

28. BOUNDARY SETTLEMENT AND LAND EXCHANGE AGREEMENT WITH HERCULES INCORPORATED, SEQUOIA REFINING CORPORATION, AND SIGNAL OIL AND GAS COMPANY, CONTRA COSTA COUNTY - N 329, PRC 4886.1.

After consideration of Calendar Item 27 attached, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION:

1. FINDS 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 SHORELINE OF SAN PABLO BAY FOR THE IMPROVEMENT OF THE WATERS THEREOF AND THE ADJACENT UPLANDS; 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 NAVIGATION, COMMERCE, AND FISHERIES; AND THAT THE STATE WILL RECEIVE LANDS AND INTERESTS IN LANDS EQUAL TO OR GREATER IN VALUE THAN THE STATE'S INTEREST IN ANY SUCH LANDS RELINQUISHED PURSUANT TO SAID AGREEMENT.
2. AUTHORIZES THE EXECUTION OF THE HERCULES BOUNDARY SETTLEMENT AND EXCHANGE AGREEMENT (BLA 144) BETWEEN THE COMMISSION, HERCULES INCORPORATED, SEQUOIA REFINING CORPORATION, AND SIGNAL OIL AND GAS COMPANY, SAID AGREEMENT BEING ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF.
3. AUTHORIZES THE EXECUTION OF STATE PATENTS TO HERCULES INCORPORATED, SEQUOIA REFINING CORPORATION, SIGNAL OIL AND GAS COMPANY, AND OTHER PARTIES AS THEIR INTERESTS MAY APPEAR OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA 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. AUTHORIZES THE ACCEPTANCE AND RECORDATION OF CONVEYANCES TO THE STATE AS PROVIDED IN SAID BOUNDARY SETTLEMENT AND LAND EXCHANGE AGREEMENT.
5. FINDS AND DECLARES 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 CONTRA COSTA COUNTY, THE REAL PROPERTY DESCRIBED IN EXHIBIT A OF SAID BOUNDARY SETTLEMENT AND EXCHANGE AGREEMENT AND THE REAL PROPERTY SHOWN AS PARCELS 1, 3, 5 AND 7 IN EXHIBIT B OF SAID AGREEMENT:
 - A. HAS BEEN CUT OFF FROM NAVIGABLE WATERS, IMPROVED, FILLED, AND RECLAIMED BY THE PRIVATE PARTIES TO SAID AGREEMENT AND THEIR PREDECESSORS IN INTEREST;

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- 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 IS FREED FROM SUCH PUBLIC TRUST.
6. FINDS AND DECLARES THAT UPON THE DELIVERY OF THE PATENT TO THE PARTIES REFERRED TO IN PARAGRAPH 3 ABOVE, THE RECORDATION THEREOF IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, AND THE FILLING TO AN ELEVATION ABOVE THE MEAN HIGH WATER LINE WITHIN 15 YEARS OF THE EFFECTIVE DATE OF SAID AGREEMENT OF ANY PORTION OF THE REAL PROPERTY DESCRIBED AS PARCEL 11 ON EXHIBIT B TO SAID BOUNDARY SETTLEMENT AND EXCHANGE AGREEMENT, SUCH PORTION OF SAID REAL PROPERTY SO FILLED:
- A. HAS BEEN CUT OFF FROM NAVIGABLE WATERS, IMPROVED, FILLED, AND RECLAIMED BY THE PRIVATE PARTIES TO SAID AGREEMENT;
- 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 IS FREED FROM SUCH PUBLIC TRUST.
7. AUTHORIZES THE EXECUTIVE OFFICER TO FROM TIME TO TIME EXECUTE AN APPROPRIATE CERTIFICATE REFLECTING THE PORTIONS OF REAL PROPERTY AS TO WHICH THE FINDING SET FORTH IN PARAGRAPH 6 ABOVE IS APPLICABLE, PROVIDED SUCH CERTIFICATES SHALL BE EXECUTED WITHIN THE 15 YEAR PERIOD REFERRED TO IN SAID PARAGRAPH 6.
8. AUTHORIZES AND APPROVES THE AMENDMENT OF LEASE PRC 3414.1 AS PROVIDED IN SAID BOUNDARY SETTLEMENT AND EXCHANGE AGREEMENT.
9. AUTHORIZES THE EXECUTION OF A LEASE TO HERCULES INCORPORATED OF PARCEL 12 AS SHOWN ON EXHIBIT B TO SAID BOUNDARY SETTLEMENT AND EXCHANGE AGREEMENT IN THE FORM OF EXHIBIT J TO SAID AGREEMENT.
10. AUTHORIZES 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 TRANSACTIONS.

