The Historic Sperry Flour Mill  
Reclaiming Vallejo’s Lost Land

INTRODUCTION

This Journal is an examination of the Fee Title and Ground Lease related to Public Trust, municipally owned and privately owned land located at 790-800 Derr Street in the City of Vallejo (COV), currently the subject of a project proposal by the Vallejo Marine Terminal, LLC (VMT) and Orcem California, Inc. (Orcem), to build a deep water berth, port and a cement plant at the Historic Sperry Mill site (Project). It is not intended to offer any legal opinion, but does take issue with the claim that these Project applicants are the legal holders of the Fee Title and Ground Lease for these parcels of land, and the notion that they have the right to demolish and/or alter the historic structures that stand on this site.

We demand that further action on the Project proposal be suspended until the assertions and allegations in this report are independently and authoritatively investigated and the issues of property title and the related ground lease have been clarified and settled.

When the COV received an application for a Major Use Permit (MUP) from VMT/Orcem stating that some of the existing structures at this site would be demolished, altered and reconstructed, it brought to light the core question of who actually owns this land and the structures on it, and who has a legitimate right to restore, alter or demolish them and under what conditions. Our investigation, initially intended to verify the ownership of these historic buildings and structures; also revealed errors, infractions, irregularities, and questionable practices dating back to 1991 that we detail in the following pages.

The historic Sperry site, most recently operated by General Mills, Inc. (GMI), consisted of sixteen (16) structures built from 1869 to 1992. Six (6) of these structures are historic resources as identified by the Historical Resources Evaluation, Appendix F of the DEIR, submitted by the applicants as part of their permit application. As we shall show, these structures stand on land under the jurisdiction of the State Lands Commission, governed under Public Trust Doctrine, with the COV acting as Trustee. One of the six historic resources (the Flour Mill building) stands in part on State Land held in trust by
the City of Vallejo. The remaining 10 structures stand on parcels originally leased by GMI from the COV.

As originally proposed, the project site at 790-800 Derr St., is situated on 39+ acres of land comprising of: a 9.89 acre parcel (now Parcel 23) leased by VMT from COV, originally leased by GMI, a 19.92 acre parcel (now Parcel 22), originally leased by GMI from the COV which current County records show to be owned by VMT, and 10+ acres additional parcels of abandoned streets and several parcels owned by Solano County. The proposed Orcem plant would occupy approximately 5 acres, sitting directly on Public Trust land.

After GMI ceased operations in 2001 and abandoned the property in 2004, the 30-acre leased lot—Parcel 90, where the historic Sperry structures stand—underwent a series of administrative processes involving, among other things, lease assignments, foreclosure, subdivision and ground lease amendments. On March 17, 2016, the Vallejo Architectural Heritage and Landmarks Commission confirmed the Vallejo Architectural Heritage Foundation’s nomination designating six (6) Sperry Mill structures as City Landmarks. On March 28, 2016, VMT filed an appeal to overturn this decision. To date the COV has not heard this appeal. The site was nominated for inclusion on the National Register of Historic Places. On July 28, 2017, the Sperry Flour Company Vallejo Mills Historic District was approved by the California Historical Resources Commission to become Vallejo’s fourth historic District, now listed in the California Register of Historical Resources and eligible for the National Register.

The California Environmental Quality Act (CEQA) provides the State’s main legal protection for Historic structures. CEQA governs the alteration or demolition of all structures with “historical significance.” The proposed demolition of the historic Sperry Mill structures is more challenging since these buildings and structures stand largely on Public Trust land, not land owned by the project applicants. For a property owner to pursue the demolition of a “historically significant” structure, the owner must comply with CEQA. For a ground lease holder to pursue demolition, alteration or reconstruction of “historically significant structures” standing on leased public land, the lessee must not only comply with CEQA, but also with California Government and Civil Code. There are also guidelines from the National Park Service (NPS) on leasing historic resources, which prohibits, alteration, demolition, expansion or reconstruction without a CEQA review.
An effort to preserve historical trust resources and encourage reasonable and legal development of the site brought us to the research and evaluation contained in this Journal. What we had expected to be simple arguments based on two case laws—Save Tara v. City of West Hollywood, and Natural Resources Defense Council v. City of Los Angeles and China Shipping—proved to just be the tip of the iceberg. Our research took us back to 1850, when California was admitted as the 31st state in the Union, to familiarize ourselves with Federal and State laws that led to our conclusion that a portion of this historic site has been improperly privatized. Tracing the history on how, when and who owned, occupied and operated on this site over the past 160+ years helped to determine who actually owns the land and the structures the Project applicants propose to demolish, alter and reconstruct, and whether the applicants actually have the legal right to do so.

This journal is composed chronologically to describe incidents and events that took place on the dates indicated, making reference to their relevance to the present in order to understand the ongoing proceedings. It was prepared by members of the community who are not real estate or legal professionals, but in consultation with specialists in those and other areas, using their collective best abilities. We provide a great deal of supplemental support material and documentation. Conjectures and questions are simply that. Conclusions are drawn when they appear to be supported by the documentation available.

It is worth stating from the start that all of the issues presented in this report concern VMT as current holders of a lease with the COV and purported owners of adjoining land. To our knowledge Orcem has no ownership interest in any of the land discussed, nor are they signatories to any lease agreements with the COV. They are tenants of VMT and to the extent they have complied with VMT’s lease with the COV, a sub lessee of that lease.

It is our intention that the issues raised will call for a rigorous investigation that we feel can only result in the reclaiming of Public Land that was improperly privatized.
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This journal is a chronological exploration of events that took place from the mid-19th century to the present. It is presented in ten (10) sections, with discussion of information and documents provided by the COV through Freedom of Information requests, COV City Council archives, documents recorded at the Solano County Recorder’s office and other public archives. These sections are as follows:

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CHRONOLOGY OVERVIEW

The Early Years
When California became a state in 1850, the Federal government retained ownership of more than four million acres of what was then called “swamp lands,” a designation that included swamp land, marsh salt lands, overflow and tidal lands. In 1868 the Federal government, by Act of Congress, passed legislation that some of this land could be granted to the State of California to improve international trade and commerce.

The Historic Sperry Four Mill, built over tidal land, began operations in 1869 as an international grain shipping operation that eventually expanded to include a flourmill. The occupancy and operation of the site was authorized by the State legislature from 1868 until 1913 when the City of Vallejo was granted trusteeship. The Sperry Mill Company who briefly occupied and later closed the mill in the early 1900s was granted a 50-year lease when they re-entered the flour milling business to support America’s involvement in World War I. Serious expansion of the mill started in 1914 continuing after Sperry became a part of General Mills. Sixteen (16) buildings were constructed between 1869 and 1992 including six structures designated Vallejo City Landmarks in 2016 and the resources contributing to the Sperry Flour Company Vallejo Mills Historic District in 2017.

1989 – 2006
A lease Agreement was executed May 1, 1991, but commencing January 1, 1989, between the COV and GMI for a period of 25 years, with an option to renew for an additional 25 years. The lease was neither notarized nor recorded with the County, but a Memorandum of Lease (MOL) affirming the lease was recorded sixteen years later in 2007, six years after GMI ceased its mill operations in 2001 and three years after GMI closed and abandoned the plant in 2004.

2007
The GMI lease was assigned to Cherokee Brooks Street Vallejo, LLC who in turn assigned the beneficial interest to Bank Midwest as collateral on a $7.15 million loan against the leasehold and other properties. GMI also quitclaimed to CBSV 9 specific land parcels near the leasehold property and everything within a 1-mile radius of the Sperry site to which GMI may or may not have had easements or other rights. Documents submitted here appear to show unorthodox practices and possible misconduct by some past COV staff, the Assignees and the bank. They support our contention that GMI may not have identified or owned the properties they took over from Sperry.

2010
Notices of Default were recorded for CBSV and 5 months later, a Trustee’s Deed Upon Sale was recorded. No Notice of Trustee Sale was found in the Solano County Recorder’s office; and there was no clear indication whether a publicly advertised auction was held. The leasehold and the fee
simple property were apparently each sold for $100,000. One month before the alleged auction took place Bank Midwest assigned the beneficial interest of the leasehold to California Cherokee Brooks Return LLC, a Missouri LLC that had been incorporated a day earlier.

2012 – 2014
On July 24, 2012 the Vallejo City Council adopted a First Amendment to the Lease, apparently as a contingency to the purchase of adjoining “private property,” by a then unnamed buyer. This was recorded on October 1, 2012 along with an Assignment and Assumption of Ground Lease executed between California Cherokee Brooks Return, LLC (assignor) and Vallejo Marine Terminal, LLC (assignee). The assignment was recorded with the “Consent of City” to Cherokee Brooks Street Return Vallejo, LLC, a third, unrelated entity, not actually a party to the transaction. The Lease assigned was the leasehold foreclosed in 2010. This First Amendment extended the lease term to 33 years, with an option to renew for another 33 years. It also granted priority usage of 15 acres of “Licensed Area” of the coastal area intended for public use, which GMI had not used and was not included in the 1991 GMI lease. The amendment further allowed for the abatement of rent for three years (later extended to four years) and a rent offset for capital improvements up to $8 million.

When the First Amendment was adopted, the COV cited categorical exemption under 14CCR section 15330 for “operation, repair, maintenance or minor alteration of existing structures of facilities not expanding existing use” which would not require a CEQA review. The use of 14CCR section 15330 contradicted the First Amendment, which stated that the COV would allow the demolition, alteration and reconstruction of the historic structures that the Lessees did not own.

Furthermore, the First Amendment eliminated almost 20 acres (Parcel 22) that were described in the 1991 GMI lease, leaving less than 10 acres (Parcel 23) of “lease area,” and identified those 20 acres as “private property.”

On May 23, 2013, VMT leased approximately 5 acres to Orcem which consist of a portion of Parcel 22, a portion of the tidelands and a portion of Parcel 23, as confirmed by a Memorandum of Lease recorded at the Solano County Recorder’s Office on March 10, 2015. The COV City Council has not seen or approved any sublease for the tidelands or Parcel 22, which would be required for a sublease of more than 10 years.

On September 5, 2013, VMT and Orcem applied for a building permit to construct a deep-water berth, a marine terminal, and a cement plant. The Project description submitted indicated that several structures on the leasehold property would be demolished for the construction of the proposed Orcem Project.
On June 9, 2014, a Second Amendment was executed to allow VMT to subdivide the land. The subdivision of the land was not in accordance with the Subdivision Map Act. They indicated the subdivision was exempt from the Subdivision Map Act, citing California Government Code 66426.5, a statute specifically intended for subdividing public and private parcels for purposes of giving right-of-way to public utilities, not for leasing, licensing or encumbering the land. There is no record of any City Council hearing or vote to authorize this Second Amendment, which was filed with the Solano County Recorder on August 22, 2014.

2015 to Present

A Draft Environmental Impact Report (DEIR) was released for public comment on September 2, 2015. A few days later, a Third Amendment was adopted, and for the first time the California Environmental Quality Act (CEQA) was mentioned. The DEIR was already under review by agencies and the public when the Third Amendment was executed. No mitigation measures had been identified, nor were any significant impacts and effects of the Projects on the environment that might be mitigated or avoided.

Within 4 years, the Project had been amended; VMT eliminated several parcels from the original proposal (allegedly to meet environmental concerns). We believe that VMT was not totally certain which parcels they bought out of foreclosure and what they were leasing, evidenced by the changes in the project location, originally 39 acres, to 34 acres and then 32 acres since the MUP was submitted in 2013. More recently, VMT changed their location area again, to 32 acres. All of the plat maps submitted by VMT/Orcem show a tidelands area that is different from the survey of the State land Commission. Boundaries of the leased area were also moved from the actual boundaries identified in the Assessor's Plat Map from 1913.

In a public hearing held February 27 and March 6, 2017 the Vallejo Planning Commission supported the recommendation of City Staff, voting to deny the Project. VMT/Orcem appealed that decision. A public hearing at City Council was held May 30 and June 1 to hear the appeal.

On May 30 and June 1, 2017, at the conclusion of the public hearing, the City Council voted 4/3 approving a previously unpublished/unagendized resolution which instructed City Staff to work with the Project applicants to confirm a stable and final Project description by July 15 and finalize the EIR by January 16, 2018. When City Staff and the applicants did not meet this deadline, staff returned to the City Council for additional guidance and were instructed to continue working on a stable and “finite” Project description by August 25.

We learned that City Staff and the Project Applicants did agree on a stable and finite project description. Staff is currently reviewing the DEIR to determine which parts they believe must be recirculated for agency and public review.
REFERENCES

CEQA Case law:
  - Natural Resources Defense Council v. City of Los Angeles/China Shipping
  - Save Tara v. City of West Hollywood
  - Preservation Action Council v. City of San Jose/Lowes/IBM
  - City of Santee v. San Diego County Board of Supervisors
  - Myers v. Board of Supervisors of Santa Clara County

California Public Resource Code

California Public Contract Code

California Civil Codes

California Government Codes

Chapter 310 of the California Statutes of 1913

Chapter 24 of the California Statutes of 1963

Chapter 588 of the California Statutes of 2004

Settlement agreement between city of Vallejo and State of California

Archived Staff Reports, City of Vallejo

Carey and Company Historical Assessment

Historic Articles of Solano County – The Sperry Pioneers

Materials from Online Archives of the State of California.

