

SAN DIEGO UNIFIED PORT DISTRICT DONATED/LOANED ITEMS POLICY

I. Statement of Purpose

The San Diego Unified Port District (“District”), as the public trustee of District tidelands, is committed to the aesthetic development of the tidelands. In developing the tidelands, the District strives to promote community involvement and provide opportunities for the community: (1) to participate in the public display of art (the “Public Art”), and (2) to donate landscaping, hardscape items, historic objects or other items or improvements (the “Other Property”), for public display in or on District buildings, parks and rights of way, as the District determines appropriate, on a case by case basis. In order to accomplish these objectives, augment the District’s existing Public Art policies and provide guidelines and procedures for governing the acquisition, display, maintenance, potential deaccessioning and lending of Public Art and Other Property to others for public display, the District hereby adopts this “Donated/Loaned Items Policy”.

II. Acquisition

A. Offers of Donation

All offers to donate or loan an item to the District for public display should be in writing, addressed to the San Diego Unified Port District, District Clerk, and accompanied by information adequate to evaluate the proposed donation, including but not limited to the following:

1. Drawings, photos or written descriptions of the item(s) to be donated (including size, colors, weight, materials, and any information which will establish that the item has the requisite physical integrity to withstand public display and withstand exposure to the natural elements);
2. Proposed site and method of display (including any necessary hardscaping, landscaping, buildings, utilities, security devices, anchoring or other information necessary to insure public safety);
3. An explanation of why the item(s) should be displayed on tidelands and how the display of such serves a purpose appropriate to the interests of the public and the District;
4. Estimates of the costs of installing the item(s) for public display, including but not limited to: physical anchoring of structures for display, retrofit of existing buildings or improvements, landscaping, lighting, security and maintenance and whether the District or donor will pay for such costs;

5. Written explanation of legal issues, including but not limited to, identifying the current legal owner of the items, the existence of any copyrights, patents or other title rights in or to the item(s) - such as any interests to remain with the artist or designer of the item(s), and an explanation of any conditions or limitations on the donation of the item(s) and whether the District or donor will pay for such costs;
6. The estimated value of each item (including appraisals of the item(s) if available);
7. The anticipated date for the donation to occur;
8. Public support for the proposed donation;
9. Anticipated life of the item(s);
10. Environmental effects of the item(s);
11. A written description of the background/historical information associated with any donated art item, including but not limited to, information about the creation of the item(s) and the artist (if applicable) who created it;
12. A warrant of originality (if applicable); and
13. Any additional Information the District's Public Art Coordinator deems necessary or appropriate to analyze the offer of donation.

A failure to provide the information outlined above may result in the District Clerk rejecting the offer of donation as insufficiently documented to warrant District staff time to evaluate the offer of donation.

B. Review of Offers of Donation

Once the District receives an adequately documented offer of donation, District staff will categorize each item as either "Public Art" or "Other Property" (in accordance with the definitions set forth in Section I above). Whether categorized as "Public Art" or as "Other Property" the offer will be submitted to the District's Public Art Committee or the Donated Items Review Committee (to be composed of a representative from each of the following District Departments: Marketing, General Services, Risk Management, Development Services, Engineering and Planning), and if recommended by the Public Art Committee or the Donated Items Review Committee, then submitted to the District's Board of Port Commissioners

C. Committee Review

Staff will: (1) provide copies of all information received from the donor to the attendees of the applicable Committee Meeting, and (2) make such arrangements as may be practical and possible to provide for display of the actual item(s) to be donated at the applicable Committee Meeting. If such display is not practical or possible, photographs and/or drawings may be substituted. Once the Public Art Committee or the Donated Items Review Committee has completed its review of the proposed donation, they will be responsible for making a written recommendation to accept or reject the offer to the Board of Port Commissioners.