Attachment:

Calendar Item 27 (5 pages)

BOUNDARY SETTLEMENT AND LAND EXCHANGE AGREEMENT WITH HERCULES
INCORPORATED, SEQUOIA REFINING CORPORATION,
AND SIGNAL OIL AND GAS COMPANY, CONTRA COSTA COUNTY

Hercules, Sequoia and Signal assert ownership to substantial areas of land located in the City of Hercules, Contra Costa County. The basis of their title claims stem from the confirmatory patent of Rancho El Pinole, and several patents issued by the State Surveyor General designated as Tide Land and Swamp and Overflowed Patents.*

Questions regarding the nature and extent of the title of Hercules, Sequoia and Signal have been raised in connection with efforts by said private parties to clarify the title to the lands each claims to own. These questions primarily stem from the uncertainty as to the precise boundaries of the lands located within each of the aforementioned patents and the extent and nature of title which passed as a result of the State patents. The boundary problems are the result of the fact that each boundary which is in question is located along a water elevation and consequently fluctuated in location with natural changes. Extensive changes have been made in the subject area by the activities of man which stopped such natural fluctuations, such activities being fill, construction of structures and railroad facilities. There has never been a determination of the location of the littoral boundaries in their last natural state and the relocation of even the upland boundaries set forth in the subject patents is a most difficult problem because of the failure to perpetuate monuments on the ground from the time of the original surveys (made in the early days of statehood) to the present. Although the perimeter descriptions contained in the State Tide Land Patents appear to extend beyond the mean low water line of San Pablo Bay, the State contends that said patents were only effective to transfer title to said line as it last naturally existed (since the Surveyor General had no statutory authority to convey submerged lands) and that the State is the owner of all lands waterward of said line. In addition, the State contends that it has a retained easement for purposes of commerce, navigation and fisheries over patented tidelands.

After more than a year of negotiations, the parties have reached an understanding for the compromise and settlement of all issues between them by means of the proposed boundary settlement and exchange agreement. The pertinent details of the proposed agreement are as follows:

1. The parties as set forth below will fix the location of the ordinary low water line of San Pablo Bay as the agreed boundary line within the subject area as shown on Exhibit "A"

*State Patents being issued as a result of applications received for Contra Costa Tide Land Survey No. 16, Title Land Locations Nos. 84, 176, 214 and 215, and Swamp and Overflowed Surveys Nos. 63 and 168.

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2. To effectuate the aforementioned boundary agreement:
 - a. Hercules, Sequoia and Signal (as more specifically specified in the agreement) will quitclaim all right, title and interest waterward of the agreed boundary line to the State; and
 - b. The State (as more specifically specified in the agreement) will quitclaim all right, title and interest by virtue of its sovereignty to the lands lying landward of said boundary line shown as Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of Exhibit B of the agreement subject to the retained easement of commerce, navigation and fisheries over those lands shown as Parcels 2, 4, 6, 8, 9 and 11 on Exhibit B of the agreement.
3. In exchange for the State's termination of the easement of commerce, navigation and fisheries, to the extent it exists, over those lands described in Exhibit A of the agreement and Parcels 1, 3, 5, and 7 as shown on Exhibit B of the agreement (all of which are above the present mean high water line by reason of having been filled and reclaimed or always having been above said line), Hercules will convey to the State Parcels 9 and 10 (consisting of 43.365 acres) together with all right, title and interest of Hercules within the intervening portion of the Southern Pacific Co. right-of-way lying between Parcels 9 and 10, more particularly described in the proposed agreement, and with access to said Parcel 10 by road. Hercules will retain the right to use the existing private road through Parcel 10 as access to its chemical plant for a period ending July 1, 1984, or until alternate access to Hercules Chemical Plant is provided, whichever is sooner, subject to the right of the State to relocate the road at its own expense. Said exchange will provide the State with upland property and clear ownership to the main channel of San Pablo Bay so that public access and utilization of said bay can be re-established and enhanced in the subject area. (The proposed agreement also provides for the termination of said easement over any portion of Refugio Creek (Parcel 11) which is improved, filled and reclaimed and which is no longer in fact tidelands or submerged lands within 15 years of the effective date of the agreement with the proviso that the easement shall attach to any lands which may become the new bed of said creek subject to tidal action as the result of such activities.)
4. The State will lease to Hercules the area lying waterward of the agreed boundary line which is presently used for pumping and conveyance of cooling waters to Hercules fertilizer manufacturing facilities, said leased area being shown as Parcel 12 on Exhibit B of the agreement.
5. Provision is made for Hercules to retain responsibility for the security, maintenance and supervision of Parcels 9 and 10 while the State prepares plans for the State's use of said Parcels. The State may terminate this provision upon 30 days notice and in any event the provision will terminate on July 1, 1977.

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6. The agreement provides for the amendment of an existing lease between the State and Sequoia, Lease PRC 3414.1, so that the legal description is in conformity with the boundary line established in the proposed agreement.
7. Prior to December 31, 1974, Signal, at its sole expense and liability, will remove a pier which it no longer uses as more specifically set forth in the agreement.
8. Finally, the proposed agreement sets forth certain escrow instructions for the completion of the transaction.

Copies of all documents necessary to accomplish the above transaction are on file in the office of the State Lands Commission and by reference made a part hereof.

Pursuant to Sections 6301, 6307 and 6357 of the Public Resources Code, the State Lands Commission is authorized to enter into such boundary settlement and exchange agreements regarding sovereign lands.

An appraisal and evaluation has been made by the Division 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.

EXHIBIT: A. 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 SHORELINE OF SAN PABLO BAY FOR THE IMPROVEMENT OF THE WATERS THEREOF AND THE ADJACENT UPLANDS; 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 NAVIGATION, COMMERCE, AND FISHERIES; AND THAT THE STATE WILL RECEIVE LANDS AND INTERESTS IN LANDS EQUAL TO OR GREATER IN VALUE THAN THE STATE'S INTEREST IN ANY SUCH LANDS RELINQUISHED PURSUANT TO SAID AGREEMENT.
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