Materials from the Vallejo Naval and Historical Museum and the Mare Island Museum

Materials from the Bancroft Library, University of California, Berkeley, NavSource Naval History Archives, and other public and private collections and archives.
**CHRONOLOGY OF EVENTS: THE EARLY YEARS**

In order to determine the ownership of six (6) City landmark buildings at 790-800 Derr Street, we researched the history of the Sperry Flour Mill starting with the comprehensive Staff Report prepared by Lilly Bianco, Dina Tasini and Bill Tuikka of the COV Planning Department for the Architectural Heritage and Landmark Commission meeting of March 17, 2016 (AR-2016-01), and an article by Ernest D. Wichels dated November 10, 1963 from Historical Articles of Solano County titled “The Sperry Pioneer” (AR-1900-04).

**1850:** California was admitted as the 31st state in the country. The Secretary of the Navy was considering the township of Vallejo for a Naval Shipyard. But it was not until two years later that a survey of the region was done that determined Mare Island to be the best location for a shipyard: a major boon for Vallejo, which was a very small town of fewer than 800 residents under the Mexican Regime.

**1857:** Three years after the Mare Island Naval Shipyard built its first ship, a survey was conducted of the entire region under the direction of A.D. Bache, Superintendent of the Survey of the Coast of the United States. The aerial map of that survey (PM-001) shows the future location of the Sperry Mill consisting of a small inland at the base of tall hills, largely overflowed, submerged and tidal lands. The site was among four million acres of swamp, overflowed, marsh salt, submerged and tide lands of which the US government retained ownership after California became a State. From 1857–1860, the Survey identified two million acres of what were broadly termed “swamp lands” in California.
1860: J.P. Houghton, a resident of Solano County, was elected State Surveyor General. Under his administration of all State and Federal land in California, two state agencies were created: 1) The State Locating Agency, whose mission was to locate, survey and acquire “swamp lands” from the Federal government; 2) The Swamp Land Commission, whose purpose was to register all the swamp, overflowed, marsh salt, submerged and tide lands identified by the State Locating Agency.

1862–1863: When Leland Stanford was governor of CA, he petitioned the US Congress that such lands located by the State Locating Agency be sold to the State of California. Congress approved the sale at $1 per acre to a buyer qualified to survey, reclaim and segregate these lands to be used for the public and for schools. After a lengthy process, the Swamp Land Commission began selling these lands for $1 per acre under the Statutes of 1868, Chapter 459: minimum 150 acres / maximum 320 acres.

The future Sperry Mill site was too small in itself to be sold independently in 1868. However, it could have been sold to the City of Vallejo as part of a larger lot meeting those parameters. Or, it is also possible the Federal government retained ownership as the Naval Shipyard on Mare Island was being built. Historical records show several such parcels between Wilson and Sacramento Streets, where original housing for the Navy was located, were Federally owned until 1997.

1868: This was a significant year for Vallejo. The California Legislature approved four statutes that completely transformed the township:

- a) Vallejo was incorporated and became the City of Vallejo, vested under a Board of Trustee with five (5) members;
- b) authorized building streets, schools, railroads, etc.
- c) constructed a ferry service to cross the Carquinez Strait from Vallejo and Benicia to Port Costa to support the growing population and “change in demographics” of the area;
- d) extended the wood dock and pilings in the overflowed and tideland area now known as the Historic Sperry Mill site. The dock was expanded to 150 feet wide and extended towards the water to reach a depth of 20 feet to accommodate larger ships. The original wharf, built in the mid-1850’s, operated by David N. Darlington and Isaiah Hanscom, could only handle small boats.

1869–1873: The Vallejo Elevator, as it was then called, was constructed on the wharf over the river by D.W. Rice, President of the California Pacific Rail Road Company. This was authorized under the Statutes of 1868, Chapter 357, which allowed the extension of the railroad from Marysville to Suscol, passing through the city of Vallejo. General J. B. Frisbie and James McCudden took over the original wharf from Darlington and Hanscom and expanded the wood dock and wood pilings and became exclusively a grain shipping operation. PM-002 shows the Elevator built on wooden stilts and the original railroad.
1874–1890s: The City of Vallejo was incorporated once again in 1874. Its boundaries and sphere of influence were identified in the Statues of 1874, chapter 408. Based on this, the Historical Site was legally situated within the City of Vallejo boundaries. **PM-003** shows the City of Vallejo plat map after re-incorporation of 1874. Roads and grids were identified, surveyed and plotted.
A.D. Starr, who operated the Vallejo Elevator in later years, expanded his empire, building the Starr Flour Mill where the railroad and the wooden docks were located. Led by improved transportation routes and increased demand from foreign countries, the success of the flourmill operation established Starr as the most powerful man in California’s flour milling industry. It was reported that during this period, A D. Starr quietly expanded the mill as shown in PM-004.

Austin Sperry came to California in 1852 in search of gold. After panning for 23 days, he decided the real riches were to be made providing food for prospectors. He started a flourmill in Stockton, the Sperry Flouring Company, which in just a few years, grew to become the most important flourmill and feed producer in California. After Austin Sperry’s death in 1881 the business continued to flourish under his brother, Samuel Sperry. In 1892, Sperry joined forces with Horace Davis’ Golden Gate Mill.

During this period the City of Vallejo also continued to grow, as shown in PM-003. However, the mill site remained comprised of its small inland and mill built largely on overflowed, submerged and tidal lands.

1893: Financial panic brought the Starr Flour Mill to collapse. Its operation was sold to the Sperry firm, but the new owner closed it within a year. In 1895 the Vallejo plant was sold to George Washington McNear and was renamed Port Costa Mill. Port Costa Mill built the Manager’s house and the barn in 1901, and operated at the site until around 1910.
1913: On June 11, 1913, the Statutes of 1913 were approved. Chapter 310 (AR-1900-03) states:

> “An act conveying to the city of Vallejo certain tidelands and lands of the State of California lying under inland navigable waters within the boundaries of the said city, situated in the Napa Creek, the Mare Island straits and the straits of Carquinez, including the right to wharf and therefrom to the city of Vallejo, in furtherance of navigation and commerce and the fisheries, and providing for the government, management and control thereof.”

Under Public Trust Doctrine, the Sperry Mill site could be leased for 25 years, with an option for an additional 25 years (There is no record that a lease existed between the Sperry Mill and the COV, but any such verbal or written lease would have originated from the date of this Statute and expired in 1963, when the Statutes of 1913 were repealed.).

1914–1917: The inland expansion of the Sperry Mill Company during these years was greatly influenced by the Statutes of 1913. PM-005 shows aerial photo of the Sperry Mill circa 1945.

The mill did not build another grain elevator until around 1916: 47 years after the construction of the first elevator. In 1914, when World War I broke out, there was a worldwide grain shortage that prompted volunteer rationing in United States. The war placed new demands on American flour producers including the Sperry Flour Company. Even as the federal government sharply curtailed any construction that did not contribute to the war efforts, a massive expansion was allowed at the Sperry Mill because of its importance to America’s involvement in the war and its location in Vallejo close to the Mare Island Naval shipyard, and Naval bases in San Francisco and Alameda.
The expansion, circa 1916–1917, used grants from the Federal government as part of the War effort to address the worldwide food shortage.

The buildings and structures erected on the site during this period were as follows:

1) Expansion of the wood dock and wood pilings (1919)
2) Manager’s house (built in 1901, remodeled in 1917 and 1919)
3) Grand Silos (1915–1917)
4) Administrative Building (1917)
5) Flour Mill (1917)
6) Garage (1916)

These six buildings and structures were later designated City of Vallejo Landmarks.

We believe that the inland was enlarged significantly at this time for construction of these buildings by cutting the hillside and filling in the tidal area and submerged lands that now comprise Parcel 23. This would be consistent with a survey completed in the 1930s that indicates the area had been filled many years earlier. As shown on PM-005, the Mill expansion retained the original Bulk Mill building which stood on what we now call Parcel 23. This building was destroyed by fire in 1936 and was not rebuilt.
1920–1945: When war ended in 1920, the robust growth seen at the site slowed, and the Mill shut down temporarily. In 1929, the Sperry Mill combined with several other American milling companies to form General Mills Inc. (GMI). By that time the six historic structures had been there for more than a decade.

GMI took over the operations of the Sperry Mill in Vallejo. There is no known record that any written lease existed between GMI and the City of Vallejo during the period 1928 – 1989. However, from the AHLC Staff Report, Wichel's historic article and the recitals of Chapter 310 of the California Statutes of 1913, the historic structures, having been completed before 1919, and standing on Public Trust land, were not owned by GMI. The Statutes of 1913 state that upon the termination of any lease after 50 years, the leasehold property was to revert back to the people of State of California, with the COV acting as trustee.

The Statutes of 1913 also state that if, after the initial 25 years, the lease were to be renewed for another 25 years, it could be terminated at any time by mutual agreement of the COV and the lessee, on such just and reasonable terms for compensation for improvements as might be mutually agreed upon. This would have been an essential provision for any lease.

When World War II began, Harry A. Bullis became president of General Mills, Inc. The prominence of the Sperry Division emerged once again during the War. Anticipating that a slump could happen again after the war, as in 1920, Bullis prepared a postwar economic plan that sought to increase production by developing a greater variety of products developed in modern efficient plants.

1946–1965: Recovering from a slumped economy, GMI built several buildings and structures during this period. Although these buildings and structures were not designated landmarks, it was clear that the Historic Sperry Mill Site consisted of the 39+ acres where the following buildings partially stand until some of them were recently razed. These buildings and structures shown in an aerial photo in Plat Map 006 are as follows:

- Warehouse (1947)
- Manager's Garage (1950)
- Repair and expansion of the Old Bulkhouse (1957)
- New Bulkhouse (1965)

The expansion during this period also included parcels owned by Solano County, presently part of Sandy Beach. We found no documents showing that these parcels were either leased or purchased by GMI from the County. Furthermore, the 1947 Warehouse was built on what had previously been tidal and submerged land, by cutting the hillsides and using the soil material from the terrain to fill the submerged and tidal land. The rail spur on the site, which had previously run along the shoreline, became as it appears today, an inland line.
By 1963, the Sperry division of General Mills Inc. was one of the biggest non-governmental employers in Solano County, employing 150 local residents. George Derr, Superintendent of the Sperry Plant at that time, was also Vice Mayor of the COV. Knowing that they remained on this site until 2001, we speculate that an agreement, verbal or written, might have made sense to extend, renew or restate the Sperry Mill lease to protect the jobs of the local residents. However, we found no written record of this.

As of this time, however, we see no definitive data to indicate that the Mill Site was privately owned. There is no record of a lease or purchase agreement found at the GMI Archives. There is, however, some relevant information to indicate the Mill Site may be owned by the State under the trusteeship of the City of Vallejo. This information is discussed in the following pages.

To fully understand whether and when the Historic Sperry Mill site and its structures and improvements reverted back to the COV as Trustee of the Public Land, as provided under Chapter 310 of the Statutes of 1913, we requested copies of all leases concerning GMI from the City of Vallejo. We received the following:

- A 1991 Lease between GMI and COV (a document which was neither notarized nor recorded with the County) linked AR-2000-01.
- Two assignments of the GMI lease.
- Three amendments to the lease assigned to VMT.

Reviewing these documents brought more questions than answers and led us to the Solano County Recorder’s Office (SCRO), California State Archives, the California State Lands Commission (SLC), and other public resources and libraries, where we reviewed additional documents not provided in response to our FOI requests. We also researched and examined all the laws, statutes, and regulations related to the site.

The Sperry site was originally governed under the granting Statutes of 1913, Chapter 310 which allowed for Public Land to be leased for 50 years. After Sperry / GMI had occupied the site for 50-years by 1963, the California State Legislature held an emergency session and adopted the granting Statutes of 1963, Chapter 24 (AR-1900-05). The Statutes of 1963 recognized the existence of occupied properties, (including GMI as the holding company of the Sperry Mill) and extended lease to a total of 99 years. For GMI this meant a lease from 1913 that would expire in 2012.

January 1, 1989: It was determined that General Mills Inc. (GMI) became the sole tenant and occupant of the property located at 790-800 Deer St., Vallejo, CA, presently known as the Historic Sperry Mill, per the lease agreement that was executed two years later.

Apr 30, 1991: The COV City Council approved a lease with GMI for a 9.9-acre industrial site on the waterfront on Derr St. The minutes indicate the lease had been under negotiation for two years. They indicate some confusion determining exact boundary lines. They had not been properly determined beforehand because the description in the prior lease made references to tidelands for which no official record had been found. It was, however, determined that these lands were “public trust conditioned lands.” The State Land Commission was consulted on this matter.

May 1, 1991: A lease Agreement was executed May 1, 1991—pre-dated to commence January 1, 1989—between the COV and GMI for a period of 25 years, with an option to renew for an additional 25 years. The lease was neither notarized nor recorded with the County, but a Memorandum of Lease (MOL) affirming it was recorded sixteen years later in 2007, six years after GMI ceased milling.
operations and three years after GMI closed and abandoned the plant. Paragraph 28 states that the lease would not be recorded with the Solano County Recorders Office, but that a Memorandum of Lease could be recorded if requested by either party. This lease specifies “All that portion of the following described land as lies within the Legislative Grant to the City of Vallejo, pursuant to Chapter 310 of the Statutes of 1913” with its corresponding Legal Description.

