

25. BOUNDARY SETTLEMENT AND LAND EXCHANGE AGREEMENT BETWEEN THE COMMISSION, MOBIL OIL ESTATES (REDWOOD) LIMITED, ET AL., BLA 141, W 20401 (CALENDAR ITEM 23); AND REAL PROPERTY DONATION AGREEMENT AND BAIR ISLAND ENVIRONMENTAL STUDY AGREEMENT, MOBIL OIL ESTATES (BAIR ISLAND INVESTMENTS) LIMITED, W 20401 (CALENDAR ITEM 24); SAN MATEO COUNTY.

During consideration of Calendar Items 23 and 24 a number of interested persons addressed the Commission, the majority of which were not in opposition to the items but felt sufficient time had not been given for their evaluation. In order of their appearance, those presenting testimony were:

Mr. Trev Wright, Wildlife Management Supervisor, Department of Fish and Game  
Mr. Jack Fraser, Regional Manager, Department of Fish and Game  
Mr. Walter O. Stieglitz, Refuge Manager, U.S. Bureau of Sport Fisheries and Wildlife  
Mr. Bob Norris, City Councilman, City of Redwood City  
Mr. George E. Reed, Senior Planner, San Francisco Bay Conservation and Development Commission  
Mr. Neil H. Smith, President, Mobil Oil (Redwood) Ltd.  
Mr. Ronald J. MacQuarrie, President, Redwood Shores Homeowners Association  
Ms. Pat Barrentine, Vice President, Committee for Green Foothills  
Mr. Joseph Carleton, Conservation Chairman, Loma Prieta Chapter, Sierra Club  
Mr. Bill Lytel, Resident of Belmont Shores  
Mr. William F. Dempsey, Right-of-Way Agent, County of San Mateo  
Mr. Albert T. Bergeron, President, Sequoia Audubon Society  
Ms. Ilene S. Weinreb, Councilwoman, City of Hayward, and Chairman, Hayward Area Shoreline Planning Agency

At the conclusion of the testimony, the Commission determined that there was an overwhelming desire on the part of many people to have more time to study the boundary agreement and land exchange. The staff was instructed to hold a public hearing in Redwood City not sooner than two weeks nor more than three and one-half weeks, so that it could be concluded before the next Commission meeting at which time the interested parties will have had 30 more days to study the matter. The audience was invited to attend the next regular Commission meeting to be held in Sacramento at which time any further testimony will be chiefly limited to new and pertinent points and not a total re-review of today's discussions.

At this point the meeting was adjourned and the Commission invited those wishing to do so to accompany them on helicopter tours of the areas involved in the boundary settlement and land exchange, and real property donation of portions of Bair Island.

Attachments:

Calendar Item 23 (5 pages)  
Calendar Item 24 (3 pages)

CALENDAR ITEM

23.

8/73  
WDC  
W 20401  
BLA 141

BOUNDARY SETTLEMENT AND LAND EXCHANGE AGREEMENT  
BETWEEN THE COMMISSION, MOBIL OIL ESTATES (REDWOOD) LIMITED, ET AL.;  
SAN MATEO COUNTY

The State Lands Division and Mobil Oil Estates (Redwood) Limited, a California corporation, have been negotiating over the nature and extent of public interests affecting approximately 23 acres within a 176-acre area claimed by Mobil in Redwood City, San Mateo County. The product of those negotiations is the subject agreement which will result in the State obtaining approximately 5 miles of upland water frontage and fee title to approximately 132 acres of lands (plus 13 acres of residual title interest) abutting portions of Steinberger and Belmont Sloughs and San Francisco Bay. Portions of the lands passing to the State are of sufficient size for appropriate structures or improvements to provide greater public utilization and appreciation of the area.

Access ways to the State lands will also be provided by 2.5 miles of roadway easements from existing dedicated public streets.

Mobil is the successor in interest to whatever title was received in the area claimed by virtue of certain swamp and overflowed land patents issued by the State, private rights to which vested prior to 1870. The State received a confirmatory patent to all swamp and overflowed lands within the area claimed by Mobil from the Federal government in August 1, 1919, pursuant to the Arkansas Swamp and Overflowed Act of September 28, 1850, as amended, confirming the title of the lands so patented which are of that character.

