

REPORT ON SANTA BARBARA TRUST LANDS

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TABLE OF CONTENTS

<u>Topic</u>	<u>Page</u>
I Introduction	1
II Background	2
III Trust Revenue and Expenditures	3
A. Interest Earned on Trust Accounts	3
B. Accreted Lands	4
IV Accounting Methods and Records of Fiscal Mangement of Trust Funds	6
A. Past Practices	6
B. Recommendations	7
V Trust Uses	9
A. Live-aboard Vessels	9
B. Slip Transfers	11
C. Brokerages	11
VI Conclusion	12
VII Response of the City of Santa Barbara	Exhibit A
VIII Comments of the Grand Jury of the County of Santa Barbara	Exhibit B

REPORT ON SANTA BARBARA TRUST LANDS

I INTRODUCTION

Pursuant to inquiries by members of the public, Santa Barbara City officials, and the Santa Barbara Grand Jury, Staff of the State Lands Commission and the Attorney General's office have conducted a preliminary review of the practices of the City of Santa Barbara relative to its administration of its granted lands.

This preliminary review was concentrated in two basic areas:

- (1) Permissible use of revenues derived from or attributable to the granted lands; and
- (2) Permissible uses of the granted lands.

Specific matters studied included disposition of interest earned on granted lands trust accounts, and of revenues derived from the so-called "accreted lands"; accounting methods used to record revenues to and expenditures from the granted lands trust funds; use of the granted lands by live-aboard vessels and boat brokers; and slip transfers.

The study and the resulting comments which follow in this report serve to highlight some important issues concerning administration of the Santa Barbara grant, and as a basis for further discussions between the City and staffs of the State Lands Commission and the Attorney General's office. This report should not be considered a conclusive statement as to the propriety of the administrative practices of the City. Cooperation of Santa Barbara City officials and others contacted during the conduct of this study was excellent. This positive attitude aided in the review process.

II. BACKGROUND

By Chapter 78 of the Statutes of 1925, the Legislature purportedly granted to the City of Santa Barbara certain State owned sovereign tidelands and submerged lands. The effectiveness of this statute is questionable because the subject lands were to be bounded on the seaward side by a pierhead line which did not, and does not, exist.

By Chapter 13 of the Statutes of 1937, the Legislature amended the original granting statute in three important respects:

(1) It defined the granted area to be those tidelands and submerged lands within the City limits lying seaward of the mean high tide line as it existed in 1937 (this reference to the City limits established a seaward boundary and thus provided a complete description of the granted lands);

(2) It released those reclaimed, filled, and accreted lands within the city limits and seaward of the mean high tide line as it existed on April 25, 1925 from the land use restrictions of the grant; and then granted those lands to the City along with other tidelands and submerged lands within the city limits (see (1) above);*

(3) It authorized the City to convey a certain portion of the granted lands to the State for use as a stadium for Santa Barbara State College.

By Chapter 365 of the Statutes of 1937, the Legislature amended the earlier 1937 provisions to correct the description of the stadium parcel and to allow the City to lease or convey the stadium parcel to the State. A ninety-nine year lease was subsequently issued to the State on March 24, 1938.

By Chapter 9 of the Statutes of 1940, the Legislature authorized the City to lease another parcel to the United States Government for use as a site for a naval reserve armory.

*These reclaimed, filled, and accreted lands constitute a limited area generally located easterly of Santa Barbara Point and westerly of the Harbor.

By Chapter 193 of the Statutes of 1975, the Legislature amended the prior granting statutes to allow leases of 66 years (prior law restricted such leases to 25 years), and to specifically enumerate permissible uses of the granted lands. Section 6 of this legislation adds Section 4 to the grant, which expressly limits the use of revenues from the granted lands to trust purposes which are matters of "...statewide, as distinguished from local or purely private, interest and benefit," and then enumerates those uses.