At the City Council meeting where this lease was authorized, Al Da Silva of the Economic Development Department stated that the lease was an extension of a previous lease with General Mills that expired in 1989.

The discussion and lease raise several related issues worth noting:

a) Item 1, paragraph 2 under DESCRIPTION OF PREMISES states: “In the event that lessee elects not the use the portion of the leased premises below the mean high tide waterline pursuant to Sections 4 and 6 of this lease, a new description of the premises will be prepared and incorporate herein.” Since the lease mentions the possibility to not use the portion below the mean high tide waterline, it clearly indicates that the lease included of land above the mean high tide waterline, land now being described as privately owned property.

b) The Council meeting minutes state: “GMI was given up to August 1, 1992 to conduct a study to determine the engineering feasibility as well as cost effectiveness of restoring or demolishing the dock. If General Mills elects to not reconstruct the pier, that will be demolished and leased premises will be deleted.”

c) Item 6, paragraph 2 of the lease states that “In the event Lessee elects not to restore or demolish the pier, this lease will be amended to exclude any unused portion of the premises.”

d) The minutes make no mention that the lease would not be notarized or recorded.

Question: Is this document legally binding under California Civil Code (CCC) section 1550?

• The document was not notarized, attesting that its signatories signed it on the day claimed, or attesting to the authenticity of the signatures.

• Two of the signatures appear to have been done in proxy, not by the parties named. There is another signature in place of John M. Powers, Legal Counsel indicating it was signed on his behalf and there are initials beside the signature of Charles F. Gill on behalf of GMI.

• The General Mills Archive confirms that John M. Powers and Charles F. Gill were administrative officers of GMI in 1991, but they have no copy of any written lease between GMI and the COV.
This lease was for a term of 25 years with the option to extend for another 25 years, bringing it beyond the 99 years allowed under Chapter 24 of the Statutes of 1963.

We have found no evidence that GMI followed through on the study to determine the feasibility of restoring or demolishing the pier, though we know they did neither. This would appear to confirm that the wharf area was not intended to be included in the lease.

In 1991, there were fifteen buildings and structures standing on the property. Although the lease stated that GMI had the right to maintain them, there are no stipulations, covenants or restriction attached to the lease on how these buildings would be maintained or kept from decay and deterioration. The Lessee was given no right to demolish any of the buildings, including the now-named Historic Landmarks, but was allowed to build more structures as needed. In 1992, GMI built a sixteenth and final structure on the site.

**September 1, 2001**: GMI ceased operation of the Mill.

**Sometime in 2004**: GMI vacated and abandoned the Leasehold. Under CCC 1951.2 and 1951.3 GMI defaulted on the terms of their lease when the plant ceased operation. This is viewed as a non-monetary default, considered not redeemable, since GMI could not be forced to resume operations. Subject to the terms of the Lease, paragraph 15 (b), this was a material default of the Lease and grounds for its termination.

**Question**: This Lease was examined to determine if there remain any grounds for it to have continued.

- Would the non-monetary default be redeemed by converting it to a monetary default?
- Did GMI exercise its option to cancel the Lease, as allowed in paragraph 26, by paying the cancellation penalty of five years rent?
- If the penalty were paid, would that payment have kept the Lease active? Can the COV provide evidence of any such payments?

Paragraph 15.2 (a) detailing Remedies for a material default or breach states the Lessor may: “Maintain this Lease in full force and effect and recover the rent and other monetary charges as they become due, without terminating the Lessee’s right of possession irrespective of whether Lessee shall have abandoned the premises.” This term may be contrary to the CCC cited and CA Commercial Real Estate law, however, the time limitation to challenge it has expired. The only remaining question is: Did GMI exercise this remedy and pay rent from 2004 to 2007, giving credence to the Memorandum of Lease (MOL) dated March 7, 2007, sixteen years later?
The GMI lease is the governing document that made it possible to transfer possession of the site three (3) times in the last 12 years without the benefit of a public hearing as required by California Government Code section 52021. It is very important for the public to determine if the Historic Site should finally revert back for the benefit and enjoyment of the public under Public Trust Doctrine.

September 11, 2004: The judgment entered in the case City of Vallejo v State of California, Solano County Superior Court Case # 19710, recorded at the SCRO on April 15, 2003 attached herewith as AR-2000-02, states that the COV “shall not grant, convey or otherwise alienate those lands or any part thereof to any individual, firm or corporation for any purpose” as provided in Chapter 588 of the Statutes of 2004 (AR-2000-04). The Statutes of 2004 (AR-2000-04) identified all leased property along the tidelands.

The GMI site is not included in this list, which contradicts the COV’s assertion that this property was leased then and that this lease still remains active.

We believe the GMI site was not listed among leased properties in the Statutes of 2004 as a result of GMI having ceased operation, vacated and abandoned the site by then, and that the land had then reverted back to the public. This was common knowledge at the time and the COV was aggressively seeking a new tenant for the site. There was no recorded written lease to prove otherwise. Court Case 19710 granted the petition of Lennar Mare Island (LMI) to convert some parcels of land being leased from the COV to fee simple title to allow LMI to exchange or purchase the parcels of land for residential use. This judgment did not include the Historic Sperry Site, which was at that time Public Land.

The Statutes of 1913 Chapter 310 (AR-1900-03) and the Statutes of 1963, Chapter 24 (AR-1900-05) confirm that the following provision had not changed: “The city, or its successors, shall not grant, convey, or otherwise alienate those lands, or any part thereof, to any individual, firm, or corporation for any purpose, except as provided in this act. However, the city, or its successors, may grant franchises on or lease those lands, or any part thereof, for limited periods not to exceed a maximum period of 66 years, for purposes consistent with the public trust.”

The Statutes of 1963, Chapter 24 included the provision that all leased properties that did not show any activity for the benefit of the public for a period of 10 years would revert back to the State of California. The GMI site has shown no activity to benefit the public since 2001. This provision alone should have allowed the Public Trust Land to revert back to the people by 2011.

In the event GMI were to actually have claimed ownership of any of the land at the site, one would expect to find evidence that the property came onto the commercial real estate market, perhaps as early as 2001 when the plant ceased operations, and certainly by 2004 when they closed and
vacated the property. We have found no evidence that GMI was trying to sell any land at this time. The first evidence we see of the property being offered for sale is in January 2011.

**December 28, 2006:** Steve England, Real Property Asset Manager for the city of Vallejo recorded a “Notice of Non-Responsibility (NONR)”, apparently to indemnify the city from the remediation activities on the site. We found no record of when the site remediation began, but based on the Remediation Agreement dated May 30, 2007 between Cherokee Brooks Street Vallejo, and GMI, remediation could have not started before October 2007 when it was recorded. It’s a common practice that notices involving construction activity are posted on site 72 hours before activity starts.

The only purpose for recording this NONR (AR-2016-01) appears to be to establish that APN-0061-160-090, consisted of only 9.41 acres in preparation for the staff report for the City Council hearing six weeks later. We believe that a covert operation aimed at subdividing the 29.92 acres of Public Trust land began in December 2006. Austin, Lucas and Alexander, the first group interested to lease the site, would have started negotiations at about the same time.
CHRONOLOGY OF EVENTS: 2007

February 13, 2007: The City Council approved a resolution authorizing the City Manager and City Attorney to execute a Memorandum of Lease (MOL) acknowledging the GMI lease and allowing it to be assigned to two (2) Limited Liability Companies (LLC) in CA:

1) Lucas, Austin and Alexander, DBA Brooks Street, and
2) a group of financiers DBA Cherokee Vallejo.

The Staff Report did not include a copy of the GMI lease being assigned, as would be standard procedure in order to allow the City Council to review it, and confirm that this lease actually existed. Instead the Staff gave City Council specific background information:

- that the City entered into a lease agreement with GMI in May 1991, and
- that lease would not expire until 2014.

The staff report was prepared by Craig Whittom, Assistant City Manager, and Susan McCue, Economic Development Program Manager. It gave an incomplete and inaccurate history and failed to mention that GMI ceased operations in 2001 and vacated the premises by 2004. The report stated that GMI had requested that the Council approve the assignment of the lease to Brooks Street, to preserve the annual rent of $74,090, although GMI had the right to terminate the lease upon payment of a five-year penalty.

The annual rent here is clearly appropriate for 29.91 acres, the entire APN 0061-160-090, not just 9.89 acres as the COV appears to believe now.

Staff mentioned that the resolution was simply to get approval for an Assignment of Lease. The new Tenants had not determined a definite project and were concentrating only on the remediation of the site by GMI and closing escrow for the purchase of property adjoining GMI, which was scheduled for late February. In addition to the MOL, the following documents were executed:

1) An estoppel certificate to confirm the terms of the current lease;
2) Remediation agreement; and
3) Right of Entry agreement.

City staff stated that once the new tenants identified a project, the Lessor and Lessee would execute a Covenant and Environmental Restriction on the Property for the benefit of the Solano County Department of Resource Management and the CA Regional Water Quality Control Board, San Francisco Bay region. This statement shows that the COV had no intention then to require the applicants to comply with the California Environmental Quality Act (CEQA).
March 7, 2007: A Memorandum of Lease (MOL) was recorded (AR 2007-02), the first public appearance of this lease, acknowledging a Lease for property GMI had abandoned in 2004. The COV restates GMI’s option to extend the Lease for an additional 25 years, which otherwise should have terminated when they departed the Leasehold three years earlier. It was improper that the COV confirmed this after the Lessee had already defaulted and had not performed according to the terms of the original Lease.

The MOL would be considered an Unlawful Contract under CCR Section 1667, because the terms implied are contrary to express provisions of this law. The MOL appears to have been executed in bad faith, as it did not protect the public’s interest.

The events that took place two months later explain why an abandoned lease was resurrected by recording this MOL eighteen (18) years after the original lease start date. Strong legal arguments could be raised that restoring an otherwise-terminated lease would circumvent the long process of leasing Public Land for economic development, and CA Government Code 52021, which required a new city ordinance following a public hearing.

A public hearing would have exposed the long history of the site being part natural inland, part cut hillsides, partly filled, and partly submerged land which was unencumbered and undivided until 2007 per the Solano County Assessor’s Office. When the COV staff stated that the land governed under Public Trust Doctrine, described as APN-0061-160-090, was only about 9.45 acres, and not 29.92 acres based on plotting the exact coordinates and distances contained in the legal description of the Public Land granted under the Statutes of 1913, Chapter 310, was it merely a miscalculation or misinterpretation of the geodetic survey performed in the mid 19th century, or something more serious?

There is some reason to believe that the Lease between COV and GMI dated May 1, 1991 was not actually prepared and signed on that date. The absence of any notarization supports this allegation. The signatures of the Legal Counsel and the Lessee were signed in proxy and not by the named parties. Based on the granting statutes of 1913, 1963 and 2004, GMI’s occupancy and possession of the Historic site had been secured, grandfathered and was in full force and effect without a written agreement. We find no compelling reason for this lease to have existed prior to 2007.

Here’s why: In 1942 when GMI took over the Sperry Mill, verbal agreements concerning Public Land contracts were considered binding. The leasehold granted to GMI encumbers Parcel lot APN 61-160-090, which covers land that lies within the legislative grant pursuant to Chapter 310 of the Statutes of 1913. In the early 1930s the State Lands Commission was formed. The Statutes of 1913 were repealed in April 1963, as approved by the Governor and recorded by the Secretary of State. It is not clear when verbal agreements on Real Estate on Public Land became prohibited. But it can be concluded that GMI was in possession of the Public Land without a written contract.
This is relevant for the following reasons:

- If the lease agreement was actually executed in 1991, why wasn’t it officially notarized?

- Why doesn’t GMI, one of the parties to this agreement, have a copy of it in its archive?

- Why didn’t the COV record a document as significant as the GMI lease, when by 1991, the California Department of Real Estate required all Real Estate contracts to be recorded for constructive notice and an accurate paper trail? Is it because the document was not notarized and no notary public would notarize a predated document signed in proxy?

- By 1991, Chapter 310 of the Statutes of 1913 had been superseded by Chapter 24 of Statutes of 1963. Why didn’t the COV refer to the Statutes of 1963 when the GMI lease was executed? When the resolution to execute the MOL was presented to the City Council, why didn’t COV Staff disclose that the unrecorded Lease commenced in 1989?

- Minutes from the City Council Meeting of April 30, 1991 indicate that GMI was allowed until August 1992 to determine whether they would use 3 ½ acres of submerged land where the historic pier was located. If GMI determined it was not feasible or economically viable to restore the pier, which we presume was the case, since the pier was not restored, it would be demolished and the “leased premises will be deleted.” The lease itself states, “On the date of the execution of this Lease, Lessee is utilizing only the dry land portion of the property. Only in the event that Lessee elects to restore the pier… Lessor will have an appraisal made of the leased land below mean high tide and an appropriate lease rate for the wet lands will be negotiated by the parties.”

- Since the Staff Report for this meeting was not archived, we do not know whether a draft of this lease was considered then (AR-2007-01).

- CCR Section 1995.210 – 1995.270, which took effect January 1, 1990 restricted Assignments and transfers of Public Land in contracts executed after that date. Although the Council minutes indicate the City had been negotiating a lease with GMI for months, and that a previous lease had expired on December 1, 1988, this also gives a compelling reason a 1991 lease provided for it to take effect starting in 1989. Legally, this 1989 lease being executed in 1991 is problematic because it did not conform to current California Code Regulation and the SLC guidelines.