The area claimed by Mobil is traversed by the former and last bed of Phelps Slough, which was a navigable tributary of Steinberger Slough. For approximately 20 years the tributary has been cut off from the tidal waters of Steinberger Slough and San Francisco Bay by an extension of existing levees constructed at the intersection of Phelps Slough and Steinberger Slough. The Mobil claim area lying landward of the levees along Steinberger Slough has been subject to reclamation.

Current negotiations have dealt with the assertion by the State that the portion of Phelps Slough crossing the area claimed by Mobil is sovereign tide and submerged lands and that the State is the owner of all or portions of the slough or, in the alternative, to the extent any private rights were created therein by virtue of the aforementioned patents, that those rights are subject to an easement of commerce, navigation and fisheries.

Within the area claimed by Mobil, Phelps Slough occupied approximately 23 acres.

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In 1905, the District Attorney for San Mateo County brought an action against H. M. Pearsall, S. I. Allard, et al. (San Mateo Superior Court Case No. 2802) to abate private and public nuisances arising out of the erection of dams on Phelps Slough and two tributaries thereof. The original judgment in that case, on December 19, 1905, decreed that Phelps Slough was a navigable tributary and that any obstruction thereto must be removed. The Court went on to hold at that time that the tributaries of the slough were not and never had been navigable waters and, therefore, any obstructions across them were lawful. The original judgment was modified on September 2, 1930, to find that any portion of the slough within 1500 feet of the easterly line of the old Bayshore Highway was unaffected by any navigable waters and could therefore be dammed and otherwise obstructed. The final modification of the judgment affecting Phelps Slough occurred on September 11, 1946, by which all of the original decree was found to not affect or relate to Phelps Slough landward of the intersection of Phelps with Steinberger Slough.

The State Lands Commission, in 1966, entered into a boundary agreement (BIA 68) with one of the predecessors in interest of Mobil fixing the ordinary low water mark of Steinberger Slough.

Based upon the foregoing, Mobil has asserted that the State has no interest within the subject lands it claims to own.

The principal points in the proposed boundary settlement and exchange agreement are:

1. The State by deed from Mobil will have confirmed or received fee title to approximately 132 acres (plus 13 acres of residual title interest) presently claimed by Mobil, located around the perimeter of the Redwood Shores Development in Redwood City along the edge of portions of Steinberger and Belmont Sloughs and San Francisco Bay. These lands, together with similar lands already dedicated to the public, will allow continuous public access to the slough and bay areas from approximately the county airport on Steinberger Slough to approximately the lands formerly occupied by the San Mateo Scavenger Co., on Belmont Slough, a distance of approximately 5 miles. The lands are sufficient for hiking, bicycling, wildlife habitat and public facilities for such activities as nature interpretative centers, fishing and boating, with public parking. In addition, the State shall receive relocatable access easements of several miles in length to these lands from dedicated public streets. (It should be noted that portions of these lands abut the proposed San Francisco Bay National Wildlife Refuge.)
2. The State Lands Commission agrees to transfer administration over the lands referred to in paragraph 1 above to the Department of Fish and Game by means of a 66-year lease. The Department of Fish and Game may sub-let all or portions of the lands to the Bureau of Sport Fisheries and Wildlife of the United States Department of Interior (for a part of the San Francisco Bay National Wildlife Refuge) or to local governmental

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agencies. Ultimate public use of the land areas depends upon the formalization of a plan based upon several alternatives available. To date, the Department of Fish and Game has informed the State Lands Commission that:

"Several of the Redwood Peninsula parcels contain excellent marsh growth and provide habitat for numerous species of wildlife. They can also provide angling and boating access to Steinberger and Belmont Sloughs or simply a place for people to enjoy viewing wildlife."

The proposed lease to the Department of Fish and Game specifically provides that before the commencement of any development of the leased lands, the Department will prepare and distribute appropriate environmental impact statements as required by Public Resources Code Sections 21000 et seq., as amended, and obtain such permits as required by any governmental agency having jurisdiction over such land.

