public records show that Mr. Blank submitted numerous staff reports to the Harbor Commission on mooring rental rates between 2022 and 2024. This includes reports in January, February, and March 2022—while Mr. Blank was serving as Centennial Commodore of the dock owner and mooring field operator Balboa Yacht Club.

Email correspondence also shows Mr. Blank was directly involved in influencing the City appraiser’s analysis of mooring rates. In one 2023 email, Mr. Blank instructed Mr. Netzer to “[p]lease just apply the 30’ rate you determine to that mooring but definitely add an entry in the report that includes the 25’ category.” Although Mr. Blank belatedly claimed to have recused himself in March 2024, he and the City allowed his admittedly improper participation for two-plus years. Such participation irreparably tainted the process.

**D. THE CITY FURTHER ALLOWED OTHER INDIVIDUALS WITH MATERIAL CONFLICTS OF INTEREST TO ENGAGE IN THE PROCESS.**

The conflicts do not stop there. Harbor Commissioner Rudy Svrcek owns a dock and boat in Newport Harbor. The Deputy City Attorney previously advised Mr. Svrcek to recuse himself from discussions and from voting on mooring realignment due to his dock permit being within 500-1000 feet of a mooring field. Harbor Commissioner Scott Cunningham owns a bayfront home and boat in Beacon Bay, which maintains a community dock—a tidelands user.

Yet, Commissioners Svrcek and Cunningham failed to recuse themselves from participating in the City’s mooring valuation and rental review process. Moreover, Commissioner Cunningham acknowledged in a July 2020 email that he already had “two long conversations” with Mr. Netzer about his appraisal and that the “net net when we are ready” “and funded” is the “appraisal results will look much different than the 2016 numbers.” How did Commissioner Cunningham know what the “net net” would be when the City’s appraiser had yet to perform the appraisal? Why was Commissioner Cunningham talking to the appraiser about appraisal results in July 2020 when the appraisal RFP did not even go out until 2021?

It is incumbent on the City to comply with its own rules, the PRA and the Harbor Commission’s Rules of Procedure. The City failed to do so.

Newport Beach City Council Members  
Page 13

#### IV. THE CITY'S CONDUCT CONTRAVENES FEDERAL ANTITRUST LAWS

The United States Supreme Court has repeatedly confirmed that a city is not immune from antitrust laws. (See, *City of Lafayette v. Louisiana Power & Light Co.* (1978) 435 U.S. 389 [rejecting the City of Lafayette's argument that antitrust laws protect only against conduct by private businesses and do not apply to municipalities].) The well-established antitrust rules prohibiting illegal conduct such as collusive price-fixing, bid rigging and the like therefore apply to the City here. (*United States v. Socony-Vacuum Oil Co.* (1940) 310 U.S. 150, 223 [stating, "Under the Sherman Act a combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity ... is illegal per se ...."]). Following the *Socony* case, courts have broadly defined price fixing as an instance where the defendants have in any way agreed on a course of conduct affecting prices (See, e.g., *Arizona v. Maricopa County Medical Society* (1982) 457 U.S. 332; *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 658-659.)

There is reason to believe that the City (through its staff and consultants) and certain entities in San Diego may have been working in concert with one another in connection with mooring rates.<sup>5</sup> Mr. Netzer's appraisal cites to a tentative proposal for mooring rate increases by the San Diego Unified Port District pursuant to which the San Diego Port District apparently provisionally agreed to a mooring ratio of 50% of slip fees. Mr. Netzer uses this provisional San Diego data to support his "mooring to slip" methodology and appraisal conclusion.

It is believed that at the time that Mr. Netzer referenced and disclosed the terms of the tentative mooring rate hikes being contemplated in San Diego, those terms were a part of certain confidential negotiations which were not made public. This, of course, begs the question of how such confidential information was available to the City's appraiser in advance of the information being made available to the public. Additionally, there is the concern that negotiations about rates, rather than agreements upon rates, influenced a rate determination by an appraiser for the City.

We also note that Mr. Netzer's appraisal claims that the SLC approved the rates being proposed in San Diego. This is untrue, as corroborated by the SLC. The SLC remarked in its April 9, 2024 letter to the City:

---

<sup>5</sup> In addition to potential price-fixing concerns, federal antitrust laws are further triggered by the City's monopoly over the tideland user fees and its unfair business practices with respect to the mooring permittees.

Newport Beach City Council Members  
Page 14

Second, the appraisal references proposed mooring rate increases by the San Diego Unified Port District, another trustee of sovereign land, and states that they were approved by the State Lands Commission. Just like in Newport Bay, the State Lands Commission does not have review or approval authority over the San Diego Unified Port District's mooring rates and therefore did not approve the Port's mooring rate increases.