There are reasons to wonder whether this GMI Lease may have been executed much later than 1991, because language in the lease helped effect the Assignment of Lease to Cherokee Brooks. We believe the COV intentionally violated CCR 1951.2 – 1951.3 with the GMI Lease by the inclusion of paragraph 15.1(a), in effect predicting that the site would be vacated and abandoned thirteen years later.
May 30, 2007: Cherokee Brooks Street Vallejo, LLC (CBSV), a Delaware-based Limited Liability Company took over the Leasehold and purportedly bought adjoining GMI property. Several documents were recorded:

1) Assignment and Assumption of Lease with attached Consent of City (AR-2007-09)

2) Remediation Agreement (AR-2007-08)

3) Entry Permit Agreement (AR-2007-07)

4) Leasehold Deed of Trust (DOT), Assignment of Rents and Security Agreement (Including Fixtures Filing) in favor of Bank Midwest. The DOT allowed CBSV to borrow $7.15 million. The DOT is attached here as document AR-2007-05

5) Deed of Trust and Assignment of Rent (AR-2007-06)


7) Quitclaim Deed (QCD) issued by GMI (AR-2007-03)

We were unable to locate or retrieve any escrow documents proving that CBSV actually purchased any of the adjoining property City Staff claimed would have closed in late February 2007, or an Estoppel Certificate confirming the current lease. The Estoppel Agreement (EA) that was recorded was substantially altered from the original Consent of City approved by City Council on February 13, 2007 with the specific instruction that the Consent could not be modified or amended. The EA added a provision that $7.15 million loan was secured in part by the leasehold. It was noted that all terms and statements made in the recorded EA were the “actual and present knowledge” of Craig Whittom, Assistant City Manager of the COV, the Lessor. The EA also contradicted terms in the Assignment approved by the City Council, that the assigned Lease to CBSV could not be reassigned without written approval by the Council. As it turned out, this assigned Lease was reassigned to Bank MidWest, and again reassigned to a second Cherokee (which we will see in 2010). All of these assignments were made possible by the recorded EA, which was not approved by the Council following public hearings required by CA Government Code and Public Trust Doctrine.

Whether the GMI Lease is valid or not, there was no provision in the lease allowing the assignee, CBSV, to borrow money against the Leasehold property. And there was no resolution from the City Council authorizing or approving CBSV to encumber the leasehold. We found that the Estoppel Agreement (EA) was recorded the same date, May 30, 2007, and was instrumental to secure a $7.15 million loan, and which contradicted itself and the Consent of the City approved on February 13, 2007. The EA states that all the terms of the 1991 GMI lease would remain the same, and that the lease would remain in full force and effect. However, section 4.0 of the EA states that during foreclosure, the lender (in this case Bank Midwest) could assign their beneficial interest to anyone. The GMI lease contains no provision for the leasehold to be encumbered by a loan.
Reviewing the legal description in the assigned lease, it shows that the area of leased property was altered from a total of nearly 30 acres to less than 10 acres, leaving 20 acres unencumbered by the Assignment of Lease. It is deceptive and highly questionable to subdivide Public Land through an Estoppel Agreement, outside of public view, without going through the public hearings required by CA Government Code and the Subdivision Map Act. The 20 acres appeared to have been privatized after a convoluted recordation of an unauthorized Estoppel Agreement.

To help us understand how and why this Public Land could be subdivided merely by an instruction from a city official, we examined the Quitclaim Deed issued by GMI and the Assessor’s property record associated with the 30 acres (Parcel 90) to determine whether GMI actually owned any of these properties, either by purchase or through a property tax sale.

The recitals of the Quitclaim Deed (QCD) are all traditional and usually are executed by landowners or Lessees when they leave everything to the Assignees. It appears obvious that GMI did not actually know what properties or easements had been granted to them when they took over the Sperry Mill operation. The QCD included, in addition to nine specific parcels, all properties within a 1-mile radius of the leased property, including property GMI clearly could not have owned. PM-007 shows all the properties within 1-mile radius of the Sperry Mill Site encompassing the area quitclaimed by GMI, including parcels owned by the Solano County under the sphere of influence by the City of Vallejo. In 2016, VMT removed the Solano County parcels from their Project description.
PM-007 plots all of the properties included in this 1-mile radius that GMI quitclaimed to CBSV. It shows homes, housing developments, public and private property that includes Grace Paterson Elementary School, the Norman King Community Center, Sea Breeze, the Bayview Townhouses, every single residences on Sandy Beach, several churches, a Public Storage, businesses, etc. This is clearly preposterous and demonstrates that the QCD was not intended to actually sell any of those properties that GMI clearly knew they didn’t own. In real estate transactions, it is a common practice...
that if Sellers are to sell what they rightfully own, escrow should have been opened, a preliminary title search ordered, and Grant Deeds executed identifying each and every parcel with its legal description, and then recorded at the County Recorder’s Office for constructive notice. We found no such documents in regard to GMI’s transfer of property to CBSV.

To be clear, a Quitclaim Deed is not a sale of land. It merely transfers any rights that the Grantor may or may not have to a property to the Grantee. It does not guarantee that the Grantor actually has any rights at all to the property he is transferring; GMI could legally have quitclaimed any property within that 1-mile radius to CBSV. It did not give Cherokee Brooks the right to transfer title or to mortgage any properties not actually owned by GMI. Any property so claimed would be considered a “Wild Deed,” as in the recent case of San Diego’s Petco Park, where a Wild Deed allowed San Diego’s City-owned major sports venue to be recorded as privately owned, leading to a multi-year court battle to reclaim proper title. To date we have found no evidence that GMI owned any property they Quitclaimed to Cherokee Brooks.

The first published Assessor’s parcel maps from 1956 shows parcel 90 with no change in description or ownership between the 1868 survey and 1956 (AR-2007-10). The Assessor’s record shows that up to 2007 the leased property GMI assigned to CBSV was undivided, per legal description APN 0061-160-090, having an assessed value of $5.15 million. (AR-2007-11)

Every document we uncovered led us to conclude that GMI had occupied the Sperry Mill Site without any written agreement or lease. There was no legitimate reason a Lease Agreement should have been executed since they had occupied the Sperry Mill site since 1942. GMI did not need a lease agreement to guarantee their continued use of the Public Land because the granting Statutes of 1963, chapter 24 allowed them to occupy the land until 2014. The only need to execute a lease agreement would have been to facilitate the assignment of that lease to CBSV without going through a public hearing. This also apparently allowed a covert privatization of abandoned Public Land.

The language used in Chapter 588 of the Statutes of 2004 would support our contention that the 1991 GMI lease was likely executed much later, perhaps just before the Lease facilitated CBSV’s $7.15 million loan. In 1991 GMI didn’t need to execute a lease at all. They were already in possession and occupants of the site since 1869 by virtue of California’s granting statutes.

Looking back again historically, Abraham Dubois Starr expanded his empire, adding a milling operation to a shipping port that had existed since before 1850. In 1869, Starr owned the property adjoining the port. He purchased the land under the Land Law of 1820, which gave him priority use of the Public Land immediately bordering his own property without a written agreement until 1850. In those times, this was common and legally binding when enacted by the State Legislature. When the Sperry Flouring Company (later Sperry Mill Company) took over the Mill from Starr in 1894, Sperry assumed that same exclusive right to the Public Land without a written agreement. This was so
again when George Washington McNear of the Port Costa Mill took over the mill from Sperry in 1895 and when Sperry took the mill back from McNear in 1910. Before McNear’s death, it was reported in local news that he planned to expand the mill after the lease of the site expired. The collapse of the flour industry in the area due to increased competition prevented those plans from materializing.

Sperry became the most powerful flour producer in California in the early 1900s. He wanted to expand the mill to meet demands during the worldwide shortage of grain in 1914 when World War I broke out. Sperry secured this expansion by lobbying the State legislature to approve Chapter 310 of the Statutes of 1913. From 1916–1917, Sperry built more elevators, the Administrative Building, silos and the warehouse using grants from the Federal government. Sperry was granted possession and an additional 50 years occupancy of the site.

When World War I ended in 1920, the robust growth slowed and the Mill shut down temporarily. In 1929, the Sperry Mill joined several other milling companies around the United States to create General Mills. There is no evidence that any written lease existed between GMI and the COV before 1991. But based on everything we found, the six Landmarked buildings on the site, having been erected by 1917, were not owned by GMI, and would revert back to the people of California with the COV as trustee in 1963 as per Chapter 310 of the Statutes of 1913:

“If after the initial 25 years is renewed for another 25 years, the renewed lease may be terminated at any time by mutual agreement of the city and the lessee, on such just and reasonable terms for compensation for improvements as may be mutually agreed upon.”

This is a very important provision of any lease that may have existed. It clearly states that by 1963, the site should revert back to the people and that the COV should have compensated GMI for the improvements built on the site.

When World War II began, Harry A. Bullis became President of GMI. The Sperry Mills division of GMI emerged prominently again during the war. Anticipating that a slump might happen again once the war ended, as in 1920, Bullis prepared a postwar economic plan seeking to increase production by developing a greater variety of products and modern efficient plants.

By 1963, GMI’s Sperry Mill division became one of the largest non-government employers in Solano County, with 150 employees. George Derr, who was the Mill’s superintendent during that period, was also Vice Mayor of the COV. The granting Statutes of 1913 expired in 1963 and GMI would have been required to vacate and the land revert back to public use. Closing the GMI operation would mean losing the largest non-governmental employer in Solano County. An emergency session was held by the State Legislature to extend the leasehold of the Sperry Site protecting the jobs of local residents. The continuous possession of the Historic Site by GMI after Chapter 310 of the Statutes of 1913 was repealed was secured by Chapter 24 of the Statutes of 1963 extending
the leasehold to 2014. It can be concluded that no written lease agreement had ever existed since 1869, since possession of the Sperry Mill was secured by these granting statutes.

Likewise, there was no evidence found to show that the buildings or improvements at the Sperry Mill served as compensation for GMI’s continued possession of the site, as stated in the granting Statutes of 1913.

Questions:

- Should it then be assumed that the Historic Landmarks reverted back in 2004 and, therefore, are now owned by the people of the State of California?

- Or is it possible that GMI had been paying rent all along according to the 1991 lease, or that they or CBSV paid any rent in arrears to support the recorded MOL in 2007?

- To prove that a lease actually existed, the COV needs to show evidence of GMI’s payments on the lease from 1989–2007 to legitimize the 1991 assignment of its lease. Without such payments, can it be concluded that our contention that this lease was actually executed later than 1991 is correct, and that the Assignment of Lease may be fraudulent as well, executed only to guarantee the $7.15 million loan from Bank MidWest?

While we have no legitimate reason to be able to examine financial transactions between private entities, our concern is focused on the GMI lease that was somehow revived after abandonment of the property, surviving the foreclosure on an unauthorized mortgage that encumbered Public Land, and survived again to be reassigned to VMT, who plan to demolish the historic structures located there. Whatever took place in 2007, as unorthodox as it appears to be in every way, 20 acres of Public Land, which should have reverted to public use in 2014 were lost through a manipulative and covert process, intentionally kept from public scrutiny.
CHRONOLOGY OF EVENTS: 2010

June 22, 2010: Two Notices of Default (NOD) AR 2010-01 and AR2010-02 and Election to Sell Under Deed of Trust were recorded at the Solano County Recorders Office (SCRO), indicating that as of June 18, 2010, Cherokee Brooks Street Vallejo, LLC (CBSV) was in default of its loan agreement with Bank Midwest, NA (BMW) in the amount of $6,869,663.94. It stated that $6,264,609.05 was the principal balance of the loan which became due and payable in full because of the following:

1) CBSV failed to pay its Ground Lease payments, and
2) CBSV failed to pay the reimbursement amount when due.

The Notices of Default were sufficient grounds to suspend, terminate, or invalidate the Lease that had been assigned to CBSV. What is astounding about this is that the deed of trust (DOT) being foreclosed specifically states that the security interests assigned to Bank Midwest (BMW) include the rents, security deposits and income that was supposed to be collected on the abandoned property. The DOT (AR 2007-06) was reviewed extensively. Sections 1.2.5 and 2.8, specifically state that the “Rents,” “Security Deposits” and “Income” on the leased property were intended to confer upon BMW all rights and impose upon CBSV all obligations under applicable law and were intended to be construed in accordance with such statutory requirements. CBSV absolutely and irrevocably grants, assigns, transfer and send over to BMW such rents, security deposits and incomes.

November 2, 2010: California Cherokee Brooks Return LLC (CCBR) was incorporated in the State of Missouri on November 2, 2010, one day prior to the date they were assigned the leasehold’s beneficial interest (see December 23, 2010). Its registered agent was David M. Neeb, whose principal address is listed as 1111 Main St. #1600, Kansas City. BMW’s address is listed as 1100 Main St., Kansas City.

The documents referring to CCBR are linked as AR-2010-05. The main activity of CCBR is to buy, sell, lease, develop, own real estate and make improvements. CCBR is not engaged in banking, a mortgage holder, or a real estate security trader. The introduction of this new Cherokee Brooks is important. It requires us to determine whether the foreclosure would give automatic entitlement or ownership of the Historic Landmarks to CCBR.
We note that the Lease itself could not be assigned according to the lease itself without written consent of the COV, indicating the “chain of title” was broken.