3. In exchange for the lands received by the State in paragraph 1 above, the State will patent to Mobil all of the State's right, title and interest in and to approximately 160 acres on which Phelps Slough was located which are claimed by Mobil and which lie landward of the parcels to be confirmed or conveyed to the State. The State will also terminate the public trust and easement of commerce, navigation and fisheries to the extent, if any, it exists over the lands described in the patent.
4. The State shall issue a 49-year lease to Mobil for dredging a small limited area on Belmont Slough for purposes of improved navigation, water circulation, and marina access to the adjacent deep water. The lease will also permit construction of slips, docks, piers and wharves within a specified portion of the leased area. The lease provides that all required authorizations from other governmental agencies having jurisdiction over the leased area must be obtained by Mobil before any work can be done.
5. The location of the ordinary high water mark along a portion of Steinberger Slough under current existing conditions is also fixed in the agreement.

Copies of the substantive documents necessary to accomplish the above transaction are on file in the office of the State Lands Commission and are incorporated herein by reference thereto.

Federal, State and local agencies, as well as members of the public, have been advised of the proposed agreement, during the pendency of negotiations, and their comments obtained.

The exchange of rights, titles and interests is being made pursuant to Section 6307 of the Public Resources Code. Since the State will acquire mineral interests in the lands being received in exchange for those given up, no mineral rights will be retained in State lands to be exchanged to Mobil.

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Pursuant to Section 6357 of the Public Resources Code, the State Lands Commission is authorized to enter into boundary line agreements regarding the location of the ordinary high water mark.

The State Lands Commission also has the general authority, with regard to the lands in question by virtue of Sections 6102 and 6301 of the Public Resources Code, to enter into such boundary line agreements.

The 66-year term of the lease to the Department of Fish and Game is considered necessary to insure that any public use of the area is compatible with the wildlife habitat therein and to insure its protection. Section 2004 of the California Administrative Code allows the issuance of leases for such a term where the Commission finds that such is in the best interests of the State.

The proposed boundary settlement and exchange agreement is exempt from the provisions of Section 6371 of the Public Resources Code relating to environmental impact reports. As previously noted, such reports must be filed by the Department of Fish and Game prior to the use of any State lands leased to Fish and Game by State Lands.

An evaluation has been made by the State which indicates that the State will receive lands and interests in lands equal or greater in value to those lands and interests claimed by the State and to be surrendered as a result of this exchange.

This matter has been reviewed and approved by the office of the Attorney General.

EXHIBITS:           A. Vicinity Map.                           B. Location Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE EXCHANGE OF LANDS AND RIGHTS SET FORTH IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2 BELOW, IS IN THE BEST INTERESTS OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION AND TO ENHANCE THE CONFIGURATION OF THE SHORE LINE OF PORTIONS OF STEINBERGER AND BELMONT SLOUGHS AND SAN FRANCISCO BAY FOR THE IMPROVEMENT OF THE WATERS THEREOF AND THE ADJACENT UPLANDS, AND THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING IN THE WATERS INVOLVED AND IN FACT WILL ENHANCE AND ENLARGE PUBLIC RIGHTS AND UTILIZATION OF SAID WATERWAYS FOR TRUST PURPOSES OF COMMERCE, NAVIGATION AND FISHERIES; AND THAT THE STATE WILL RECEIVE LANDS AND INTERESTS IN LANDS EQUAL TO OR GREATER IN VALUE THAN ANY SUCH LANDS OR INTERESTS RELINQUISHED BY THE STATE PURSUANT TO SAID AGREEMENT.
2. AUTHORIZE THE EXECUTION OF THE BOUNDARY SETTLEMENT AND LAND EXCHANGE AGREEMENT (BLA 141) BETWEEN THE COMMISSION, MOBIL OIL ESTATES (REDWOOD) LIMITED, AND THOSE OTHER PARTIES WHICH EXECUTE SAID AGREEMENT, SAID AGREEMENT BEING ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF.