III. TRUST REVENUES AND EXPENDITURES

Revenues derived from granted lands are themselves subject to the terms of the grant and the Public Trust, and may not be expended for general municipal uses.

This principle was firmly established in the case of City of Long Beach v. Morse (1947) 31 Cal.2d 254, and is expressly set forth in the granting statute, which clearly enumerates permissible uses of the revenues derived from the granted lands. Improper charges to or expenditures from the granted lands trust funds must be returned to the trust.

In addition, where the City has advanced monies to the trust and now seeks reimbursement of those amounts from the trust, further investigation will be necessary to determine the City's intent in this regard at the time of the original expenditures.

A. INTEREST EARNED ON TRUST ACCOUNTS

Interest earned upon trust fund deposits are "revenues accruing from. . .the granted lands. . .," as described in Section 6 of Chapter 193 of the Statutes of 1975 (Section 4 of the grant) and are thus subject to the trust and grant prohibition against use for purely local or private benefit.

Staff's preliminary review of City treatment of interest earned on trust funds reveals that some portion of the interest earned on the Harbor Fund is credited to the

(Mallon v. City of Long Beach (1955) 44 Cal.2d 199, 210.)

Therefore, in view of the intendments in favor of the constitutionality of a statute (Mallon v. City of Long Beach, supra, at p. 212; Jersey Maid Milk Products co. v. Brock (1939) 13 Cal.2d 620, 636), the City of Santa Barbara Trust Grant must be interpreted as simply allowing non-trust use of that portion of the granted lands that had previously been filled and reclaimed, but requiring that revenues generated by these lands be put to traditional trust uses.² Indeed, the City of Santa Barbara is, at the present time, properly depositing all such revenue in its granted lands trust accounts, telling evidence of the City's understanding of its grant.

Moreover, the granting statute in Section 4 provides a list of specific uses which expressly limits the uses that may be made of revenues accruing from or out of the use of all of the City's granted lands, including the accreted lands. Each of the uses enumerated is a trust use; no general municipal use is permitted to be made of any revenue produced from any of the land thereby granted to the City. Thus, while the Legislature has allowed the City to make non-trust use of a portion of its granted trust lands, this provision only applies to land use restrictions and has no application to revenues. Only trust uses may be made of the revenue generated directly or indirectly from all of the City's granted lands. The City must therefore continue to deposit all revenues produced by these lands, including that derived from the accreted lands, into its granted lands trust accounts.

2. Similar legislative authority has been given to the City of Long Beach in its grant. (Stats. 1959, ch. 1560, sec. 2) See also the Trust Grant to the City of Newport Beach (Stats. 1978, ch. 74, sec. 3) which requires that revenues from lands freed from the common law public trust themselves remain subject to the trust.

IV. ACCOUNTING METHODS AND RECORDS OF FISCAL MANAGEMENT OF TRUST FUNDS

A. Past Practices

Questions raised regarding the propriety of past charges to the Santa Barbara trust funds are as yet unresolved.

A limited review of the City's accounting procedures as related to its administration of the granted lands trust funds, revealed the following deficiencies.

1. There is no uniform system of accounts to accumulate cost information for various city departments which may be working on the same granted lands project, program or operational activity.
2. Cost accounting data generated by the various city departments are produced on an estimated basis and therefore, are not satisfactory.
3. Granted lands capital projects are not charged with uniform fringe benefits or overhead rates, and in fact most projects are not charged with either benefits or overhead.
4. There is no labor distribution system to determine the exact hours spent on any particular granted lands project, program, or activity.
5. Estimated amounts used to charge the granted lands trust fund for services rendered by the City's General Fund departments are not adjusted to the actual costs at the end of the fiscal year.

As a result of these deficiencies, it has been difficult to reconcile apparent discrepancies between budgeted and actual charges to the trust. Resolution of these outstanding issues will be necessary in order to determine the extent to which there has been compliance with the trust provisions.