**December 23, 2010**: BMW recorded an Assignment of Beneficial Interest Under Deed of Trust the Leases, rents and security previously assigned to them by CBSV to CCBR (document **AR-2010-06**). This document is dated November 3, 2010. The use of the name Cherokee Brooks as the beneficiary is not coincidental, as we explain later.

**December 23, 2010**: A Trustee’s Deed Upon Sale (TDUS) Document **AR-2010-03** was recorded exactly the same date and time as the previous document. Recitals state that the Leasehold property was auctioned on December 8, 2010 and that the highest bidder was CCBR, notwithstanding that the Beneficial Interest of the Leasehold had already been assigned to CCBR on November 3rd, at the same time the TDUS for the fee property was recorded, indicating it had been auctioned December 9, 2010. CCBR was also the high bidder (**AR-2010-04**).

These two TDUS documents make no mention of whether or when the Notices of Trustee Sale (NTS) were issued, published or recorded. Due to the lapse of time, it will be difficult to determine if the trustee sales were actually published as required by CCC Sections 2924f and 2924g, etc. No Notice of Trustee Sale (NTS) was recorded at the Solano County Recorder’s Office. BMW may claim that the NTS were recorded in another county, which is allowable in certain circumstances under CCC section 2924. However, BMW was still in violation of CA foreclosure laws. The Trustee sale date and time must be published in the City and County where the property is located. Neither the details nor the minimum bid were stated in the DTUS. The DTUS states that CCBR was the Grantee as well as the foreclosure beneficiary, which allowed them to bid below the amount, defaulted on.

Bryan Cave, LLC is listed as the foreclosing agent for these proceedings—one of the largest foreclosure agents operating in the states of California, Oregon and Washington. It seems unlikely that a prominent foreclosure agency would fail to record a NTS and not publishing the date and time of the auction. We therefore conclude that this action was intentional.

It is not clear whether BMW assigned the beneficial interest to CCBR as successor lender, or as a bidder at the foreclosure auction. The Assignment of Beneficial Interest was recorded at the same time as the DTUS, meaning BMW followed CCC 2934. But the use of the name “Cherokee Brooks” as Lender, as Assignee and Assignor, and as foreclosure Beneficiary is certainly questionable and deceptive. CCBR is neither a bank, a mortgage lender, nor a securities trader. CCBR is a real estate development company, formed only the day before they were assigned the benefit of the DOT and pre-selected to be the one and only bidder in an exclusive foreclosure auction. Therefore, the foreclosure sale was fraudulent and illegal. This deceptive assignment of the GMI lease was made even worse when it facilitated a $7.15 million loan during the 2007–2009 recession, only to be...
foreclosed three years later. Likewise, we believe the foreclosed DOT provided a way to privatize 20 acres of property that GMI had previously leased from the City of Vallejo.

California Civil Code (CCC) section 2938 explains why the name “Cherokee Brooks” was used in each of these capacities:

- If the DOT were to have been sold to a different entity, the GMI lease could not have been assigned. Foreclosure on an Assignment of Lease as explained in CCC section 2938, is a foreclosure of “interest in leases, rents, issues, or profits of real property made in connection with an obligation secured by real property, irrespective of whether the assignment is denoted absolute, absolute conditioned upon default. This means the security interest that was assigned to CCBR was only an interest in existing and future leases; rents and income, not from the GMI lease itself. This is also confirmed in that the GMI Lease had no provision that allowed CBSV to mortgage the Leasehold itself.

- Later documents indicate that California Cherokee Brooks Return LLC was owned or managed by Armed Forces Bank, NA. Under CA Financial Code, banks can sell or buy DOTs from one another. If BMW had sold the DOT directly to Armed Forces Bank, NA without the Cherokee Brooks name, the GMI lease could not have been assigned. As explained in the previous paragraph, the slight difference in the Cherokee Brooks names solved that problem. Looking at document AR-2010-03, it could be perceived that the foreclosure was halted, evidenced by the fact that no NTS was issued, recorded or published. Using Cherokee Brooks as grantee as well as the foreclosing beneficiary made it appear as if the original Cherokee Brooks was able to redeem the property before the foreclosure took place.

- Armed Forces Bank, NA, using the name Cherokee Brooks as the foreclosing Beneficiary, was allowed by CCC section 2924 to bid lower than the amount due under the NOD. The auction proceeds ($200,000 for both the Lease interest and the fee property) was only a fraction of the $6.8 million default balance of the DOT. The use of the name Cherokee Brooks served two purposes: The GMI Lease remained assignable and, at the same time, Cherokee Brooks was able to settle the $7.15 million loan with $200,000. While it is not illegal to use slightly different names for companies owned or managed by the same individuals, CA Foreclosure Law 2924l, prohibits a trustor (in this case Cherokee Brooks Street Vallejo), being foreclosed on, to bid lower than the outstanding balance of the loan. Therefore, whatever the circumstances of this foreclosure, fraud cannot be ruled out. The fact that California Cherokee Brooks Return terminated their company on October 24, 2014 supports our belief that this LLC was created for the sole purpose of facilitating the foreclosure proceedings in their favor.

Odder still: The GMI lease identifies the encumbered parcel as APN-0061-160-090 comprising more or less 30 acres, while the TDUS, document AR-2010-03, shows the parcel foreclosed on was APN-
0061-160-220, comprising 20 acres. Until 2007, when the GMI lease was assigned to Cherokee Brooks Street Vallejo, the entire 30+ acres was still a leasehold estate that could not be sold or conveyed. In fact, the two-recorded Trust Deeds that guaranteed the $7.15 million loan were:

1) a Leasehold Deed of Trust, and
2) an Assignment of Rent.

Between 2007 and December 2010 when the foreclosure took place, parcel APN-0061-160-090 was subdivided into 2 parcels, bearing the legal descriptions APN-0061-160-220 and APN 0061-160-230. It is evident that subdivision of the Sperry Mill site was done to allow privatization of the 20-acre parcel, which is confirmed by a recorded Estoppel Agreement and events that took place two years later.

Note regarding PM-008: The County Assessor Map shows duplicate parcels marked 22 and 23, which will require an explanation. As mentioned earlier, the earliest Assessor Map from 1956 (detail in PM-009) shows parcel 90 undivided.
In 2016, inquiries were made to the State Land Commission (SLC) and the Governor’s Office of Planning and Research (OPR) to determine when and how the 30+ acres of APN-0061-160-090 were divided into a 20-acre parcel bearing the legal description APN-0061-160-220 and a 9.9+ acre parcel bearing the legal description APN-0061-160-230. The response to these inquiries will be discussed later.

Our examination of the foreclosure proceedings did not go beyond determining that it was illegal since we are not able to challenge a foreclosure involving three private entities. However, we have determined that because of the Statutes of 1913, 1963 and 2004, the Historic Landmarks are not
affected. Public Land, or any part thereof, cannot be granted, conveyed or assigned to any individual, firm or corporation for any purpose except as provided under those Statutes. The foreclosure did not convey the Historic Landmarks to BMW or to the assignee of the beneficial interest of BMW, which was CCBR. As stated in both trust deeds, the loan from BMW was to be guaranteed by the lease income on the property, which may also have constituted fraud, although we have not determined whether GMI or Cherokee Brooks paid rent at all on the vacated buildings or closed mill. It should be stated again that we find it questionable and deceptive to effectuate subdivision of Public Land by merely executing an Estoppel Agreement on the instructions of a COV official.

Under the granting Statutes cited, the COV could have reclaimed the leasehold property when the site was listed for sale by Ted Gallagher under “historic listings” after the foreclosure. There is no evidence that CCBR actually took possession or occupied the site in December 2010, or that any lease payments were made prior to VMT coming into the picture in 2012. Later in our research, we learn that VMT did not pay rent by virtue of three amendments to this questionable, deceptive lease assignment.

It is worth noting that the above-mentioned foreclosure process occurred at the time of the COV’s own bankruptcy proceedings, which lasted from May 6, 2008 until November 11, 2011.
CHRONOLOGY OF EVENTS: 2012 – 2014

Several months after the foreclosure sale in 2010, the old Sperry Mill site was listed for sale as an “Historic Listing.” Ted Gallagher’s name appears as the listing agent. An advertisement described the property for sale as the old GMI Mill, and enumerated each of the buildings by size, description and year built. The list price was $8,300,000. The historic Mill was described as bearing the address of 790 Derr Street, Vallejo, CA. Another listing from March 2011 describes it as:

“Development opportunity with flexible land use possibility. Tremendous water views of the Carquinez Strait with easy freeway access. Motivated seller. Will consider all reasonable offers. Seller will consider carryback financing. 39 gross acres @ Carquinez Straits, Vallejo, CA 29 acres of fee simple land & 10 acres of leasehold interest 1,400 of water frontage 164,000 sq. ft. in 8 structures. Built & used when General Mills operated the former milling facility. Formerly rail served Existing dock (requiring significant repair/rebuild) Zoning: I.U. (Intensive Use). City is open to a wide variety of uses.”

For the two years following the foreclosure proceedings, the historic GMI site remained vacant and abandoned. There is no evidence that the property was being maintained, and it is unlikely any rent payments were made under the terms of the original GMI Lease. The only record we were able to find, as previously discussed, was the 2010 Notice of Default (NOD). It was publicly known that the GMI Lease, whether valid or not, having been defaulted on monetarily and non-monetarily, abandoned, with all its buildings vacant for sixteen years, should legally have terminated as of June 2010 when the NOD was recorded, which was a default of the ground lease payment and the reimbursement of costs, but likely also of taxes and insurance.

July 2012: The COV issued a public notice that the City Council would consider the following on its Action calendar, agenda item C (AR-2012-01).

“Audit a Resolution authorizing the City Manager to execute a First Amendment to the Ground Lease for the property referred to as 790-800 Derr Street” between the COV and Vallejo Marine Terminal.” (AR-2012-04)

The procedure used in this public notice was not in conformance with CA Government Code 37380, etc. On reading the agenda, one would assume that a Ground Lease already existed between the COV and VMT, and that the recommended resolution concerned an amendment to that lease. We searched the City Council archives, agendas, and videos and staff reports from January 1, 2012, to July 24, 2012 and filed Freedom of Information requests. No agenda was provided or found showing that a Ground Lease was authorized and executed. Instead, COV staff made it appear that the GMI lease survived the foreclosure.
The staff report regarding this First Amendment (AR-2012-01) was released a few hours before the council meeting on July 24, 2012. With a heavy Council agenda, which included the City budget, several administrative appointments, salary issues, and the approval of two major developments, it is doubtful whether the Mayor or Council members, let alone members of the general public, had time or reason to investigate any issues related to the First Amendment beyond the Staff Report and recommendation.

**July 24, 2012:** City Council Resolution No. 12-118 N.C (AR-2012-02) was adopted, authorizing the City Manager to execute the First Amendment to the Ground Lease between the COV and VMT. The public hearing made no mention of whether or when a “Ground Lease” had been authorized, executed or assigned, and changed what had been previously described only as a “lease” to a “Ground Lease.” The lease document, provided by the COV in 2015 under FOI, showed that the lease referred to by the COV in this hearing was the same GMI lease which the COV allowed to survive after abandonment in 2004, default and foreclosure in 2010, and later, an “Assumption and Assignment of Ground Lease” dated 9/28/12, and recorded with the County on 10/1/12. It is worth noting that the Legal Description in this Assumption and Assignment matches the Legal Description of the GMI Lease: approximately 30 acres (AR-2012-03).

The staff report stated that “a newly formed entity called the Vallejo Marine Terminal, LLC (“the Lessee”) is in contract to purchase the Private Property. However, closing the transaction is contingent on receiving an amendment (“the First Amendment”) to the existing lease agreement for the City Property. The Lessee has plans to reuse the General Mills Site for industrial operations including integrating rail, truck, and ship/barge transportation so that the site serves as a trans-shipment center for commodity products, with cargoes coming into the facility and being shipped abroad.”

The report further stated, “Part of the Lessee’s business model is to sublease a portion of the General Mills site to other tenants that will also generate tax revenues for the city. One such potential entity is a manufacturing facility that estimates $30 million in capital improvements and is a high energy user and therefore will generate significant utility user tax revenue.” Eight months later, that potential entity was identified as Orcem America, a cement manufacturing company, the subsidiary of a company based in Ireland.

**Question:**

- **Was all of this done by City Staff acting on their own?**

- **Did the COV Staff conceal the identity of Orcem and its proposed cement operation from the public and members of the Council during this City Council meeting for competitive reasons as they stated, or to avoid an environmental impact report as required by CEQA?**
The report continues: “The agreement contains language that ties the Capital Improvement Offset ("CIO") directly to the revenues received by the City” (i.e., the Capital Improvement Offset will never exceed the amount of revenue received by the City). Among the terms of the First Amendment, City Staff stated: “The Lessee is eligible to receive a credit toward their rent for the installation of capital improvements on the City Property in the amount not to exceed $8 million” (the CIO). However, the Lessee would pay a minimum of 15% of the base rent each year with the CIO rolled over to future years.

