

**STAFF REPORT
C77**

A 17

02/04/19

G 11-01.6

R. Boggiano

S. Scheiber

S 11

**AUTHORIZE FILING A DISCLAIMER IN THE MCENERNEY ACTION TITLED
“CITY AND COUNTY OF SAN FRANCISCO V. ALL PERSONS, ETC. ET AL.
AND STATE OF CALIFORNIA, SAN FRANCISCO COUNTY SUPERIOR COURT
NO. CGC-18-569714”**

PARTIES:

City and County of San Francisco, acting by and through the San Francisco Port Commission

All Persons Claiming Any Interest In, or Lien Upon, the Real Property Described in the McEnerney Complaint, or Any Portion Thereof

State of California, acting by and through the California State Lands Commission

LOCATION:

Privately owned land and granted sovereign tide and submerged lands located in the City and County of San Francisco.

BACKGROUND AND STAFF ANALYSIS:

The Commission approved a Compromise Title Settlement and Land Exchange Agreement for Pier 70 (Agreement) in 2017 ([Staff Report 77, November 29, 2017](#)). The parties to the Agreement are the State of California, acting by and through the Commission, and the City and County of San Francisco (City), acting by and through the San Francisco Port Commission (Port). The Agreement concerns real property in the City within the area commonly known as Pier 70.

In 1906, an earthquake and fire caused the public records in the City’s Office of the County Recorder to be destroyed. In order to restore and establish its public record title for certain lands at Pier 70, the Port has filed an action under the Destroyed Land Records Relief Law, referred to as a McEnerney action.

Because the McEnerney action involves, in part, the title to or boundaries of former tide or submerged lands, the Commission is named as a defendant.¹ The McEnerney action involves lands at Pier 70 including portions of Michigan Street,

¹ Pursuant to Public Resources Code section 6308.

STAFF REPORT NO. C77 (CONT'D)

18th Street, 20th Street, and former Waterfront Street, as well as portions of Assessors Block 3941 and Assessor's Block 4046, and certain lands lying to the east of that parcel.²

Most of the lands involved in the McEnerney action are lands owned in fee by the Port, as trustee, subject to Chapter 1333 of the Statutes of 1968 (Burton Act), the Burton Act Transfer Agreement, and the common law Public Trust Doctrine (Port Lands). The Port seeks a judgment that the Port, as trustee, is the owner in fee simple of all the Port Lands subject to certain reserved interests including the reserved interests of the State of California under the Burton Act, the Burton Act Transfer Agreement, and the State's sovereign title.

A portion of Michigan Street, which is not included in the Agreement nor within the Commission's jurisdiction, is located within the original Mexican pueblo grant to the City. The City claims fee simple absolute ownership to this portion of Michigan Street (City Lands).

Based on a comprehensive, independent analysis of the facts and law, staff has ascertained that there is no sovereign interest in the City Lands held by the State of California either under the direct management jurisdiction of the Commission or granted in trust to the Port. Staff concurs with the Port's ownership interests of the Port Lands. Therefore, staff recommends that the Commission authorize the Attorney General to file a disclaimer on its behalf.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.2 of the Commission's Strategic Plan to provide that the current and future management of ungranted sovereign land and resources and granted lands are consistent with evolving Public Trust principles and values, particularly amid challenges relating to climate change, sea-level rise, public access, and complex land use planning and marine freight transportation systems.

² The certain lands lying to the east of Assessor's Block 4046 are described in the deed granted to the State of California, Recorded November 13, 1967 in Book B 192, page 384, Official Records of the City and County of San Francisco. All of the lands defined in the complaint as "Port Lands" comprise a portion of "Parcel A" as described and depicted in that legal description and survey recorded on May 14, 1976, at Book C 169, page 573, Series No. Y88210, Official Records, describing and depicting lands transferred to the City, in trust, pursuant to the "Agreement Related to the Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco," entered into on January 24, 1969, and recorded on January 30, 1969, at Book B308, page 686, Series No. R40413, Official Records.

STAFF REPORT NO. **C77** (CONT'D)

2. The title settlement and land exchange at Pier 70, authorized by Chapter 477, Statutes of 2011, was approved by the Commission at its November Commission meeting ([Staff Report 77, November 29, 2017](#)).
3. At the November 2017 Commission meeting and as part of the Commission's approval of the Agreement, Commission staff received general authorization to participate on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement or Chapter 477, Statutes of 2011. Because the City Lands are located outside of the boundaries of the land included in the Agreement, staff is seeking additional authorization to disclaim any sovereign title interest in the City Land.
4. Authorizing the Attorney General to file a disclaimer is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBIT:

- A. Location and Site Map

RECOMMENDED ACTION:

It is recommended that the Commission:

AUTHORIZATION:

Authorize the Attorney General to file a disclaimer on behalf of the Commission in the case of *City and County of San Francisco v. All Persons, etc. et al. and State of California*, San Francisco County Superior Court No. CGC-18-569714.

NO SCALE

LOCATION



Exhibit A

G11-01
 PIER 70
 LAND EXCHANGE
 CITY AND COUNTY OF
 SAN FRANCISCO



PIER 70 LAND EXCHANGE

MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.