The District's Public Art Committee or Donated/Loaned Items Review Committee, as may be appropriate, will review the written offer and inspect the proposed donated item(s) and drawings or descriptions to determine:

1. If the offer of donation is adequately documented, as outlined in II.1 above for each item(s);
2. The availability of the requested site for placement of the item(s);
3. Whether the District has sufficient resources to: authenticate, document, research, display, retrofit or add buildings, improvements, lighting or landscaping, interpret, store, protect, conserve, insure and maintain the item(s);
4. Public Safety; and
5. The legal issues, including but not limited to, ability of current legal owner of the items to deliver unrestricted clear legal title together with all applicable copyrights, patents or other title rights in or to the item(s) without any limitations or conditions on the District's ownership and the time and costs required to acquire the item(s).

D. Legal Department Review and Documentation

If the Donated/Loaned Items Review Committee or the Public Art Committee should recommend to accept an offer of donation, the matter will be forwarded to the District's Legal Department for review and/or preparation of title transfer documents acceptable to the District ("Title Transfer Documents"). A recommendation may, however, at the election of the Public Art Committee or the Donated Items Review Committee, as may be applicable, be forwarded directly to the District's Board of Port Commissioners for "conceptual approval" before being submitted to the District's Legal Department.

E. Board of Port Commissioners Approval

Once items are reviewed and a recommendation is determined, the committee will submit the matter for consideration at the next available meeting of the Board of Port Commissioners. The Board of Port Commissioners will, if it votes to accept an offer of donation, execute a formal resolution, including any conditions to be placed on its acceptance of the offer of donation. The decision of the Board of Port Commissioners is final. If the District's Board of Port Commissioners, votes to accept an offer of donation, a written Notice of Action will be sent on behalf of the District, including any conditions placed on its acceptance of the offer of donation, to the respective donor(s) of each item accepted. Only after (i) the District's Board of Port Commissioners adopts and records a formal resolution expressly accepting title to the donated item(s), (ii) the item(s) are delivered to the District, and accepted by the District (iii) the conditions to acceptance, if any, have been satisfied, and (iv) the Title Documents have been duly executed and recorded, will an offer to donate an item be deemed accepted by the District. No offer to donate an item to the District will be deemed accepted without adoption and recording of a formal resolution by the District's Board of Port Commissioners, duly executed and expressly accepting title to the donated item(s).

F. No Obligation to Accept an Offered Item(s) for Donation

The District has no obligation to accept, display, or maintain any item(s) donated to the District. The District has the right to determine, in its sole and absolute discretion, what item(s)s offered to it for public display will be accepted, displayed or maintained by the District. Once an item(s) is accepted by the District (see above) the District shall be the sole owner of the donated item(s) and will have the right, in its sole and absolute discretion, except as limited by written title documents, to deaccession any donated item(s) without notice to or obtaining the consent of the donor.

III. Deaccessioning

In order to maintain growing collections of Public Art and Other Property it may be necessary, from time to time, to deaccession donated item(s).

A. Retention Policy

Generally, donated item(s) will be retained in the District's Public Art Collection or Other Property Collection, so long as, they continue to be relevant and useful to the purposes and activities of the District, an appropriate site for public display is available, they do not create a public safety problem, they have no adverse environmental effects, they are authentic and original, they can withstand exposure to the natural elements and they can be properly and cost-effectively stored, maintained, preserved, and/or used.

B. Deaccessioning

Deaccessioning of donated item(s) may be considered when the conditions identified in the Retention Policy no longer prevail, or in the interest of improving the quality of the Public Art Collection. Examples of situations where deaccessioning would be considered include:

1. The item(s) has deteriorated beyond a reasonable means of conservation or in deteriorating has lost its usefulness.
2. The authenticity, attribution, or genuineness of the item(s) is determined to be false or fraudulent.
3. The item(s) is redundant or is a duplicate that has no value as part of a series.
4. The District's possession of the object is determined to be illegitimate, i.e.; the work may have been stolen or illegally exported or imported.
5. Where it has been determined that other entities or governments have a superior right to the item(s).
6. The item(s) is located in an area where jurisdiction will be transferred to another entity or is made inaccessible to the public.

C. Consensus

Donated items which have been accepted into the District's Public Art Collection or Other Property Collection, will be deaccessioned only at the direction of the District's Board of Port Commissioners, which shall consider the recommendations and comments of: (1) the Public Art Committee or the Donated Items Review Committee as may be appropriate, (2) the District staff, and (3) any public comment received.