City Staff reported that the CIO would equate to 85% of the revenue to the City, including rent, reimbursement for property taxes, and insurance premiums paid, meaning if VMT’s capital improvements were to reach or exceed $8 million, and the CIO rolled over for 33 years, the amount of the CIO would be $242,242 per year applied against rent, taxes, insurance. The COV would still remain obligated to pay rent to the State Lands Commission, which presumably would be the 15% remainder of the base minimum rent required under the First Amendment. Furthermore, COV estimated that the Lease revenue would range between approximately $450,000 – $900,000 (depending on the Consumer Price Index) over the initial 33 years period; that is equal to estimated revenue of only $13,636–$27,273 per year. Thankfully the First Amendment did not allow the CIO to exceed the city revenue, so the COV will not owe money to VMT. Nevertheless, the COV will receive no rent revenue from this agreement. The minimal amount that VMT is required to pay in rent will not go into COV funds. Vallejo, as Trustee, is requited to deposit these funds into a Trust account to be allocated for maintenance and upkeep of all Public lands under COV’s trusteeship.

Projected annual rental income of $13,636–$27,273 realized by the COV after 33 years certainly undermines the justification made by the City Staff on February 13, 2007 that the 1991 GMI lease should survive to preserve an annual income of $74,090, the alleged rent being paid by GMI during their lease term. Nor does it meet the State Lands Commission’s mandate that such leases be at market rate.

The staff report stated that there was no real estate broker involved in this transaction that the COV did not have to pay an agent to represent the City with regards to the assignment of the lease to VMT. However, Ted Gallagher, Vice President of Cassidy, Turley, Walnut Creek, who was the listing agent for the sale of the site, was in discussion with VMT and Orcem as early as 2010. He claims to have negotiated a ground lease between them for $32 million that we later learn included a sub-lease of Public Trust land. On February 27, 2017 at the public hearing before the Planning Commission, Steve Bryan, President of Orcem, disclosed that he saw the Sperry Mill site in August 2010, six months before the property was listed by Ted Gallagher. He stated that he first met the men behind VMT in 2010. VMT itself only registered with the California Secretary of State in September 2012, two months after the City Council approval of the assignment.
The Staff report made no mention that a sub-lease had been discussed before VMT sought approval for the assignment of the lease. This appears to be the sequence of events:

1) Discussion between Ted Gallagher and VMT and Orcem in August, 2010.

2) Listing of the sale as a historic site in January, 2011.

3) Revival of the foreclosed 1991 GMI lease and its assignment to VMT on July 25, 2012, followed by the sale of a portion of the property to VMT.

4) Sub-lease to Orcem in March, 2013.

This looks to be a well-orchestrated plan to privatize Public Land out of public view and to circumvent CEQA, which would have required full disclosure of how and when Public Lands were privatized.

The resolution was approved unanimously by the Mayor and five Council members present. This action was equivalent to giving VMT a gift, without meaningful and viable considerations for the City. It clearly indicates impermissible preapproval of a Project that had yet to be identified, a far cry from what was advertised when the historic site was listed for sale, where the seller would expect to receive $8.3 million as opposed to the COV giving away $8 million to whomever took control of the property.

October 1, 2012: The First Amendment between COV and VMT (AR-2012-04) dated September 28, 2012 was recorded. COV Resolution # 12-118 N.C. stated that the agreement qualified as an exempt project under 14 CCR Section 15330, a categorical exemption, Class 1, for “Operation, repair, maintenance, or minor alteration of existing structures or facilities not expanding existing uses,” and therefore, exempt from a CEQA review pursuant to 14 CCR Section 15330.

The First Amendment included not only rent abatement and a CIO, it also added two provisions not mentioned in the July 24, 2012 Staff Report: Sections 5.2 and 5.3, found on page 6 as Waterfront Improvement and Other Alterations. It states:

“Lessor agrees, in its capacity as Landlord, that VMT may perform restoration, demolition, reconstruction or improvement involving the pier…”

and further states:

“VMT, may, from time to time, make or cause to be made improvements, additions, alterations, changes in or to the improvements and the Leased premises it deems necessary or desirable, including demolition, removal or replacement of existing buildings on the Leased property.”

These sections clearly contradict the categorical exemption offered in the first amendment, and change the VMT Lease from “no project” to a “project allowing demolition, alteration and reconstruction.”
In City of Santee v. County of San Diego, the California League of Cities (of which the COV is a member) explains that before agreeing to the specifics of projects, particularly projects involving Public Land, cities will often negotiate purchase options, memoranda of understanding, exclusive negotiation agreements or other forms of preliminary or tentative agreements that may be required for a Project to get the financial resources together to conduct environmental and technical studies, seek approval or grants from various governmental agencies, and explore interest among commercial tenants. The Courts have agreed because this can avoid economic loss both for the government agency and the project applicants before they commit to an acquisition or long-term lease of public land; which could prove unfeasible after a lengthy MUP process.

**October 1, 2012:** On the same date, an Assignment and Assumption of Ground Lease was also recorded between VMT and California Cherokee Brooks Return, LLC, with a “Consent of City” given to Cherokee Brooks Street Return Vallejo, LLC a third entity. This third Cherokee name gives the impression it was meant to mislead City Council to believe that the Chain of Title had not been broken, that the 1991 GMI lease survived the foreclosure, obscuring the fact that after Cherokee Brooks Street Vallejo defaulted, Bank Midwest became the Assignee in 2007, followed by California Cherokee Brooks Return in 2010, and VMT in 2012. This document is attached herewith as AR-2012-03. This is the first time an Assignment and Assumption refers to this lease as a “Ground Lease.”

**Question:** Is this Assignment and Assumption of Ground Lease legally valid if the Consent of City was given to a party not named in this transaction?

Within five (5) years, the questionable-GMI Lease was given five lives that evaded scrutiny by the public and perhaps, the City Council as well. No one ever questioned what was missing in this chain of title. The fact that the last Assignee authorized by the COV was Cherokee Brooks Street Return Vallejo, LLC, not California Cherokee Brooks Return, LLC. and that there was no clear authorization that the Lease be assigned to BMW, nor assigned to a second Cherokee (CCBR), which eventually led to the assignment to VMT. This is the reason the COV consented to the assignment to a third Cherokee, with its corporate name closely resembling the original Assignee: To covertly and manipulatively hide the illegality of the earlier assignments and the privatization of Public Land. Public Record searches find no Cherokee Brooks Street Return Vallejo, LLC among corporations registered in California.

This explains why there is no action item found in any City Council Agenda from January 1\textsuperscript{st} to July 24\textsuperscript{th} of 2012, authorizing the assignment of the GMI lease. For public consumption, it was made to appear that the GMI lease survived the foreclosure and it was not necessary to reinstate or to re-acknowledge that it existed.
This also begs the question: Why a ground lease? And how does this affect the Historic Landmarks?

The First Amendment gives the answers to these questions. We examined the legal description attached as Exhibit “A” on the Assignment and Assumption of Ground Lease and found that it was exactly the same parcel described in the original GMI lease and confirmed in the Memorandum of Lease in March 2007, comprising almost 30 acres. This shows that the questionable 1991 GMI lease was once again revived on October 1, 2012, after it had been defaulted and foreclosed on December 23, 2010.

Even more unusual: The First Amendment further states that the legal description of the GMI leasehold was to be eliminated and replaced by a legal description which reduced the leasehold property to 9.89 acres. After mapping out the legal description attached to the First Amendment, we determined why the GMI lease was reduced. The 9.89 acres that remained in the GMI leasehold (Parcel 22) was a filled area, which included only the historic dock. Parcel 23 containing 19.92 acres where the historic buildings stand was removed from the amended lease. It was later discovered that CCBR had somehow transferred the title to Parcel 23 to VMT, claiming to own outright land, which had previously been part of the leasehold property. Presumably, this was effectuated by the Estoppel Agreement and the blanket Quitclaim Deed.

The First Amendment to the GMI Lease, not only expunged all relative and pertinent terms of the 1991 lease agreement, but it also extended the Lease term to 33 years, with an option to renew for an additional period of 33 years. It allowed abatement of rent and a CIO, and clearly shows that even though the MUP application wasn’t submitted until eight months later, the COV had pre-committed to this project as a whole, so as to effectively preclude any alternative or mitigation measures that CEQA would otherwise require, including the alternative of not moving forward with the project. (See CA Code reg. title 14, Section 15126.6, sub (e); Save Tara v. City of West Hollywood; Natural Resource Defense Council v. City of Los Angeles and China Shipping).

Courts have looked to California Supreme Court Save Tara for guidance to determine whether a government agency has committed itself, to the extent that it blocks alternatives or mitigation measures that would ordinarily be required by CEQA. For this reason alone, the City Staff could recommend not certifying the DEIR that was released three years later.

Another relevant case that caught our attention is China Shipping, because VMT’s lease and proposed port are very similar to China Shipping’s lease/permit entered into with the City of Los Angeles and the Port of Los Angeles granting a coastal development permit. China Shipping was constructing a container terminal, permitted by the city of Los Angeles based on a 1997 program EIR and a 2000 SEIR prepared by the United States Army Corps of Engineers, Los Angeles District, for its “Ports of Los Angeles Deepening Project.” After reading the details of the two EIRs used by the
city, it appeared that the execution of the lease and the issuance of the permit to build the container terminal met CEQA guidelines and that the actions taken by the City of Los Angeles were appropriate and could not be challenged.

The petitioners, Natural Resources Defense Council, Coalition of Clean Air Inc., and several neighborhood associations challenged the permit issued citing that the project did not follow CEQA guidelines when the city entered into the agreement with China Shipping for a “preferential right” to use approximately 110 acres of wharf and backlands and a “secondary right” for additional berths. The term was 25 years. They filed a petition at the Los Angeles Superior Court for a writ of mandate to rescind the permit and claimed that the EIR used for the project violated CEQA. The petition was denied at Superior court, but the California Attorney General supported their position on appeal. The Court of Appeals reversed the decision of Superior Court, citing that the Program EIR and the SEIR used were not sufficient to address the significant impact of the container terminal being built.

The AG provided a succinct statement as to why CEQA was violated. “The China Shipping case goes to the first principles of the CEQA Process. The CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project covering the entire project, from start to finish.” And goes on to state: “Here, the Port and the City of Los Angeles had reduced CEQA to a process whose result was largely to generate paper, to produce an EIR that describes a journey whose destination is already predetermined and contractually committed to before the public has any chance to see either the road map or the full price tag.”

**September 5, 2013:** A Major Use Permit (MUP) application was submitted to the COV jointly by VMT and Orcem California Inc. (Orcem). The application included a Project description, which stated that Orcem would manufacture cement products, which would require demolition of some of the existing historic buildings to give way to their own buildings, which would be needed in their operation. VMT would build a deep-water berth and operate as a port. The Project location shown in PM-010, consists of approximately 39 acres, the exact same acreage and location that GMI used per PM-006, when GMI was in full operation of the mill.

Orcem’s application might have been considered “due diligence” by a prospective tenant since no City Council resolution was found authorizing a long-term sublease. This was later proven wrong. A Memorandum of Lease (MOL) between VMT and Orcem dated May 23, 2013 was on file at the SCRO (recorded March 7, 2015). A consultant to VMT denied knowledge of this recorded MOL, saying that the MOL would only be recorded once the project was approved. A copy of the MOL between VMT and Orcem from the SCRO is linked as **AR-2013-01**. The initial term of this lease is 35 years, with options to extend for up to three additional 10-year periods. Portions of land lying “within the legislative grant to the City of Vallejo” are included in the legal description.
We find no agenda item or minutes from any public hearing showing that this sub-Lease to Orcem by VMT was authorized by the City Council, as required for any lease longer than 10 years.

**April 8, 2014:** Consent Calendar item “F” (AR-2014-01) was approved unanimously by City Council without discussion authorizing the City Manager to execute an agreement between the City and Dudek for the preparation of an Environmental Impact Report for the proposed VMT / Orcem project and execute reimbursement agreements with VMT and Orcem to reimburse the City for the costs of the EIR agreement. Dudek was selected as the most qualified of three respondents for a project of this scope. The total cost of the preparation of an EIR was projected to be $611,990 including Administrative Services.

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Vallejo Marine Terminal Project Location Map per Major Use Permit application, 2013. Total area = 39+ acres. Parcels used are the same as used by GMI, which include parcels granted under Chapter 310, Statutes of 1913; Solano County land: COV abandoned streets; and tidelands per State Lands Commission survey.
The authorization, when approved, is a standard administrative activity, which would have no potential physical change in the environment so that it is not considered a Project under CEQA. The staff report also stated that there would be no fiscal impact to the COV, because VMT/Orcem would fund all costs associated with the contract.

Note: At a second public hearing for the DEIR in 2015 at the Norman King Community Center in South Vallejo, Andrea Ouse was asked who was paying for the EIR. She said the fees were shared by the Project applicants and the COV, contradicting the approved resolution. The total cost of the preparation of an EIR was expected to be $611,990 including Administrative Services.

**Question:** If the statement was true that the COV was sharing the cost, and the earlier report to City Council that the contract would have no fiscal impact on the COV was also true, is it possible that shared cost of this contract came out of the Public Trust Fund?

The council specifically authorized a Master EIR, considering that the project would involve two applicants and several phases. The total area of the land involved is approximately 39 acres. The land being used for Orcem seeks a use permit for less than 5 acres. Staff determination of a Master EIR is correct, however, the Next Steps, and Scope of Work identified in the Consultant and Professional Services Agreement, clearly indicates that the EIR Dudek intended to prepare would focus on the Orcem project and VMT’s Operation in collaboration with Orcem.

The language used in the authorization request and the reimbursement Agreement between VMT/Orcem and the COV, is clearly an added entitlement to the Project Applicants.

