

MINUTE ITEM

This Calendar Item No. 22
was approved as Minute Item
No. 22 by the State Lands
Commission by a vote of 3
0 at its 9/20/76
meeting.

CALENDAR ITEM

22.

COMPROMISE SETTLEMENT

9/76
WC
W 503.696
W 21034
W 21159
BLA 151

The State, by way of proposed settlement, is to issue patents to two presently reclaimed parcels in the City of San Mateo consisting of 1.98 acres and 9.52 acres, respectively, of which the Division calculates 0.93 acres and 1.82 acres, respectively, are open historic tidal navigable waters. In exchange, the State would receive a deed to a parcel of marsh along San Pablo Bay in Solano County having a total of 393 acres, of which 72 acres may have been upland swamp lands and 321 acres of accretion land.

The State is to receive, at the private parties' expense, a title policy or policies for the exchange parcel in the total sum of \$85,000.00.

(Borges [W 21034])

This parcel is located along Marina Lagoon in the City of San Mateo and is depicted on the attached plats--Exhibits A, B, C, D, and E. The total parcel consists of 1.98 acres, of which 0.93 acres were open tide waters in a natural state. The area has been reclaimed and is presently dry land. It was originally included within the perimeter description of a State Swamp and Overflowed Lands Patent. It is now proposed for commercial development with public access along and to Marina Lagoon.

By way of compromise settlement in lieu of the costs and uncertainties of litigation, the private claimants have agreed to convey other land to the State of a value of \$35,000.00 in exchange for the State's claims within the parcel. The Division has conducted an appraisal of the parcel and evaluation of the State's interest therein and has concluded that the \$35,000.00 constitutes value which is equal or greater than the State's interest within the parcel.

At the request of the private parties, the Division has assisted in locating the exchange parcel.

(Tyre [W 21159])

This parcel is also located along Marina Lagoon a short distance upstream from the first parcel. It has been filled and is now dry land. It is depicted on the attached plats--Exhibits A, B, C, F, and G. As with the other parcel, it originally consisted of bay tidal marsh traversed by 1.82 acres of open tidal waters of Seal Slough. It was originally included within the perimeter description of a State Swamp and Overflowed Lands Patent. The parcel is now proposed for multi-residential use with public access along and to Marina Lagoon.

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Also by way of compromise settlement, the private parties have agreed to convey other land to the State of a value of \$50,000.00 in exchange for the State's interest in the subject parcel. The Division appraisal and evaluation shows that this sum constitutes equal or greater value than the State's interest being given up.

At the request of the private parties, the Division also assisted them in locating the exchange parcel.

(Exchange Parcel) Zunino - W 503.696)

This parcel is located in Solano County and consists of 393 acres of marsh bounded by San Pablo Bay on the south and the Sears Point Highway on the north. It is depicted on the attached plats marked Exhibits A, H, I, and J.

The parcel is included within the proposed Federal Wildlife Refuge and is under condemnation. Both the State and the City of Vallejo are parties in the suit due to the conflicting questions of title concerning the nature of a substantial amount of accretion. The evidence indicates that accretion is continuing at this time. The private claimants base their claims on State swampland patents. The State contends the accretions were the proximate cause of artificial conditions and that the State therefore is the owner of a substantial portion of the parcel. The private parties dispute this, and claim title to all the accretions.

Based on staff calculations, 321 acres or more may be accretions. A resolution of the dispute, except by compromise settlement, would require considerable time and expense in the lawsuit, with an uncertain result. The parcel has been appraised and the title dispute evaluated (after considering the title evidence), and it is believed that the allowance of \$85,000.00 (about \$216.00 per acre overall) constitutes a sound basis for settlement, and that this sum is equal or greater than the interest being given up by the State in the two San Mateo parcels.

By Chapter 483, Statutes of 1947; Chapter 117, Statutes of 1957; and Chapter 1501, Statutes of 1957; the City of Vallejo received legislative trust grants. While the 1947 grant extended to the ordinary high water mark, the recorded survey of the grant (copy attached as Exhibit K) did not include any of the accretions. In addition to the survey problem, the grant may have reverted to the State for lack of compliance with the substantial improvement provision of the grant statute. The City has been asked to quitclaim any right, title, or interest it may have within the exchange parcel to the State. Should the City fail to do so, some questions of boundary will exist between the

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City and State for future resolution; however, the staff recommends that the settlement be approved irrespective of any failure to resolve the City grant problems at this time.