Please advise whether Mr. Netzer and/or his company have been involved with appraisal of mooring rates in San Diego, including but not limited to the rates being considered or actually charged by the San Diego Port District. If he had no such involvement, the City should readily agree to confirming the same in writing.

**V. THE CITY'S LAST-MINUTE PROPOSED "ALTERNATIVE" SCHEME IS PLAGUED BY FUNDAMENTAL DEFECTS.**

**A. THE "ALTERNATIVE" SCHEME IS YET ANOTHER EXAMPLE OF THE CITY'S GAME-PLAYING AND LACK OF TRANSPARENCY.**

The above issues, along with the myriad defects plaguing the City's conduct and 2023 appraisal report authored by Mr. James Netzer, have been presented to the City on a number of occasions. To date, the City has been unable to provide legitimate or logical answers to these issues. Public record requests have been met with claims that certain documents are either not publicly available or do not exist.

It is difficult, if not impossible, to accurately track down the City's ever-changing positions prior to its decision to act. For example: In 2015, the City rejected the very same appraiser's ratio valuation analysis. Yet, in 2023, the City embraced the ratio valuation analysis that it had already rejected. California law makes clear that, "California public policy will not permit a litigant 'to blow hot and cold' by taking the benefits of a doctrine when it suits his purpose and then repudiating the same facts when it is no longer profitable or to his advantage to do so." (*Kunec v. Brea Redevelopment Agency* (1997) 55 Cal.App.4th 511, 525.)

Now, rather than addressing the relevant issues head-on, the City intends to sweep the objections raised by the mooring permittees under the rug by proposing, at the eleventh hour, an "alternative" scenario for mooring permittees. This proposed "alternative" utilizes the 2023 appraisal as a threat (without ever responding to the questions and objections asserted by the mooring permittees). Perhaps not surprisingly, the City's newest "alternative" scheme was conveniently posted during the July 4th holiday period in an effort to reduce public participation and opposition of the mooring permittees, potential mooring permittees and members of the public. The City apparently deliberated concerning this "alternative" plan during closed session meetings but chose to conceal its existence until just days before the upcoming public meeting.

Newport Beach City Council Members

Page 15

Thus, rather than abiding by a linear and well-considered process which would ensure that the mooring permittees are treated in a transparent and non-discriminatory manner, the City has instead jumped all over the place, careening from one position to another without any logic or accountability. Not only that, but the City has apparently transacted secretive deals with private yacht clubs which were not offered to the individual mooring permit holders. The City's conduct in this regard calls to mind a game of "whack-a-mole" as opposed to the fair and equitable process that the Beacon Bay Act guarantees.

Stated another way, the City is a moving target. The City's treatment of the mooring permittees throughout this entire process has been not only unfair but is also irreconcilable with the fiduciary duties owed by the City to the mooring permittees.

**B. THE STAFF REPORT IS REplete WITH VAGUE AND INCONSISTENT STATEMENTS REGARDING THE PROPOSED "ALTERNATIVE" PLAN; MOREOVER, THE STAFF REPORT FAILS TO PROVIDE THE MOORING PERMITTEES WITH ADEQUATE INFORMATION ABOUT NEWLY PROPOSED SCHEME.**

The July 9, 2024 Staff Report (the "Staff Report") raises even more issues about the City's treatment of the mooring permittees. It contains only skeletal and vague information and fails to provide the mooring permittees with sufficient time or information to fully evaluate the City's newest positions. In addition, the Staff Report is replete with problems in and of itself. These include, but are not limited to, the following:

- Lack of Analysis: The Staff Report does not identify what analysis, if any, was undertaken by the City in connection with its shift to the alternative proposal. The mooring permittees have submitted a public records request to obtain all documents involved in or relied upon by the City in the creation of the alternative plan since the City has not provided any of that information to them.
- Lack of Information Provided to Mooring Permittees: As referenced above, the City's last-minute pivot to the proposed alternative plan is troubling for many reasons - not the least of which is that the Staff Report provides only negligible and vague information as to how the City proposes to implement the alternative plan. The Staff Report includes sweeping generalizations without identifying specifics. How are the mooring permittees supposed to provide a reasoned response to a vaguely described alternative proposal which was sprung on them at the last minute over a holiday weekend? The City's tactics are unfair, especially since the City, according to itself, is the sole arbiter of what information it chooses to release to the mooring permittees and when, if ever, it chooses to release that information.

