

Long Beach, California
June 20, 2011

California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825-8202
%Lynda Smallwood Lynda.Smallwood@slc.ca.gov

Members, Long Beach City Council
333 West Ocean Blvd.
Long Beach, California 90802
Submitted by e-mail

RE: Long Beach City Council Special Meeting, June 21, 2011
Closed Session, Item 11-0624 – **Price and Terms of Exchange**
Regular Meeting, Item 23 – **Land Exchange Agreement**
State Lands Commission Meeting, June 23, 2011
Item 135 – **Compromise Title Settlement and Land Exchange Agreement**

Dear Commissioners and Councilmembers:

BACKGROUND

This Exchange Agreement culminates a years-long process by which the City of Long Beach has systematically, incrementally and purposefully contrived to remove park and public open space uses in the Queensway Bay/Pike (Trust Termination Parcels) and transform the area into private commercial and retail uses. Once lands seaward of the mean high tide line had been filled and the historic Pike area was “temporarily” converted into an asphalt parking lot, the die of development was cast. This temporary parking lot, originally meant as a “place holder” until appropriate development might occur (under Tidelands law, for uses such as fisheries and commerce, open space, parkland and recreation) was cited by the City as the very reason the land it occupied was “no longer suitable” for Tidelands uses, having been a parking lot for all the intervening years.

Then, as the way was laid for the development of the Queensway Bay Project (currently the Pike), the City ignored the restrictions of the Public Trust Doctrine, made decisions to build for non-conforming uses and falsely declared the entitlements for its plans were in place. Notwithstanding the opinions of the SLC staff, City staff and project developer to the contrary, the Commission, after the events described in the Litigation History section of the staff report, continues to

indicate there are fatal flaws in the Project developer's and City's choices of tenants which remain as non-conforming uses today. Otherwise,

California State Lands Commission
Long Beach City Councilmembers
Page 2

there would be no benefit to freeing these parcels from the Public Trust as outlined in the "Benefits of the Exchange" section.

From the City's point of view, this Exchange Agreement at last completes its original intent, begun decades ago, to rid itself of what it deems burdensome development barriers, a protection the Public Trust Termination Parcels have enjoyed for as long as anyone in the City of Long Beach can remember. And now, with the transfer into the Public Trust of yet more historically public open space, the Final Public Trust Parcels themselves may fall prey to the same development schemes as occurred at the Pike

POSITION

It must be made clear: the existence of the Public Trust at the QWB parcels did at no time impede the City's actions in building non-conforming uses in the Trust Termination Parcels. These uses were constructed during litigation and occupied over 10 years ago.

With this Land Exchange Agreement there is nothing to prevent the City from again acting in violation of Tidelands Law. Only the SLC's strict vigilance and attention to City actions, plans and activities will ensure compliance with Public Trust Doctrine in the Final Public Trust Parcels. My plea is that the SLC use strong oversight with these Final Public Trust Parcels. Otherwise there is nothing to assure the people that the City will comply with Public Trust Doctrine there, any more than it did at the Queensway Bay / Pike location.

As for the members of the Long Beach City Council, it convenes in Closed Session on this Land Exchange Agreement at 4:15 PM on June 21, 2011. Then the first public airing of this issue since the onset of the current round of negotiations with the SLC staff many months ago begins just 45 minutes later, on the Council's Regular Agenda. Not one current Long Beach councilmember sat on the Council when the initial QWB/Pike Land Swap was approved. And that was done in a Special Meeting called just two days after the Twin Towers collapsed on September 11, 2001. Now the City Council plans to take its first public action on this agendized Agreement in a similarly rushed manner, less than an hour after its closed-door approval which, by the way, already appears in finished form on both the City Council of June 21 and on the SLC agenda two days later.

The People deserve a full accounting of the negotiations which have led to this Agreement. There has been no light shed on the determination of the comparative values of the Trust Termination Parcels or the Final Public Trust Parcels. In light of a local history of extreme variation in Public Land values, including disputes which arose at the time of the 2001 Land Swap and between parties involved in the recent Wetlands/Public Storage swap, the City has shown itself to have an uneven track record in this regard. Its

California State Lands Commissioners

Long Beach City Councilmembers

Page 3

value determinations cannot go unquestioned. I submit, 45 minutes is not sufficient time to reasonably expect any member of the public to be able to conclude whether or not the land values were determined fairly.

CONCLUSION

Due to the extraordinarily short time between the City Council's Closed Session on the Land Exchange Agreement and its first public airing and final decision (45 minutes), it is my conclusion that the People cannot rely on the City Council to act on their behalf and in their favor on this issue. Without sufficient or reasonable time for the fullness of the matters involved in this Exchange to become known, analyzed, understood and accepted or rejected, they must be rejected out of hand. The Council will, in effect, have only its own limited understanding of the matter, informed by only its staff. In the past, this staff has shown its ability to err in maintaining the Public Trust, and there is nothing in this Agreement which indicates the People can expect it to act differently.

Similarly, for the members of the State Lands Commission, regardless the tone or content of SLC staff's negotiations with the City of Long Beach, the People have been excluded from the process, to the point of ignorance of it, up until its final hour.

For these reasons, it is strongly urged that the Long Beach City Council take a Receive and File action on this item so that the People get ample time to take part in the democratic process it is cased within. Later the item could be brought back for a more even-handed airing. It is also strongly urged that both the Long Beach City Council and the State Lands Commission lay the item of this Land Exchange Agreement over also to such a time as the democratic process can take hold and the People are able to participate as fully as they might. Additionally, it is urged the State Lands Commission convene in Southern California, ideally in Long Beach, when this item is brought back.

Respectfully submitted,

/s/

Gary Shelton
240 Chestnut Av. Apt. #908
Long Beach, California 90802