

Public Trust Doctrine Violations

The City could have decided to put this mega-shelter nearly anywhere else in the City without running into the public trust doctrine. But Seawall Lot 330 is not like other properties in the City. The Embarcadero used to be part of San Francisco Bay. The bays and waters of the State are protected by the public trust doctrine, which dates to Roman times and is recognized by the U.S. Supreme Court and California Supreme Court. Those bays and waters do not lose their public-trust protections when filled in or diked off, as the Embarcadero was early in the 20th century.

The public trust doctrine requires these lands and waters to be held in trust for the benefit of the public, for purposes of marine commerce, navigation, recreation, and fisheries. Taking over public trust land to build housing is generally not allowed.

When the State granted this valuable public-trust property to San Francisco in 1969, it stipulated that the public trust still applied. The law requires that if San Francisco ever wanted to use this public-trust property for non-public-trust purposes, like housing, it needs to insist on getting “fair market value” in return, plus prior approval from the State Lands Commission. The City did neither: it leased a property worth close to \$100 million for just a few thousand dollars a month, and the City completely ignored the State Lands Commission. The City violated the public trust doctrine.

Planning Code Violations

In addition to shirking its responsibilities under the public trust doctrine, the City violated its own Planning Code. To keep the waterfront attractive, the City’s general plan under the Planning Code understandably requires development on waterfront property to go through design review. But the City did not do any design review here, in violation of the Planning Code.

The City claims that design review is not required because the project is of a temporary nature. But the language of the Planning Code does not exempt temporary projects from the design review process.

California Environmental Quality Act (CEQA) Violations

The City violated CEQA by not undertaking an environmental review. It determined itself to be entirely exempt from environmental review under CEQA, despite the significant impacts this project will have on the community and the environment. The property is known to be contaminated, but the City proposes no cleanup and will be having hundreds of people sleeping on top of contamination. Daily calls for emergency services will snarl traffic on the Embarcadero and Bay Bridge.

The CEQA exemption the City relies on is also inapplicable for projects that are inconsistent with the general plan and zoning requirements. Design review is a requirement of the property’s waterfront zoning. As described above, the project did not undergo design review as required.