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3. AUTHORIZE THE EXECUTION OF A STATE PATENT WITHOUT THE RESERVATION OF MINERAL INTERESTS TO MOBIL OIL ESTATES (REDWOOD) LIMITED, AND OTHER PRIVATE PARTIES AS THEIR INTEREST MAY APPEAR OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY TO THE PARCELS OF REAL PROPERTY DESCRIBED IN SAID AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE, PURSUANT TO THE TERMS OF SAID AGREEMENT.
4. AUTHORIZE THE ACCEPTANCE AND RECORDATION OF CONVEYANCES TO THE STATE WITHOUT RESERVATION OF MINERAL INTERESTS AS PROVIDED IN SAID BOUNDARY SETTLEMENT AND LAND EXCHANGE AGREEMENT.
5. FIND AND DECLARE THAT UPON THE DELIVERY OF THE PATENT TO THE PARTIES REFERRED TO IN PARAGRAPH 3 ABOVE, AND THE RECORDATION THEREOF IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, THE REAL PROPERTY DESCRIBED IN SAID PATENT:
  - A. HAS BEEN CUT OFF FROM NAVIGABLE WATERS, IMPROVED, FILLED, AND RECLAIMED BY MOBIL OIL ESTATES (REDWOOD) LIMITED, AND THEIR PREDECESSORS IN INTEREST.
  - B. HAS THEREBY BEEN SEVERED FROM THE PUBLIC CHANNELS AND WATERWAYS AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR COMMERCE, NAVIGATION AND FISHING, AND IS NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS AND THEREFORE SHALL BE FREED FROM THE PUBLIC TRUST FOR SUCH USES.
6. FIND THAT THE ISSUANCE OF A LEASE FOR A TERM OF 66 YEARS TO THE DEPARTMENT OF FISH AND GAME FOR PURPOSES SET FORTH IN SAID LEASE IS IN THE BEST INTERESTS OF THE STATE IN THAT SUCH TERM IS NECESSARY FOR THE PROTECTION AND PRESERVATION OF THE WILDLIFE HABITAT IN THE LEASED AREA AND AUTHORIZE THE ISSUANCE OF SAID 66-YEAR LEASE.
7. AUTHORIZE THE ISSUANCE OF A 49-YEAR LEASE TO MOBIL OIL ESTATES (REDWOOD) LIMITED, A COPY OF WHICH IS ATTACHED TO THE AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE.
8. AUTHORIZE THE STATE LANDS DIVISION AND OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE ABOVE TRANSACTION INCLUDING, BUT NOT LIMITED TO, APPEARANCES IN ANY LEGAL PROCEEDINGS BROUGHT CONCERNING THE ABOVE TRANSACTION.

CALENDAR ITEM

24.

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W 20401

REAL PROPERTY DONATION AGREEMENT AND  
BAIR ISLAND ENVIRONMENTAL STUDY AGREEMENT  
MOBIL OIL ESTATES (BAIR ISLAND INVESTMENTS) LIMITED;  
SAN MATEO COUNTY

This transaction relates to portions of Bair Island which is located in Redwood City, San Mateo County, adjacent to San Francisco Bay.

The State is to receive about 800 acres by donation from Mobil and an additional portion of Bair Island of about the same area will be the subject of further study relating to its ultimate use.

Both the Department of Fish and Game and U.S. Bureau of Sport Fisheries and Wildlife have made extensive studies and inventories of wildlife existing on Bair Island. These studies have revealed that at least three endangered species inhabit the island including the California Least Tern, California Clapper Rail and Salt Marsh Harvest Mouse. In addition, Bair Island was found to be inhabited by the Great Blue Heron, Snowy Egret, six species of water fowl, White Tailed Kite, Marsh Hawk, American Avocet, Caspian Tern, Loggerhead Shrike, San Francisco Bay Yellowthroat, and Red Winged Blackbird. It is also reported that several harbor seals have been seen in the waterways around Bair Island.

Congress, in 1972, established the San Francisco Bay National Wildlife Refuge. Initial boundaries of the refuge include only small portions of outer fringes of Bair Island. Concern was expressed by the Department of Fish and Game and the public that an insufficient portion of the island had been included in the refuge for the protection of existing wildlife. Efforts were then commenced to insure that the portions of Bair Island inhabited by the aforementioned wildlife be permanently set aside for their preservation.

