

Millius, Kerstin (Federal)

Subject: FW: Port of Los Angeles - AltaSea EDA Grant, Covenant Requirements
Location: Teleconference Call: 877-810-9415; Access Code: (b) (6) (input at two prompts)

Start: Fri 11/18/2016 10:00 AM
End: Fri 11/18/2016 11:00 AM

Recurrence: (none)

Meeting Status: Accepted

Organizer: McCloskey, Heather

-----Original Appointment-----

From: McCloskey, Heather [mailto:HMccCloskey@portla.org]

Sent: Tuesday, November 15, 2016 12:03 PM

To: McCloskey, Heather; Chekouras, Katherine (Federal); kathryn.colson@slc.ca.gov; cpatibanda@glaserweil.com; tmcosker@glaserweil.com; Galvin, Michael; Krusoe, Jenny (JKrusoe@altasea.org) (JKrusoe@altasea.org); sjensen@altasea.org; Bansal, Shalini (Federal)

Subject: Port of Los Angeles - AltaSea EDA Grant, Covenant Requirements

When: Friday, November 18, 2016 10:00 AM-11:00 AM (UTC-08:00) Pacific Time (US & Canada).

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The following discussion points from Katy's 11/14 email provided below to guide our conversation regarding the EDA grant requirement to record religious and nondiscrimination covenants on port property at the end of the useful life of the project:

I offer the below as thinking points for our conversation.

A few clarifications and a suggestion.

1. The inherently religious purposes covenant can be removed with EDA permission and repayment of the federal share. I will double check on this but I believe that if the buildings are removed after the useful life, the value would be minimal to none. Most ground leases provide the landlord the right to require the tenant to remove the improvements. In sum, for this item there is likely some flexibility in how the language is drafted to meet everyone's concerns. The covenant cannot automatically release, but there is the option to request its removal. So I am hopeful we can work with your proposal below with a few tweaks.
2. It is unclear to me whether the EDA improvements are in tidelands. The letter you sent pertains to actual marshes.
3. It is an interesting question whether a non-discrimination clause, which likely just affirms the Port and State's already existing legal requirements under federal (and maybe state) law falls into the same category as conservation easements. This is especially true given the attached speaks to a conveyance, which is not required nor desired by EDA. In addition, the mitigation for a third party benefit described in the attached has a very different public benefit than federal grant money to be used on state land. Unfortunately, EDA has been asked the question about leaseholds in the recent past. The DOC position is that the covenant must run with the land and can't automatically release at a certain point. See 81 FR 68168.

In the past, answers to the following have been helpful:

1. Does the State/Port when it out grants property require a non-discrimination clause. Many states require this type of clause.
2. Was this property deeded by the Federal government after 1965 (ie did it happen to be say a past coast guard or navy property). Properties deeded after the civil rights act tend to include a non-discrimination covenant already.