

**Brisbane Baylands Community Advisory Group (BBCAG) Minutes  
November 18, 2008, Community Center 250 Visitacion Avenue**

**Members Present/Absent:** *See attendee roster.* [BBCAG members 10; Public 14 attendees]

**Welcome Remarks:** Clara Johnson, opened the meeting at 7:00 p.m.

**Presentation**

The meeting began at 6:40pm with the introduction of Mario DeBernardo, Staff Counsel of the California State Lands Commission by the Chair. Mr. De Bernardo gave a presentation entitled "Public Trust Doctrine". The sixteen slide power point presentation is available at [http://www.slc.ca.gov/Misc\\_Pages/Public\\_Trust.html](http://www.slc.ca.gov/Misc_Pages/Public_Trust.html).

Mr. De Bernardo traced Public Trust Doctrine from its origins in Roman Law through English Common Law to the United States and then to California where in 1850 through statehood, California acquired the public trust or sovereign land as the trustee for the beneficiary, the people of the State of California. Those lands include tidal and submerged lands, the shoreline up to the mean high tide line, navigable rivers and lakes and the ocean floor to three nautical miles offshore. It was determined in 1853 that the public trust lands being transferred from Federal to State care consisted of 5million acres and that revenue derived from that land should be used for education. It goes to STRS, the State Teachers Retirement System.

From the 1850's until 1938, the Surveyor General had jurisdiction over the Public Trust Lands but as a result of corruption that included the Teapot Dome Scandal the responsibility for the oversight of the Public Trust Lands was given to a newly created commission, the State Lands Commission. It has three members, The Lieutenant Governor, The State Controller and the State Director of Finance. The Legislature can supersede the Commission. There are regulatory agencies involved with Public Trust Issues. They are BCDC, Coastal Commission, Water Resources Board, Regional Water Quality Control Boards, Dept. of Fish and Games and the Tahoe Regional Planning Agency.

The original uses that were appropriate on Public Trust Lands were uses related to water commerce, navigation and fishing e.g. Harbors, Ports and Marinas. In the last one hundred years through evolving Common Law, the following uses have come to be accepted on Public Trust Lands: open space conservation, ecological preservation, scientific study, water dependent or water oriented recreation and uses incidental to navigation, e.g. in San Francisco, warehouses, container ship cargo storage, convention and trade centers, hotels, restaurants and parking lots. The primary use on Public Trust lands must be a water use or water related use. There are clearly established inconsistent uses and they include: general commercial, public schools, residential, hospitals, non-visitor related hotels, restaurants and parking.

The most recent eighteen year tidal history determines the "mean high tide line" and therefore sea level rise will affect the future of Public Trust Lands. Those lands currently consist of 4 million acres of land, 120 river and sloughs, 40 lakes, 1100 miles of coastline, thousands of acres of non-coastal shoreline and three miles offshore.

Mr De Bernardo answered question from BBCAG members and the public.

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Mr. De Bernardo stated that any group can ask the Commission to promote wetlands and wildlife restoration on lands that they hold an easement on or that they own. The Lands Commission may hold fee simple ownership to land or have an easement on it.

He referred to a 1981 legal decision involving the City of Berkeley that clarified when the easement is retained despite sale of land. It involved Board of Tidelands Commission created lots.

He clarified that the Baylands Interior Drainage Channel is subject to a Public Trust easement and said that possibly the North Ditch is also subject to an easement. He said that any tributary flowing to the bay that is affected by the tide would be subject to a Public Trust Easement.

During the presentation, a quorum was achieved. After the presentation, the Agenda and Minutes were adopted.

The BBCAG Comments for the Community Preferred Alternative in the EIR Process for the Baylands Specific Plan Application were reviewed. The comments were amended primarily through comments by Michael Barnes. The comments were approved for submission to the City Council.

The announcements that were made were: The Dec 16 regular meeting has been canceled. There will be a Study Session with UPC Technical Consultants on 12/2/08 and the next regular meeting for BBCAG will be on Jan 20, 2009.

The meeting was adjourned at 8:50 +/-