D. Deaccessioning Donated Items

The District will comply with all applicable laws pertaining to deaccessioning of art items, including contacting the donor and artist (if known). If the Title Transfer Documents provide for deaccessioning, such documents will determine the method and manner of the deaccessioning. Otherwise, the District will select from one of the deaccessioning methods outlined below. Generally, preference will be given to public sale, unless the District's analysis determines that another method would yield advantages or better serve the interests of the public or the District. In appropriate instances, appraisals of the item(s) to be deaccessioned will be sought from outside sources. Deaccessioned item(s) may be disposed of by means of private sale; exchange for another work; gifting the item(s) to a tax-exempt public institution; donating the item for recycling or destruction. In each case, the applicable laws will be followed before an item(s) is deaccessioned. Destruction of the item(s) may be considered where the physical condition of the work is severely

deteriorated or will be irreparably damaged by the deaccessioning process. Funds realized from deaccessioned Public Art or Other Property will be returned to the District's Art Acquisition Fund, to be used for the purchase of other art preferably in the general category from which the funds were realized. Where possible, the names of the original donors will be transferred to the new Public Art or Other Property acquired from the sale of the original item(s).

E. Fakes and Forgeries

If a donated item(s) is determined to be a fake or forgery, the District reserves the right to dispose of the item(s) or to clearly mark and identify the item(s) so as to prevent future misrepresentation.

IV. Lending and Borrowing of Items

On occasion the District is requested to make loans from its Public Art and Other Property Collections to other institutions and organizations for public display. Likewise, on occasion, the District may determine it is appropriate to request borrowed items from other collections for public display on District tidelands.

A. Loans of District Items

The District will consider Loans of District Public Art or Other Property Collection items(s). In considering a loan request, a review will be conducted of all aspects of the loan request to determine if the request is feasible, reasonable and has sufficient merit to be presented to the Public Art Committee or the Donated Items Review Committee. In such review, the District's Public Art Committee or Donated/Loaned Items Review Committee will consider, among other things:

1. The condition of the item(s) and possibilities for damage to the item(s) to be loaned.
2. The educational value of the project for which the request was made.
3. The facility report and the professional capabilities of the borrowing institution or organization that will handle, house, and care for the loaned item(s).
4. The ability of the borrowing entity to bear the costs of the loan (including those incurred by the District).
5. The ability of the borrowing entity to obtain adequate insurance coverage for the loaned item(s).
6. The ability of the borrowing entity to arrange transport for the loaned item(s).
7. Whether the loaned item(s) will be exhibited regularly and in public.

8. Whether the loaned item(s) will be given the same level of care and security as such would receive from the District if the loan were not made.

Only upon receipt of the District's Public Art Committee or Donated/Loaned Items Review Committee's recommendation will such a request be forwarded to the District's Legal Department for preparation of all necessary legal agreements. Once the borrowing party has agreed to the terms of the loan, staff will forward the proposal to the District's Board of Port Commissioners. The decision of the Board of Port Commissioners will be final.

B. Borrowing Public Art or Other Property Items

Where the District determines it is appropriate to request borrowed items from other collections for public display on District tidelands, whether for temporary exhibition or other purposes, the items will be presented to the Public Art Committee or Donated/Loaned Items Review Committee, as may be appropriate, prior to contracting the lending institution or individual collector. In analyzing such a request, the Public Art Committee will consider the following:

1. Whether the item(s) to be borrowed could satisfy the same requirements placed on accepting a donated item(s), as set forth in Section II of this Donated Items Policy.
2. Whether the borrowed item(s) can be exhibited regularly.
3. The condition of the item(s) and possibilities for damage to the item(s) to be borrowed.
4. The educational value to be obtained by borrowing the item(s).
5. The ability of the District to handle, house, and care for the borrowed item(s).
6. The ability of the District to bear the costs of borrowing the item(s).
7. The ability of the District to adequately insure the borrowed item(s).
8. The ability of the District to arrange transport for the borrowed item(s).