Similar circumstances have arisen with regard to grants to the cities of Los Angeles, Redondo Beach, and Long Beach. In these cases, grantees have worked with the members of staffs of the Commission and the Attorney General to develop settlement agreements wherein major difficulties with past grant administration have been resolved and procedures for the future have been agreed upon. Such action is appropriate here.

B. Recommendations

Because proper administration of the Santa Barbara grant will require more detailed and accurate record keeping, Commission staff recommends the revisions in trust accounting procedures described below, and that these revisions be embodied in any settlement agreement entered into by the City and the Commission.

The City should establish an adequate system of cost accounting to ensure greater accuracy and completeness of the cost records. Such a system should include at least the following features.

1. Adequate Cost Accounting System.

An adequate cost accounting system compatible with the City's present general accounting system, should be developed. The system should have the capability to generate the cost information necessary to determine the total costs incurred in various granted lands projects and activities. (Applicable to Deficiencies 1 and 2.)

2. Adequate Work Order System For Granted Lands Projects.

Under this system all costs (labor, material, equipment, contract costs, overhead, etc.) related to specific projects, programs, or activities, would be

charged to the proper work orders. The system will serve not only a cost accumulating function but also as a management tool for control of costs. (Applicable to Deficiency 1.)

3. Capitalization of Project Related Expenditures.

Engineering costs, including benefits and overhead, associated with capital projects are an integral part of the capital expenditures and should be capitalized. (Applicable to Deficiency 1.)

4. Predetermined Rates for Fringe Benefits and Overhead.

Predetermined rates for fringe benefits and overhead should be developed to facilitate accurate estimating of various project costs. (Applicable to Deficiency 3.)

5. Adequate Time Records For Payroll Distribution and Labor Cost Determination.

These records would provide the basis for subsequent review and analysis as to the propriety and fairness of the costs incurred by the City for granted lands projects. Time sheets are currently maintained by the Public Works Engineering Division; however, they have yet to be used for cost distribution purposes. (Applicable to Deficiency 4.)

6. Year-end Adjustment of Estimates to Actual Costs.

A procedure should be established to adjust the estimated amount charged to the Harbor Fund for services rendered by the General Fund to actual costs as determined at the end of each fiscal year. This year-end adjustment should commence as of the 1981-82 fiscal year. (Applicable to Deficiency 5.)

V. TRUST USES

Certain uses of the granted lands presently permitted by the City of Santa Barbara may not maximize furtherance of the trust and grant purposes.

A. LIVE ABOARD VESSELS

The Santa Barbara Harbor Administration has recently estimated that of the 1008 boats maintained in the harbor, 252 are used as permanent residences for 424 individuals. Private residential use is not a public trust use, as demonstrated in the dissenting opinion of Justice Clark in City of Berkeley v. Superior Court (1980) 26 Cal.3d 515, 538 and in the concurring and dissenting opinion of Justice Clark in State of California v. Superior Court (Lyon) (1981) 29 Cal.3d 210, 235. (See also: Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", 68 MICH. L. REV. 473, 543-544 (1970)). Such residential use is for a purely private purpose that is unrelated to, not dependent upon, and does not further, the particular purposes for which tidelands and submerged lands are uniquely suited. Mooring or berthing boats as long-term private residences does nothing to stimulate or foster such purposes as navigation, commerce, fisheries, recreation or the preservation of ecology and open space, all of which are within the range of proper trust uses.

In view of the tremendous needs of commercial fisheries and recreational boaters for additional space on limited granted lands, the continued use of 25% of the moorings and berths at Santa Barbara for residential use appears to be inconsistent with Public Trust principles and the intent of the granting statutes.

Since 1977 the State Lands Commission's staff has discussed this issue with Santa Barbara officials, commented on the Local Coastal Plan, written letters, and addressed local meetings where this issue arose. Guidance on live-aboard issues was given by the office of the Attorney General and stated in a letter to Senator Dennis E. Carpenter dated January 10, 1978.