- Retaliatory Motive: Given the timing of the City’s alternative plan, it would appear that the alternative plan was not motivated any genuine desire to address the objections raised by the mooring permittees but was instead drafted in an effort to retaliate against the mooring permittees. The alternative plan is draconian and punitive toward mooring permittees (e.g., If you do not agree with the rent rate increase, then the City will take your moorings and charge you even more rent in doing so).
- City’s Admission That Docks and Moorings Are Both Types of Boat Storage: The Staff Report acknowledges that, “... staff interprets that charging different rates for the same type of use that does not have a different value (e.g., a resident versus non-resident rate for the same mooring), would be a discrimination in rates and is prohibited by SLC.” (Staff Report, p. 2.) The Staff Report further concedes that offshore moorings are a type of boat docking. (See, Staff Report, p. 1, ¶ 1 [“The City of Newport Beach manages the tidelands in Newport Harbor, **which includes parts of the harbor used for docking boats** (called mooring fields)...” (emphasis added)].) This underscores the key point that dock owners and mooring permittees are similarly situated in that they are both docking boats over the tidelands. There is no legitimate justification for the vastly superior docking situation to be charged far less and while having far greater rights.
- Private Yacht Clubs and Exclusive Community Given Favorable Treatment: The alternative plan calls for private yacht clubs and an exclusive community to receive discriminatory favorable treatment. The purpose of the Beacon Bay Bill and other Coastal Commission legislation is to ensure the ability of the public to use the tidelands. (See, e.g., Coastal Act § 30001 [“The Legislature hereby finds and declares...the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people....”] [emphasis added].) The City turns the Beacon Bay Bill upside down by favoring yacht clubs and exclusive neighborhoods over the public.
- Creation of More Classes Results in Additional Discrimination: From the vague information provided to date, it appears that the “alternative” scheme creates even more City-created “classes” of tideland boat dockers (e.g., dock owners, onshore moorings, offshore moorings, private yacht club mooring holders, new mooring permittees, city licensed mooring holders, etc.). The City simply creates new labels when it wants to discriminate. Doing so, however, does not alleviate or excuse the inherent discrimination.
- Historical Treatment of Other Tidelands Users: It is our understanding that, to date, the City has never required any other tidelands boat dockers to involuntarily forfeit their user rights in the manner that is being proposed under the alternative plan. Thus, this is yet another example of the City treating similarly situated tidelands boat dockers in a discriminatory manner.

Newport Beach City Council Members

Page 17

- Continued Omission of Any Response to the Mooring Permittees' Previously Raised Objections: The Staff Report fails to even attempt to respond to the objections previously raised by the existing and/or potential future mooring permittees. The City once again continues to ignore the valid points raised by these individuals.
- Gift of Public Funds: Furthermore, the Staff Report again evades any discussion about its determination of dock fees vis-à-vis mooring permit fees. The City claims that it must increase the mooring permittees' rates by an exorbitant amount because it would otherwise be considered an unconstitutional gift of public funds. Why is the City unconcerned about charging dock owners reduced rates with greater rights over the tidelands? Applying the City's logic, wouldn't the situation with the dock owners' superior and broader use of the granted sovereign land for much less money over a much longer period constitute a past and ongoing gift of public funds in violation of the City's fiduciary duties as a trustee of State-owned land? If the treatment of the dock owners was not and is not a gift of public funds or gift of public land, then it cannot be disputed that charging the mooring users less than the dock owners is likewise not a gift of public land or funds.

C. THE "ALTERNATIVE" PLAN VIOLATES THE MOORING PERMITTEES' CONSTITUTIONAL RIGHTS.

Under the City's alternative plan, the mooring permits would automatically convert to a City-owned moorings which would be subject to the short-term license provisions of the Newport Beach Municipal Code.<sup>6</sup> The City would concurrently assume ownership of the mooring equipment that is currently owned by the mooring permittees, such as the mooring chains, mooring balls and weights.

The City's plan institutes a taking. More specifically, it is an uncompensated taking not in compliance with the Eminent Domain law or the United States and California Constitutions. Nothing in the alternative plan calls for the City to pay just compensation to the mooring permittees even though the City will acquire ownership of the mooring equipment (which is currently owned and maintained by the mooring permittees) upon conversion of the permit into a license. To the contrary, the City intends to increase the mooring rates despite the taking of the mooring permittees' personal property. This scenario therefore presents a textbook case of an unconstitutional taking pursuant to the Fifth and Fourteenth Amendments' due process clauses as

---

<sup>6</sup> The conversion would take place upon the occurrence of certain conditions; however, all mooring permits owned by individuals will transform into a City license in no more than eight years regardless of what might transpire. The private yacht clubs are to be treated under a different set of rules.

Newport Beach City Council Members

Page 18

well as the Fifth Amendment's taking clause ["nor shall private property be taken for public use without just compensation"].)

