From:	Charuni Patibanda
To:	McCloskey, Heather; Chekouras, Katherine (Federal)
Cc:	Bansal, Shalini (Federal); Galvin, Michael; Viola, Rica; Robles, Ed; Krusoe, Jenny (JKrusoe@altasea.org) (JKrusoe@altasea.org); sjensen@altasea.org
Subject:	RE: AltaSea/Port of Los Angeles EDA Grant - Covenant Recordation Restrictions
Date:	Tuesday, November 15, 2016 10:26:17 AM
Attachments:	image002.png

We can do Thursday afternoon or Friday morning.

Thank you,
Char

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From: McCloskey, Heather [mailto:HMcCloskey@portla.org]
Sent: Tuesday, November 15, 2016 9:54 AM
To: Chekouras, Katherine (Federal)
Cc: Bansal, Shalini (Federal); Galvin, Michael; Viola, Rica; Robles, Ed; Krusoe, Jenny (JKrusoe@altasea.org) (JKrusoe@altasea.org); sjensen@altasea.org; Charuni Patibanda
Subject: RE: AltaSea/Port of Los Angeles EDA Grant - Covenant Recordation Restrictions

Thanks Katy, I will forward your email to the State Lands attorney and ask for her availability this week.

Char – could you please let me know times you are available for a call the rest of this week? Tim also if he would like to participate.

Once we have a day/time I can forward call in information to everyone.

Thanks, Heather

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From: Chekouras, Katherine (Federal) [mailto:KChekouras@eda.gov]
Sent: Monday, November 14, 2016 6:02 PM
To: McCloskey, Heather
Cc: Bansal, Shalini (Federal); Galvin, Michael; Viola, Rica; Robles, Ed; Krusoe, Jenny (JKrusoe@altasea.org) (JKrusoe@altasea.org); sjensen@altasea.org; cpatibanda@glaserweil.com
Subject: RE: AltaSea/Port of Los Angeles EDA Grant - Covenant Recordation Restrictions

Heather,

I think it would be helpful to schedule a meeting with the lands attorney, the Port attorney and the AltaSea attorney. This often works better than playing "telephone" between us and emailing. At this point, I prefer we discuss the below versus having emails strings. Could you please help organize a call?

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.

This Wednesday, Thursday, or Friday are the most open for me right now.

Best,
Katy

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From: McCloskey, Heather [mailto:HMcCloskey@portla.org]
Sent: Monday, November 14, 2016 10:58 AM
To: Chekouras, Katherine (Federal) <KChekouras@eda.gov>
Cc: Bansal, Shalini (Federal) <SBansal@eda.gov>; Galvin, Michael <MGalvin@portla.org>; Viola, Rica <RViola@portla.org>; Robles, Ed <ERobles@portla.org>; Krusoe, Jenny (JKrusoe@altasea.org) (JKrusoe@altasea.org) <JKrusoe@altasea.org>; sjensen@altasea.org; cpatibanda@glaserweil.com
Subject: AltaSea/Port of Los Angeles EDA Grant - Covenant Recordation Restrictions

Hi Katie,

Mike and I spoke with the State Lands attorney about the Port's ability to permanently record the EDA's covenants on tidelands property, namely the two covenants regarding nondiscrimination and not using the property for inherently religious purposes.

It is State Lands' position that the Harbor Department cannot record any type of permanent restriction on tidelands property. For your reference, attached is a letter provided to us by State Lands regarding a situation in 2014 involving a request to place a permanent deed restriction on trust property held by the City of Oakland. It provides some background information on this issue and conveys State Land's reasoning on their position.

We will be able to record the covenant for purpose and use with a limit of 20 years, and we would require that covenant to be extinguishable at the end of the 20 year period, through release of the Federal Interest.

One possible solution for the religion and nondiscrimination covenants would be if the City could comply with EDA's regulations by recording the covenants with a time limitation, namely up to the maximum length of time the Department is authorized to lease property, which in the case of the City's trust and City Charter restrictions is 66 years and 50 years, respectively. The state legislature passed a bill in 2015 which authorized the City to approve permits and leases on tidelands property for 66 years. However, the City Charter has not been similarly amended and currently authorizes permits for up to 50 years, and this would currently be the longest length of time in which a covenant could be recorded.

We would like your opinion on whether recording the religion and nondiscrimination covenants at the end of the useful life of the project for 50 years would be sufficient to meet EDA's regulations. If the useful life of the project starts in 2016 and runs for 20 years, the religion and nondiscrimination covenants would be recorded in 2036 and be in effect until 2086.

Thank you for your consideration of the foregoing, we look forward to hearing from you.

Heather

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