Our search for documents to determine when and by whom subdivision was authorized for the GMI leasehold property into two parcels of land uncovered another legal infraction for a minor subdivision of land at the historic Sperry site. This involved a portion of the 9.89-acre parcel identified as Leased Area, the tidelands and a portion of the GMI leasehold property. It is stated that this subdivision of land was to facilitate a sub-lease, which based on our research, had been executed more than 16 months earlier. This merging of tidelands and the fee simple parcel was done by executing a Second Amendment to the already questionable lease; a minor subdivision of land which is a violation of the Subdivision Map Act. There is no record that the Planning Commission or the City Council authorized such a subdivision at any public hearing.

**August 22, 2014:** A Second Amendment to the GMI lease (AR-2014-02) executed on June 4, 2014, was recorded at SCRO. City Staff referred to the Second Amendment as a “Minor Administrative Amendment” not requiring City Council approval. City Staff cited Code 66426.5 and could therefore not effect the division of the Leased premises into two separate parcels by way of this lease amendment.
CA Gov’t Code 66426.5 states: “Any conveyance of land to or from a governmental agency, public entity, public utility, or subsidiary of a public utility for conveyance to the public utility for rights-of-way shall not be considered a division of the land for purposes of computing the number of parcels…”

When City Staff allowed VMT to subdivide Public Land to affect a sublease to Orcem in what they refer to as a “minor administrative amendment,” it extended an unsolicited accommodation and committed at least four infractions:

1) They impermissibly approved the subdivision of land, which would have significant impacts on the environment (Myers v. Board of Supervisors of Santa Clara county), without a CEQA analysis. City Staff knew that the “minor” subdivision of the land would allow Orcem to build a cement factory because on September 5, 2013, Orcem submitted a project description attached to its MUP application stating that demolition of some of the existing historic buildings would be required. Demolition of historic resources poses the ultimate change in the environment, resulting in significant impacts that cannot be mitigated.

2) They allowed subdivision of Public Land which would allow VMT to sublease, encumber or assign the leased property, without City Council approval following a public hearing, which is a violation of CA Gov’t Code 66411, 66424 and 66428.

3) City Staff’s position that subdividing a parcel of land falls under “ministerial action” that can be effected at staff level by executing a lease amendment is a violation of CA Gov’t Code 66445. Since the Project Applicant did not officially apply to subdivide the land, it is assumed this was negotiated under the table.

4) When the City Staff used the wrong exemption to shortcut the parcel map approval, they reduced and/or eliminated the subdivision process required under 66445(d)(2) and 66445(e).

We assume that City Staff used the same CA code when the leasehold property was subdivided in 2012, which would indicate that the subdivision of the leasehold property might have been done illegally. The subdivision of the leasehold property according to City Staff, per recitals, was in conformance with a Summary Judgment entered on April 15, 2003, recorded as Instrument 200300058313 at the SCRO. To determine the extent of the removal of the 19.92 acres from Public Trust Doctrine, we obtained a copy of this document. This Summary Judgment cited by City Staff had nothing at all to do with the Sperry Mill site. It was part of a settlement between the COV and Lennar Mare Island, LLC and the State Lands Commission. The Judgment did not authorize subdivision of the historic Sperry Mill site. Therefore, the subdivision by the First
Amendment violated the Subdivision Map Act and is illegal. A copy of that Summary Judgment is linked as AR-2000-02.

The subdivision of Public Land without a public or court hearing not only violates CEQA and California Government Code section 37420-37430, but also is a violation of the Subdivision Map Act. When the granting Statutes of 1963 were repealed in 2004, it did not automatically allow for the conversion of this parcel into fee simple property for conveyance without consideration. The fact that the COV provided us with the GMI lease from 1991 and that a Memorandum of Lease was recorded in 2007 means that the Sperry Mill site was undivided Public Land until 2007.

Notes on Myers v Board of Supervisors of Santa Clara County: The real party of interest, Doris Hartley, was the purchaser under contract of approximately 8 acres of land adjoining Willow Springs Road in an incorporated area of Santa Clara County. She was granted a subdivision permit from the Land Development Commission of Santa Clara County to divide this into three parcels, pursuant to the minor land division ordinances of the county, without evaluating the environmental impact of subdividing the land. Neighbors appealed the commission decision and lost. They sued, and the case was heard at the Santa Clara Superior Court, and again they lost. They appealed to the Court of Appeals, where the decision was reversed and the permit rescinded.

The reversal of the Superior Court decision in this case relied on issues similar to VMT/Orcem. Myers' contention that building residential homes in a centuries-old forest and tearing out old trees to widen the roads, etc., would not pose an unavoidable impact on the environment. Doris Hartley considered these changes “minimal changes” which would not pose any serious threat to the environment considering there were houses already on the hills. The Court of Appeals sided with the neighbors and reversed the finding of the Superior Court.

When VMT/Orcem applied for a Major Use Permit (MUP), California Government Code mandates that the entire application process involve public input, either by publication or through public hearings. Subdividing land by way of an amendment after another amendment is worse than the case law cited above, considering that this subdivision was allowed to dispose it without a public hearing, which is required when processing a MUP that would allow a cement factory to lease and operate on the subdivided Public Trust parcel. This could be worse still: City Staff approved a subdivision without the Lessee actually prepared themselves using a CEQA exemption based on the wrong California statute. Since the subject of this subdivision is Public Land, the public should have been informed.
CHRONOLOGY OF EVENTS: 2015 TO PRESENT

September 5, 2015: A draft Environmental Impact report (DEIR) was released three years after the COV received the MUP application for this Project. The general public, unaware of prior actions of the COV as the lead agency for this Project, actively participated in public meetings and responded with more than 500 comments and questions. One question persistently posed was “Environmental Justice,” which was not discussed in the DEIR.

The DEIR did not identify which of seven to eight parcels at the project site were owned by VMT, which parcels were owned by Solano County and which parcels were in Public Trust with the COV as Trustee.

The timing of the DEIR release and the non-disclosure of property ownership for the Project site were violation of law, but not the only violations noted. The over 1000-page report did not contain any alternatives to the Project or alternative location, which CEQA requires. Mitigation measures are not clearly identified as to how, how much, and when they would be implemented, or whether the Project Applicant would be required to implement them. Under CA Public Resource Code 21000, etc., title 14, section 15020-15025, CEQA mandates that any government agency is responsible for complying with CEQA and shall not knowingly release a deficient document hoping that public comments will correct defects in that document, another compelling reason this DEIR could not be certified.

September 17, 2015: A Third Amendment (AR-2015-03) to the Lease was executed. It extended the abatement of rent for an additional year, meaning VMT would not have paid rent for four years. Since there were no capital improvements in that time to offset rent, it is believed that VMT had already received nearly $400,000 in considerations by the time the DEIR was released.

The third Amendment also laid out the compliance with CEQA’s Mitigation or Monitoring Program by the project applicants, which is unusual because the DEIR was only released twelve days prior and no mitigation measures were actually discussed in the DEIR. What is even more unusual in this amendment is the fact that the signatures of Ken Dawson and Blaise Fettig, officers of VMT, were acknowledged by a notary public on September 2 and September 8, 2015 respectively, even though the amendment itself was not executed until September 15, 2015. This suggests that this amendment was prepared by the Project Applicants, negotiated out of public view. Thus, it was not included on any City Council agenda.

December 3, 2015: The Public Comment period on the DEIR ended, after a 15-day extension was granted. COV released a schedule showing that the FEIR would be released sometime in February 2016, which was later revised to July 2016 and eventually November 2016 and February 2017 as a draft FEIR, after City Staff determined they would recommend the FEIR not be certified.
January 2016: A community group exposed a secret, unauthorized, ad hoc group called the Mare Island Straits Economic Development Committee (MISED), which included among its members Blaize Fettig, President of VMT, Matt Fettig, Project Manager of VMT and Steve Bryan, President of Orcem America along with officials and business leaders from the COV and Solano County. It was formed and led by three members of the Vallejo City Council, Jess Malgapo, Pippin Dew-Costa and Rozzana Verder-Aliga and included members of City Staff, including staff from the Planning Division who were directly involved with the VMT/Orcem Project proposal. This group began meeting in 2014 at almost the exact same time the VMT/Orcem Project was being proposed and evaluated. It held regular meetings to discuss dredging of the Mare Island Strait, which is vital to the VMT/Orcem project. It is inconceivable that the same officials who would be evaluating this Project would be meeting secretly with the Project applicants. It may also explain the many entitlements afforded the Project before the DEIR was released. A hearing was held January 5, 2016 to determine whether a Brown Act violation occurred. None was proven and the MISED was disbanded. COV Mayor Osby Davis later stated publicly that this ad-hoc committee was created in violation of Vallejo Municipal Code.

March 2016: The Architectural Heritage and Landmarks Commission (AHLC) approved the nomination by the Vallejo Architectural Heritage Foundation (VAHF) to designate six (6) historic structures at the Sperry Mill Site as City Landmarks, following the recommendation of City Staff (AR-2016-01). Two weeks later, VMT filed an appeal to the City Council objecting to this designation (AR-2016-02). To date, the appeal has not been heard.

We learned much later that City Staff told the Project Applicants in March 2016 that they would recommend denial of the Project at which point face-to-face meetings were suspended and all subsequent communication between Staff and the Applicants was conducted via email.

June 2016: The VAHF initiated an application to nominate the Sperry Mill Site as an Historic District with the National Register of Historic Places. When the VAHF went to the COV Planning Department to verify the exact location of the historic structures on the historic site and their respective owners, it was discovered that some of the borders that separate the fee simple parcels and the Public Trust Doctrine parcel had been moved showing erroneously that all the existing structures and buildings are now standing on the parcels claimed to be owned by VMT. A member of the COV Planning Division confirmed that VMT/Orcem had reduced the project site from 39+ acres to less than 34 acres and removed parcels located in unincorporated Solano County from the proposed Project. This was later confirmed when VMT submitted a Revised Project Alternative plan, which reduced the project area again to approximately 32 acres. The amended location map of the proposed VMT/Orcem projects is shown as PM-011. This was made available to the public in November 2016 not as an attempt to recirculate the DEIR, but rather to eliminate Phase 2 from the project altogether.
July 2016: The COV released an Environmental Justice Analysis prepared by Land Economic Group, LLC. No public hearing was held.

September 6, 2016: We received a copy of a letter from Andrea Ouse, City of Vallejo Economic Development Director; addressed to Richard Loewke confirming that City Staff would recommend denial of the Project’s MUP and would not endorse certification of the FEIR.

July to November 2016: To determine when and how APN 0061-160-090 was subdivided into 2 parcels, we contacted the California State Lands Commission (SLC) for verification. Following several email exchanges, the SLC Provided a Draft Plat Map (PM-010) prepared by their Land Surveyor, which they described as sent to us for discussion only. It clearly indicates the original borders of the leased parcels and the licensed area. The SLC indicated that they maintained the State’s easements on these parcels. We compared the plat maps and noticed three major discrepancies between the VMT/Orcem project plat maps and the SLC Survey:

1) the location of the tidelands on the VMT plat map is different from the SLC survey,

2) the boundaries of lot 23 had been moved, and

3) Phase 2 of the VMT portion of the Project is not totally eliminated, as claimed by the project Applicants. Future expansion is moved from the south side of Parcel 23 to the north side.
November 2016 – VMT/Orcem's Environmental Consultant Richard Loewke prepared a draft “Finding of Facts and Overriding Consideration,” for overturning the Planning Commission decision and approving the MUPs. This was only released to the public in January 2017 in response to a question raised about rail use.

The revised plan upon which they based this PM-012 shows different boundaries from the SLC’s PM-011.
In order to understand how the VMT/ORCEM project proposed to proceed we analyzed PM-007 against PM-008. PM-007 shows that VMT/ORCEM moved the Licensed Area towards the northern portion of the Leased Area to provide for possible future expansion. They eliminated VMT’s Phase 2 only for the purpose of the MUP approval Process. However, the revised plat map shows where the boundaries were altered for VMT’s future port expansion,

When a boundary is moved, its legal description changes. A new legal description requires a new subdivision map and additional procedures. Being less than 100 acres, this would be considered a minor subdivision, which requires a new survey. Aside from the City Council hearing where the Second Amendment to the GMI lease was approved, there is no evidence this was brought to a public hearing or that VMT/Orcem asked permission from the SLC. There is likewise no evidence that the SLC or the COV agreed to any such changes, since they were proposed after March 2016 when City Staff informed VMT they would recommend denial of the project.

We conclude that a draft Finding of Facts and Overriding Consideration was prepared to supplement the DEIR in order to avoid recirculation of the DEIR as required by CEQA when projects are amended.
On the basis of these changes and discrepancies alone, notwithstanding the environmental issues raised by different agencies, the DEIR could not be finalized or certified.

Question:

• Is a project applicant able to move the boundaries of a Public Trust land lease administratively without conforming to the State Subdivision Map Act following a public hearing?

• Would such a move affect Orcem’s lease with VMT, requiring City Council approval for a long-term sub-lease of this property?

January 2017: The COV announced a tentative schedule for a hearing of the VMT/Orcem Project before the Planning Commission on February 27, 2017.

February 6, 2017: A draft FEIR was released around the same time as the Staff Report for the Planning Commission hearing, but was not included in the Staff Report. The Staff Report recommended adoption of a resolution to deny the Project.