I. REAL PROPERTY DONATION AGREEMENT

During the past year, Mobil Oil Estates (Bair Island Investments) Limited, has acquired nearly all private title claims to Bair Island. Mobil has been made aware of the wildlife significance of the island and of the public's interest in permanently preserving the area for such wildlife and other compatible public uses. After a review of the reports on the island's wildlife significance and the advice of independent consultants, Mobil indicated a willingness to donate certain portions of the island to an appropriate public agency which would hold the property for the preservation of such wildlife.

In this connection, Mobil approached the State Lands Division about the possibility of accepting such lands, provided the Commission agreed to hold title to them in the same manner as it holds title to sovereign lands protected by Article IV, Section 3 of the California Constitution. During the negotiations on this entire proposal, the Department of Fish and Game, U.S.

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Bureau of Sport Fisheries and Wildlife, local agencies, and members of the public were advised, consulted and their comments received.

Under the proposed Real Property Donation Agreement, Mobil, on or before December 31, 1973, will grant to the State approximately 800 acres of real property on Bair Island which are partially within and immediately abutting the present proposed boundaries of the San Francisco Bay National Wildlife Refuge. This area is occupied by many of the wildlife listed above and will provide a buffer zone to protect the proposed refuge from any use which would be inconsistent therewith. Upon approval of this transaction, the Commission staff shall immediately undertake studies and negotiations for the transfer of the lands donated to an appropriate governmental agency for administration.

II. BAIR ISLAND ENVIRONMENTAL STUDY AGREEMENT

As an outgrowth of the above-mentioned negotiations, Mobil has also agreed to enter into a Bair Island Environmental Study Agreement to determine if additional portions of Bair Island have particular importance for wildlife conservation purposes or for public recreation. A copy of the agreement is on file in the office of the State Lands Commission and by reference made a part hereof. Under the provisions of the agreement, the following matters are set forth:

1. The State Lands Commission will create an inter-agency task force to conduct the above-mentioned study of the approximately 800-acre portion of Bair Island set aside by Mobil adjacent to the lands to be donated to the State above. In addition to the inclusion of various State agencies (including the Department of Fish and Game), it is anticipated that the task force shall include a representative of Redwood City, a representative of Mobil, and probably will include one representative of the U.S. Bureau of Sport Fisheries and Wildlife. (All studies by the task force shall be fully coordinated with the City of Redwood City, San Francisco Bay Conservation and Development Commission and other appropriate government agencies.)
2. The task force will have three years to complete a Comprehensive Study Plan during which time the State will have a permit and license to use the study area for study purposes.
3. Upon completion of the plan, Mobil agrees to enter into substantive negotiations with the State for the dedication of appropriate lands within the study area to implement the plan and recommendations contained therein. As a minimum Mobil agrees to grant to the State, at that time, 60 acres of ecologically sensitive real property within the study area.

Upon the advice of the Attorney General, the proposed property donation transaction is exempt from Public Resources Code Sections 21000 and 21071, et seq. Prior to any disposition of the donated lands to an appropriate governmental agency, environmental impact statements shall be filed.



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The above agreements have been reviewed and approved by the Attorney General's office.

EXHIBITS:           A. Vicinity Map.                               B. Location Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. AUTHORIZE THE EXECUTION OF THE REAL PROPERTY DONATION AGREEMENT AND BAIR ISLAND ENVIRONMENTAL STUDY AGREEMENT WITH MOBIL OIL ESTATES (BAIR ISLAND INVESTMENTS) LIMITED, COPIES OF WHICH AGREEMENTS ARE ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF.
2. AUTHORIZE THE ACCEPTANCE BY THE STATE OF THE CONVEYANCES AND PERMIT AND LICENSE AS PROVIDED FOR IN THE AGREEMENTS REFERRED TO HEREIN.
3. AUTHORIZE THE EXECUTIVE OFFICER OF THE COMMISSION TO ESTABLISH THE INTER-AGENCY TASK FORCE FOR BAIR ISLAND AND APPOINT THE MEMBERS THEREOF.
4. AUTHORIZE THE STATE LANDS DIVISION AND OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL ACTIONS NECESSARY AND APPROPRIATE IN CONNECTION WITH THE AGREEMENTS REFERRED TO IN PARAGRAPH 1 ABOVE.