

Staff Report 108

PROPOSED ACTION:

Consider sponsoring legislation that would grant in trust to the City and County of San Francisco, acting by and through the San Francisco Port Commission, certain public trust easement lands acquired and held by the California State Lands Commission pursuant to a public trust exchange and title settlement agreement approved by the State Lands Commission at its October 2022 public meeting.

BACKGROUND:

In October 2022, the California State Lands Commission [approved a title settlement and land exchange](#) agreement concerning land adjacent to Islais Creek in the City and County of San Francisco. The settlement agreement includes: 1) a Public Trust Exchange and Title Settlement Agreement between the State of California, acting by and through the California State Lands Commission, the City and County of San Francisco, acting as a charter city and by and through the San Francisco Port Commission, and Murray G. Cole and Doris M. Cole, Trustees of the 2006 Murray G. and Doris M. Cole Revocable Trust; and, 2) the California State Lands Commission making findings that are necessary to allow the City to sell a parcel of filled tidelands within the settlement area.

The Board of Supervisors of the City and County of San Francisco approved the agreement in November 2022. The San Francisco Port Commission approved the agreement in July 2022. The Governor approved the agreement in January 2023.

The Commission acquired an 18-foot-wide public trust easement along the waterway as part of the exchange agreement. A requirement of the agreement is that the Commission and the Port seek legislation to grant the 18-foot-wide public trust easement along the waterway to the Port for local management. This legislation would fulfill that requirement.

Public Trust: The foundational principle of the common law Public Trust Doctrine is that it is an affirmative duty of the state to protect the people's common heritage

in navigable waters for their common use. The traditional uses allowed under the Public Trust Doctrine were water-related commerce, navigation, and fisheries. As a common law doctrine, the courts have shaped the Public Trust Doctrine by finding that it is sufficiently broad to encompass changing public needs. Courts have also clarified that sovereign lands subject to the Public Trust Doctrine cannot be sold into private ownership.

For more than 100 years, the Legislature has granted public trust lands to local governments to manage locally for the benefit of the statewide public. There are roughly 70 trustees in the state, including the ports of Los Angeles, Long Beach, San Diego, San Francisco, and Oakland. The California State Lands Commission has oversight authority to ensure that trustees comply with the Public Trust Doctrine and the applicable granting statutes. The California Legislature is the ultimate trustee of public trust lands.

Port of San Francisco: In 1968, the Legislature granted the City and County of San Francisco, by and through the Port of San Francisco, sovereign tide and submerged lands along the waterfront to hold in trust. The 1968 legislation is known as the Burton Act. The Legislature has amended the Port's statutory trust grant numerous times since then.

The purpose of this legislation is to fulfill a requirement in the 2022 land exchange and title settlement agreement between the Commission, the Port, and the Cole Trust. The legislation will grant an 18-foot-wide public trust easement to the City and County of San Francisco, acting by and through the Port, bringing these public trust easement lands under the same management as the rest of the City and County's granted public trust lands. The legislation will require the Port to hold, operate, and manage, in trust, the 18-foot-wide public trust easement lands in accordance with the common law Public Trust Doctrine and the statutory trust provisions of the Burton Act.

RECOMMENDED ACTION:

It is recommended that the Commission:

Sponsor legislation that would grant in trust to the City and County of San Francisco, acting by and through the San Francisco Port Commission, certain public trust easement lands acquired and held by the California State Lands Commission pursuant to a public trust exchange and title settlement agreement approved by the California State Lands Commission at its October 2022 public meeting.