February 16, 2017: The law firm of Miller, Starr and Regalia, representing VMT and Orcem, sent communications to the COV Planning Department which resulted in the cancellation of a meeting of the Architectural Heritage and Landmarks Commission where they were scheduled to ratify the City Landmark designation of six (6) historic buildings and structures at the Sperry Mill Site.

February 27, 2017: A public hearing was held by the Vallejo Planning Commission to consider a Resolution of Determination by COV Staff recommending denial of the Project. Following public testimony that lasted until 12:30 AM, the commissioners voted to continue the meeting on March 6, 2017 at 6:00 PM. At the March 6 meeting, the Planning Commission voted 6 to 1 in favor of the Resolution of Determination to deny the Project.


May 30 – June 1, 2017: The appeal of the Planning Commission Action to deny the Project was heard by the Vallejo City Council in a public hearing. More than 100 community speakers testified, overwhelmingly supporting the Project denial. COV Staff noted that the DEIR was not considered in their recommendation to deny. Nonetheless, Council Member Verder-Aliga introduced an un-noticed resolution to return the Project to City Staff for further action: to determine a stable and final Project description by July 15 and complete the FEIR for certification. This resolution was passed by a 4/3 vote supported by Councilmembers Verder-Aliga, Malgapo, Dew-Costa and Sunga.
It appears these councilmembers do not fully comprehend the deficiencies that still need to be addressed and/or corrected for an FEIR to meet CEQA guidelines.

**July 25, 2017:** City Staff returned to City Council for further guidance having not reached an agreement with the Applicants on a stable and final Project description. The Council approved extending the deadline to reach a stable and “finite” Project description to August 25, 2017.

**July 28, 2017:** The California Historic Preservation Commission unanimously approved the eligibility of the Sperry Four Company Vallejo Mills Historic District to be added to the National Register of Historic Places as Vallejo’s fourth Historic District.

**August 22, 2017:** At a City Council meeting, City Manager Dan Keen reported that the Project applicants and City Staff were able to reach an agreement on a stable and finite Project description, and that City Staff were reviewing all information to determine whether all or part of the EIR would need to be recirculated.
CONCLUSION

Private companies have controlled the Sperry Mill site for more than 150 years, far exceeding the 66 years allowed by State Statutes. The City of Vallejo’s assignments and extensions of a lease that should have expired and the illegal disposition and privatization of public land has deprived the Public—the residents and children of South Vallejo in particular—from access to and enjoyment of our public waterfront. COV officials’ refusal to return the tidelands to their rightful owners by assignment after assignment, of a questionable lease, illegally disposing of a portion of it through deceptive means, including the three (3) Amendments executed for the purpose of concealing past mistakes, are not just illegal actions, but immoral.

Our objective is to restore to Vallejo the Public Lands it rightfully owns; to invalidate the 1991 lease with its unsupportable assignments and broken chain of title; to stop this Project in order to allow the COV a chance to consider an alternative Project that the Public can endorse.

We demand that further action on the Project proposal be suspended until the assertions and allegations in this report are independently and authoritatively investigated and the issues of property title and the related ground lease have been clarified and settled.

We urge the Mayor of Vallejo to form an ad hoc committee to evaluate all of the relevant information and documentation presented in this journal. We contend that the Historic Sperry Mill Site is Public Land that should remain Public Land based on evidence presented herewith. All activity related to this Project must be put on hold until the questions of legal ownership are clearly determined and resolved. As the fourth designated historic district in the COV, the Sperry Mill Site’s historic integrity should be preserved, enhanced and perpetuated, thereby proper and immediate maintenance should be in place, following the guidelines of the National Park Service.

Backroom deals made by officials out of public view are offensive to our citizens. Disposition of Public Trust Doctrine property, privatizing public land out of public view can indicate civil and criminal violations of Federal and State laws. At the least, there is evidence of inappropriate actions taken by past and present COV staff and officials. The public is outraged. Major decisions have been made without holding required public hearings. Resolutions were passed by our City Council on the recommendation of City Staff with relevant information withheld, without a single question from the Mayor or City Council. They were passed without any deliberation where questions and comments from the public could be addressed or considered in the decision. Public hearings that were held were conducted simply for the formality without sufficient notice to the public or sufficient information being provided.

The Citizens of Vallejo have long suffered the devastating effects of continual disregard for their rights from City officials who have sworn to protect us. The COV has paid millions of dollars in
damages arising from lawsuits filed against the City, taking money from where it rightfully belongs: improving our infrastructure and our schools. The City cannot afford another lawsuit. We hope that another one can be avoided if City officials face what we expose about this GMI lease and the illegal disposition of Public Land.

For these reasons, we attach herewith copies of Public Trust Doctrine and the granting Statutes, marked as AR-1900-05, to remind the COV of its obligations. The State legislature has declared that all tidelands and submerged lands and lands lying under inland navigable waters granted to the COV, as Trustee, which are leased or franchised to individuals, firms and corporations, and which have not had any activity for ten years, such leases and franchises should be terminated and revert to the Public Trust. Since 2001, after operations ceased at GMI, residents of Vallejo have seen no direct benefits from the vacant, abandoned site: 17 long years, and much longer if the COV continues to pursue the VMT/Orcem Project.

At the Planning Commission hearing on February 27, 2017, City Staff found insufficient reason to complete the FEIR and substantial evidence the significant and unavoidable impacts of the DEIR could be mitigated or reduced. The Applicants revision to the DEIR including issuing a “Revised Operation Alternative could not in any case have advanced a FEIR ready for certification. CEQA requires that a defective DEIR be recirculated, not revised or supplemented. It requires that the public be informed, so they can comment and evaluate how extensive the changes are and how these changes will affect their way of life.

The Major Use Permits under review will require a certified FEIR before another Planning Commission hearing. If appealed, the public has the right to comment again in an open City Council hearing. If the applicants are to expect approval of the Project, a certified EIR is required. Certification of an otherwise defective DEIR without recirculation would confirm pre-approval by the COV, an inappropriate way to respond to the perceived bias of at least four City Council members towards the Project.

When the COV granted abatement of rent and the capital improvement offset to VMT/Orcem, they demonstrated pre-approval and impermissible bias towards this Project. Which begs the question of how the COV has responded to others’ perceived bias regarding this Project.

On March 17, 2016, when six Historic structures were unanimously designated COV Landmarks by the Architectural Heritage and Landmarks Commission, as recommended by City Staff, the City Attorney asked two commissioners to recuse themselves from the deliberations and vote due to perceived “impermissible bias” against the VMT Project. Two Commissioners’ donation to a fundraiser of the Vallejo Architectural Heritage Foundation was deemed sufficient to show bias in favor of landmarking the historic structures.
The City needs to show as much concern for the health and safety of our elders and children by stopping this Project, showing concern for the rights of the people to use their Public Lands, and showing some favoritism towards adaptive reuse of this Historic site. Our City cannot continue to show bias for projects that offer no benefits to its residents. How desperate is our City to have projects, when the economic benefits of a Project are not equitable to the cost to the city and the hazards these projects generate?

We do not wish to impugn the COV, its staff or leaders for past mistakes and cannot confirm whether they were done with intent, carelessness or incompetence. But the legal violations must be acknowledged and corrected. Past experience has shown that these mistakes cannot be corrected or cured by another mistake. And to this purpose we reiterate some of the specific violations with substantial evidence listed below, not necessarily in order of gravity or impact:

1) An unrecorded lease agreement with GMI dated 1991, not notarized, which would have raised a red flag had it been released in 1989, the starting date of its term, with no evidence it was ever authorized by the City Council or released to the public until November 2015; a lease that may have been fraudulently concocted in 2007 to facilitate other illegal activities.

2) Recording of a Memorandum of Lease after GMI vacated and abandoned the leasehold property for at least three years.

3) Multiple assignments of the 1991 GMI lease without authorization from City Council.

4) Un-noticed, unpublished foreclosure auction, a wrongful foreclosure that should have terminated the 1991 lease; and instead resulted in privatization of 19+ acres of Public Land.

5) A recorded Estoppel Agreement used to facilitate a loan of $7.15 million, which affirmed that the 2007 transaction between GMI and Cherokee Brooks Street Vallejo, LLC was executed with only the affirmation, instruction and supervision of Craig Whittom, Assistant City Manager.

6) Three entities bearing similar Cherokee Brooks names, which may or may not have been owned by the same parties or investors, specifically organized to circumvent termination of the 1991 GMI lease, securing a $7.15 million loan and orchestrating an unpublished foreclosure sale.

7) An extended term ground lease assigned by COV that exceeds the maximum term established by Chapter 310 of the Statutes of 1913; Chapter 24 of the Statutes of 1963, and Chapter 588 of the Statutes of 2004.
8) Wrongful citation of a CEQA exemption in the First Amendment to the VMT lease.

9) Pre-approval and impermissible bias towards the Project by agreeing to abatement of rent and an $8 million capital improvements offset without consideration to benefit the city; and two years of private meeting with the Applicants and three members of the Vallejo City Council as part of the Mare Island Straits Economic Development Committee.

10) Violation of California Civil, Government and Public Resource Codes.

11) Failure to protect a Public Trust Doctrine leasehold property by subdividing in violation of the Subdivision Map Act and allowing private disposition of the subdivided parcel out of public view.

12) Misappropriation of the Public Trust Fund by funding the Project applicant’s due diligence and soft costs.

13) Invalid Assignment and Assumption of Ground Lease from California Cherokee Brooks Return, LLC, an entity with no title to said lease, to VMT with Consent of the City of Vallejo granted to an entity that is not a party to these proceedings.

We demand that the COV boldly and bravely face the consequences of its past actions. The chain of title to the GMI lease was broken in 2012. COV officials should open an investigation to determine how 19.92 acres of Public Land ended up as fee simple property, conveyed without consideration.

As has been demonstrated and proven here, Vallejo needs to take steps to immediately reclaim its lost land. This Project would not exist were it not for a fraudulent lease and questionable land ownership by VMT through a covertly orchestrated privatization of Public Land. There is no merit or benefit to moving forward with this Project on land VMT does not rightfully own.

The public demands restoration of the Historic Sperry Flour Company Vallejo Mills Historic District site, Public Land, to its rightful owner: The residents of Vallejo and the People of the State of California.

The Historic Sperry Flour Mill: Reclaiming Vallejo’s Lost Land was prepared by a committee of Fresh Air Vallejo, assisted by many members of the community.

(End of the report)
INDEX OF ATTACHMENTS

Early years:
AR-1900-01 - California Statutes of 1868, Chapter 465
AR-1900-02 - California Statutes of 1872, Chapter 408
AR-1900-03 - California Statutes of 1913, Chapter 310
AR-1900-04 - The Sperry Pioneers
AR-1900-05 - California Statutes of 1963, Chapter 24

1989 – 2006:
AR-2000-01 - GMI Lease dated 1991
AR-2000-02 - Summary Judgment between SLC and COV and LMI
AR-2000-03 - California Statutes of 2004, Chapter 588
AR-2000-04 - Notice of Non-Responsibility

2007:
AR-2007-02 - Memorandum of Lease recorded 03/07/2007
AR-2007-03 - Quit Claim Deed: GMI to Cherokee Brooks Street Vallejo, LLC
AR-2007-04 - Ground Lessor Consent and Estoppel Agreement
AR-2007-05 - Leasehold Deed of trust: Bank Midwest
AR-2007-06 - Deed of Trust and Assignment of Rent
    AR-2007-07 - Entry Permit Agreement
    AR-2007-08 - Remediation Agreement
    AR-2007-09 - Assignment of Lease to Cherokee Brooks Street Vallejo, LLC
    AR-2007-10 - Assessor’s Parcel Map, 1956
    AR-2007-11 - Solano County Assessor’s Record for APN-061-160-090

2010:
AR-2010-01 - Notice of Default (Leasehold)
AR-2010-02 - Notice of Default (Fee Simple)
AR-2010-03 - Trustee’s Deed Upon Sale (Leasehold)
AR-2010-04 - Trustee’s Deed Upon Sale (Fee Simple)
AR-2010-05 - CA Cherokee Brooks Return Corporate Documents
AR-2010-06 - Assignment of Beneficial Interest under Deed of Trust:
    BMW to California Cherokee Brooks Return

2012 – 2014:
AR-2012-01 - Staff Report re. First Amendment to the GMI Lease
AR-2012-02 - Resolution to execute First Amendment
AR-2012-03 - Assignment and Assumption of Lease to VMT
AR-2012-04 - First Amendment to the assigned Lease
AR-2012-05 - Grant Deed from CA Cherokee Brooks Return to VMT
AR-2013-01 - Memorandum of Ground Lease VMT-Orcem
AR-2014-01 - Staff Report: City Council meeting of April 8, 2014
AR-2014-02 - Second Amendment to the assigned Lease

2015 to Present:
AR-2015-01 - Memorandum of Lease: VMT to Orcem
AR-2015-02 - Staff Report re. execution of Third Amendment
AR-2015-03 - Third Amendment to the assigned Lease
AR-2016-01 - Staff Report: Architectural Heritage and Landmarks Commission meeting of 03/17/2016
AR-2016-02 - VMT Appeal of the Landmark Designation
WEBSITE REPORT IS LOW RESOLUTION AND DOES NOT CONTAIN “AR-####-##” SUPPORT DOCUMENTS.

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