Legislative grants to the City of Berkeley contain language similar to that in the Santa Barbara granting statutes. Commission staff, with the approval of the Office of the Attorney General, have advised the City of Berkeley that the leasing of 4% of the berths at its municipal marina for live-aboard cruising vessels would be neither inconsistent with the grant nor a substantial interference with the public's trust needs, given the limited number and location of live-aboards, and requirements that said live-aboard vessels be in fact navigable. It was also believed that a restricted number of live-aboards may discourage vandalism within the marina. In addition, all berths are rented on a month to month basis, and cruising vessels authorized as live-aboards are charged a higher rate than those not so designated. It should be noted also that the City of Berkeley has provided additional protection to the statewide Public Trust interest in the granted lands through the development of ordinances, resolutions and regulations and in their enforcement. (These data have been previously furnished to the City of Santa Barbara.)

It is noted that in September of 1980 the Santa Barbara City Council adopted Resolution 80-113, Slip Assignment Policy, which stated "the purpose of the Slip Assignment Policy is to provide regulations for the primary purpose of the Harbor which is to provide in-water storage for commercial and recreational vessels actively used for their intended purpose. As a limited secondary use, a slip permittee may be permitted to reside aboard a vessel by obtaining a permit from the Harbor Department pursuant to the Santa Barbara Municipal Code." Sections III and XII added certain provisions requiring navigability as a condition of berthing or mooring. (Note, however, that a non-navigable boat present in the marina in September 1980 has until 1985 to comply, unless sold prior to that date.)

Nevertheless, many problems associated with the live-aboard issue remain unresolved. There is no apparent restriction on the number of individuals who may be permitted to reside on live-aboards. So long as live-aboards are permitted on the granted lands under relatively

unrestricted conditions, their particularly high demand for services relative to health and safety will persist, resulting in a high economic demand on the trust, as well as a high potential for injury to the trust corpus. Additionally, live-aboard use may limit availability of berths and mooring sites to boaters through the waiting list procedure.

B. SLIP TRANSFERS

The City, pursuant to the Santa Barbara Municipal Code, permits the transfer of marina slips with the sale of the boat occupying the slip. As a result of high demand for boat slips in southern California, entitlement to use a slip carries an intrinsic value, which is reflected in the monetary consideration exchanged for the transfer of the boat and slip. This transfer practice may result in two problems.

First, the allowance of slip transfers limits the availability of berths and moorings through a waiting list procedure and prevents equal access to the general public. The City Council should consider discontinuation of its policy of permitting slip transfers. It may wish to implement such a change by providing a transition program such as the State Lands Commission has done in one instance, whereby present slip lessees may be allowed to transfer their slips once during a specified period of time. Thereafter, slips would be assigned only through a waiting list.

Second, slip transfers may result in private financial gain with little or no monetary benefit to the trust-owned property. Imposition of a substantial transfer fee, reflective of the value of the slip transfer, is one means of alleviating this concern. The City presently imposes a fee upon slip transfers. This fee policy should be reviewed to determine whether it assures the trust a fair return in the event this practice is continued in any form in the future.

C. BROKERAGES

Principles discussed under SLIP TRANSFERS, above, may be similarly applied to the City's practice of permitting boat brokers to display boats for sale in the marina. As one example, the City might consider imposition of a surcharge upon sale of a vessel so displayed, which surcharge may be related to the value of the sale.

VI. CONCLUSION

As stated above, this report should serve as a basis for further investigation and evaluation of the City's grant administration practices. It is hoped that the comments included in this report will be helpful to the City in formulating revisions to its grant administration practices which will be workable from the City's standpoint, and consistent with the principles of the Public Trust and the Santa Barbara granting statutes. Staff of the State Lands Commission and the Attorney General will be happy to meet with representatives of the City to discuss resolution of outstanding issues.