If the District determines that borrowing the item(s) is feasible, reasonable and has sufficient merit, then the proposal will be presented to the Public Art Committee or Donated/Loaned Items Review Committee, as may be appropriate to the item(s). Only upon receipt of the District's Public Art Committee or Donated/Loaned Items Review Committee's recommendation, will such a request be forwarded to the District's Legal Department for preparation of all necessary legal agreements. Once the lending party has agreed to the terms of the loan to the District, staff will forward the proposal to the District's Board of Port Commissioners. The decision of the Board of Port Commissioners will be final.

V. Records of Public Art and Other Property:

The District's Public Art Department and Clerk's Office will be responsible for maintaining a data base of all Public Art and Other Property Collection items which has been acquired by the District under this Donated Items Policy and at all times prior hereto, as well as, the District's files with regard to each proposed donated item (whether accepted or not). The database and/or files will include the following information:

- A. Copies of all correspondence and submittals from the donor(s);
- B. Copies of all correspondence and submittals to the donor(s) from the District;
- C. Copies of all executed title documents;
- D. Copies of all other documentation associated with a particular item(s), including but not limited to: drawings, photos, written descriptions, estimates of costs associated with acquiring, maintaining, providing security and legal expenses, etc.; any agreements between the District and donor(s) regarding the item(s); all estimates of value and appraisals, any public comment on the item(s); environmental impact reports or studies, if applicable; all written descriptions of the background/historical information associated with the item, including, information about the creation of the item(s) and the artist (if applicable) who created it; any warrant of originality; and any other information acquired by the District pertaining to the item(s);
- E. Copies of the Title Transfer Documents and any other written agreements
- F. between the District and the donor(s);
- G. Records of maintenance;
- H. Records of any deaccessioning;
- I. Records of any loan proposed or made of the donated item(s), including the executed written agreements of loan, a record of all loan fees, confirmations of all insurance, transportation records and the return of the loaned item(s); and
- J. Records of all art or other items borrowed by the District, including the executed written agreements to borrow the item(s), all fees or costs paid by the District, insurance policies or riders covering the item(s), transportation records and return records.

VI. Access to Public Art and Other Property Items, this Policy and Records:

The Port will strive to provide maximum public accessibility of the District's Public Art and Other Property collections. However, such access may be limited as necessary given District staff availability, security considerations and the physical condition and location of collection items. All requests for access to District Public Art and Other Property collection items that are not on public display should be made to the District Clerk that will be responsible for re-directing such request if necessary or appropriate. This Donated Items Policy will be made available to the public on request. All requests to view the District's

records (as set forth in section V above) will be handled by the District Clerk's Office and are subject to certain restrictions, as necessary to protect confidential information, such as the names of anonymous donors, the addresses and phone numbers of all donors, the location of item(s) not on public view, and the value of all donated items.

VII. Transfer of Title:

A. Condition of Title

The District prefers donated item(s) which are given with legal title which is free and clear of any restrictions or limitations as to use or future disposition of the item(s). Donated item(s) may, however, be accepted with title restrictions or limitations, if the District pre-approves the title restrictions or limitations and such are expressly stated in the title conveyance documents which must be approved or prepared by the Port. The District also prefers donated item(s) be made of all interest and title to the item(s). Donated item(s) made of undivided fractional interests may, however, be accepted if accompanied by a binding pledge to donate remaining undivided fractional interest within a specific period or upon acquiring same, if such provisions have been added to the Title Transfer Documents.

B. Legal Documents

Before donated item(s) is accepted by the District, transfer of title documents, including any limitations or restrictions on the transfer or continued ownership of the donated item(s), as well as any agreements between donor and the District regarding same, must be prepared by or approved by the District's Legal Department. For gifts of art, a Gift Agreement signed by the donor will confirm that the donor owns the item(s) and has the right to pass title.

C. Appraisals

The District will not provide or assume responsibility for appraisals for tax-deduction or other external purposes.

D. Compliance with Laws

The District reserves the right to require a donor to comply with the applicable laws of California and the United States, including but not limited to: The Native American Graves Protection and Repatriation Act of 1990 and any applicable international agreements between the USA and other countries.