Although the parcel to be received by the State is located in Solano County and the State's interest being given up is in San Mateo County, the staff recommends approval of the exchange as being in the State's best interest, for the following reasons:

1. The State's sovereign titles are held for the general statewide benefit.
2. The resolution of titles in the exchange parcel will facilitate immediate protection of lands within the proposed Wildlife Refuge.
3. The entire transaction involves land limited to the San Francisco-San Pablo Bay estuarine systems and the open space preservation will have an effect on the entire estuary.
4. The large area being received for the small filled parcels passing to the private parties results in a substantial gain in the open marsh areas of the bay system being preserved in public ownership.
5. The exchange will remove serious title disputes concerning all parcels involved and permit clarification of heretofore uncertain titles as part of the program for resolution of the State titles within the estuarine system.
6. A major portion of the existing litigation concerning the exchange parcel can be resolved without the anticipated costs and uncertainties of litigation.
7. Larger open space estuary parcels are generally unavailable in the San Mateo City area, and if any were located, the unit value is considerably greater than the Zunino parcel.

Copies of the proposed agreements necessary to accomplish this transaction are on file with the State Lands Commission and are incorporated herein by reference thereto.

The agreements are authorized by Division 6 of the Public Resources Code, with particular reference to Sections 6107 and 6307.

The agreements are exempt from the provision of Section 6371 of the Public Resources Code relating to Environmental Impact Reports.

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EXHIBITS:

- A. Estuary Plat.
- B. Air Photo Plat (Borges-Tyre).
- C. U.S.G.S. Quadrangle (Borges-Tyre).
- D. Compilation Plat (Borges).
- E. San Mateo County Parcel Map (Borges).
- F. Compilation Plat (Tyre).
- G. San Mateo County Assessor's Map (Tyre).
- H. Air Photo Plat (Zunino).
- I. U.S.G.S. Quadrangles (Zunino).
- J. Compilation Plat (Zunino).
- K. Grant Map (Chapter 483, Statutes of 1947).

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE EXCHANGE OF LANDS, INTERESTS IN LANDS, AND RIGHTS SET FORTH IN THE AGREEMENTS REFERRED TO IN PARAGRAPH 2 BELOW ARE IN THE BEST INTERESTS OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION, AID IN RECLAMATION, FOR FLOOD CONTROL PROTECTION AND TO ENHANCE THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND UPLAND, AND THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING IN THE WATERS INVOLVED; AND THAT THE STATE WILL RECEIVE LANDS AND INTERESTS IN LANDS EQUAL TO OR GREATER IN VALUE THAN ANY LANDS OR INTERESTS IN LANDS RELINQUISHED BY THE STATE PURSUANT TO SAID AGREEMENTS.
2. AUTHORIZE THE EXECUTION OF THE LAND EXCHANGE AGREEMENTS BETWEEN THE COMMISSION AND OTHER PARTIES WHICH EXECUTE SAID AGREEMENTS. COPIES OF THE AGREEMENTS ARE ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF.
3. AUTHORIZE THE EXECUTION OF STATE PATENTS FOR THE REAL PROPERTY DESCRIBED IN THE AGREEMENTS REFERRED TO IN PARAGRAPH 2 ABOVE, PURSUANT TO THE TERMS OF SAID AGREEMENTS.
4. ACCEPT AND AUTHORIZE THE RECORDATION OF CONVEYANCES TO THE STATE AS PROVIDED IN THE AGREEMENTS REFERRED TO IN PARAGRAPH 2 ABOVE.
5. FIND AND DECLARE THAT UPON THE DELIVERY OF THE PATENTS TO THE PRIVATE PARTIES, AND THE RECORDATION THEREOF IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, THE REAL PROPERTY DESCRIBED IN SAID PATENTS:
 - A. HAS BEEN CUT OFF FROM NAVIGABLE WATERS, IMPROVED, FILLED, AND RECLAIMED BY THE PRIVATE PARTIES 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 SUCH PUBLIC TRUST.

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6. AUTHORIZE THE STATE LANDS DIVISION AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE TRANSACTION DESCRIBED ABOVE, INCLUDING, BUT NOT LIMITED TO, APPEARANCES IN ANY LEGAL PROCEEDINGS BROUGHT CONCERNING THE ABOVE TRANSACTION.
7. FIND THAT THE AGREEMENTS ARE NOT SUBJECT TO THE REQUIREMENTS OF CEQA BY REASON OF THE EXEMPTION CONTAINED IN SECTION 6371 OF THE PUBLIC RESOURCES CODE.