**D. THE CITY'S PROJECT TRIGGERS CEQA ANALYSIS**

The City's proposed project is not exempt from CEQA. The City's plans to make changes to the harbor, (including "re-aligning" mooring fields in the harbor), the precipitous rate increases and other threatened "alternative" schemes will trigger mooring permittees to respond by, among other things, removing their chains, mooring balls, weights and other associated hardware. The removal of mooring equipment by permittees and reinstallation of the mooring equipment by the City or others constitutes a project which would necessarily impact the sea bed and potentially stir up harmful toxins. CEQA review is therefore necessary.

**VI. CONCLUSION**

Please be advised that this letter contains a summary of the arguments and objections to the proposed mooring rate increase/alternative scheme and does not constitute an exhaustive list of arguments and objections. The existing and potential mooring permittees therefore reserve all rights to revise and/or supplement their arguments and objections as appropriate. Moreover, the existing and potential mooring permittees hereby incorporate by reference the following: (a) all public records produced by the City; (b) all documents sought by the mooring permittees pursuant to a public records request but not produced by the City; (c) all documents which relate or refer to disputes involving the City concerning boat storage from 2010 to the present; (d) all documents which relate or refer to the City's tideland usage; and (e) all objections, comments, arguments and positions asserted by others concerning rates for tideland usage.

We trust that you will seriously consider these objections to the proposed treatment of the mooring permittees in relation to dock permittees and others boat dockers in the harbor that receive (or stand to receive) much more favorable treatment by the City. It is genuinely hoped that the City will comply with its obligations imposed by the Beacon Bay Act as well as the legal obligations imposed by state and federal law.

Very truly yours,

Michael H. Leifer

MHL:tb

circumstances causing the violation, the Attorney General shall bring an action in the Superior Court in the County of Orange to declare that the grant under which the city holds such tidelands and submerged lands is revoked for gross and willful violation of the provisions of this act or any other provision of law or to compel compliance with the requirements of this act and any other provision of law.



**From:** [Ross Libenson](#)  
**To:** [Pan, Katharine@BCDC](#)  
**Cc:** "[Ross Libenson](#)"; "[BCDC PublicComment](#)"; [CSLC CommissionMeetings](#); [REDACTED]  
**Subject:** BCDC Permit 2016.005.00 - Treasure Island Mobility Management Agency Moving Ahead With Tolls  
**Date:** Friday, June 21, 2024 11:25:06 AM

---

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

Ms. Pan-

I am again reaching out on behalf of the recreational users and other stakeholders of the Treasure Island shoreline to obtain, as before, any updates on whether TIMMA/TIDA/SFCTA or any of the other related Tolling Entities have either applied to the BCDC for a permit or to amend the current permit to impose an ingress and egress toll or whether there have been any changes/developments with the issue – including whether TIDA has communicated to the BCDC that it plans to ignore the BCDC’s jurisdiction.

Copied here is an agenda item for TIDA’s June 25, 2024 meeting:

**Agenda:**

"The Treasure Island Mobility Management Agency (TIMMA), in partnership with the San Francisco Municipal Transportation Agency, has secured \$7.8 million in federal funding from the Advanced Transportation and Congestion Management Technologies Deployment (ATCMTD) program for the implementation of a congestion pricing project on Treasure Island and an Autonomous Vehicle (AV) Shuttle pilot project. The project will design and construct a connected toll system to serve as the backbone for a congestion pricing program for Yerba Buena Island/Treasure Island. The project tasks include development of the Scope of Work and procurement activities for Toll System Integration services" design). The Toll System Integrator will prepare detailed toll system requirements, draft, and final system design; conduct testing; and install the toll system equipment

As before, the toll plan violates BCDC Permit 2016.005.00, the 2006 Bay Plan, and the 2014 Land Exchange Agreement between the State Lands Commission and TIDA. It appears that TIDA continues to assert that the *BCDC had no jurisdiction or authority* over TIDA’s and SFCTA’s intention to charge a toll for ingress and egress to access Treasure Island and its shoreline.

In advance, thanks for letting us know. Copied are Mr. Sullivan president of the San Francisco Board Sailors Association and members of the TI Community Organizing Committee. I have also copied this to the public comments email so it is included and made available to the commissioners for their next meeting. Likewise this is copied to the public comments for the State Lands Commission’s next meeting since the proposed toll also violates the aforementioned Land Exchange Agreement’s provisions to ensure access to the Public Trust Lands.

Ross

**Ross Libenson**

Confidentiality Notice: The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If any reader of this communication is not the intended recipient, unauthorized use, disclosure or copying is strictly prohibited, and may be unlawful. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.