

Calendar Item No. 28
as Minute Item
by the State Lands
Commission by a vote of 3
at its 12/15/76
meeting.

MINUTE ITEM

12/15/76
WC
BLA 152

28. COMPROMISE SETTLEMENT - W 21263.

During consideration of Calendar Item 28 attached, Mr. James F. Trout, Manager, Land Operations, explained the item.

Maury Hamilton, City Attorney, City of San Mateo, appeared. Mr. Hamilton stated the City is not objecting to the proposed settlement. However, they urge the Commission to, wherever feasible, settle these types of exchanges within the jurisdiction where the claim arises. In addition, he wanted to set the stage with the Commission for what will be taking place in the future within the City in connection with its granted tidelands.

Upon Motion duly made and carried, the Resolution as presented in Calendar Item 28 was adopted by a vote of 3-0.

Attachment: Calendar Item 28 (5 pages).

CALENDAR ITEM

12/76
W 21263
WC
BLA 152

28.

COMPROMISE SETTLEMENT

The State, by way of the proposed compromise settlement agreement with Levitt Multihousing Corporation, a Delaware corporation (hereinafter referred to as Levitt), is to convey the State's right, title, and interest to Levitt within a presently reclaimed parcel in the City of San Mateo (hereinafter referred to as the "Disputed Parcel"), consisting of 17.9 acres, of which the Division calculates 3.4 acres were open historic tidal navigable waters. In exchange, the State would receive title to a parcel (hereinafter referred to as the "Exchange Parcel"), of real property in the Suisun marsh area, Solano County, having a total of 148 acres, more or less.

The Exchange Parcel (designated on Exhibits C-1 through C-3, on file with the office of the State Lands Commission and by reference made a part hereof), is to be acquired by Levitt from Lawler Ranches, a California general partnership, hereafter referred to as Lawler, for exchange to the State. The purchase price is in the sum of \$70,000. A lease of the Exchange Parcel to the Department of Fish and Game by the State Lands Commission for use in conjunction with the State's Joice and Hammond Island Wildlife Management areas is under consideration.

DISPUTED PARCEL: This disputed parcel is located in the City of San Mateo, County of San Mateo, and is depicted as Parcel 1 on the plats - Exhibits A, B-1 through B 5, on file with the office of the State Lands Commission and by reference made a part hereof, and is more particularly described in the attached Exhibit B-6. The area has been reclaimed and is presently dry land. The parcel was originally included within the perimeter description of a State patent of swamp and overflowed lands. It is now proposed for residential development. The parcel is located to the west of the Bayshore Freeway which cuts it off from the present Bay System.

The private parties claim the unencumbered fee title to the disputed parcel as successors in interest to the State's Swamp and Overflowed Lands Patent. The State claim ownership, in its sovereign capacity, of substantial right, title, and interest within the parcel. The title dispute is bona fide and cannot be resolved except by agreement or litigation.

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 \$70,000 in exchange for the State's claims within the parcel. The Division has conducted an appraisal of the disputed parcel and evaluation of the State's interest therein and has concluded that the \$70,000 constitutes value which is equal or

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greater than the State's interest within the parcel.

EXCHANGE PARCEL: The Exchange Parcel is located within Grizzly Island, Solano County, California, and is part of the Suisun marsh. It consists of open land with some marsh and is bounded in part by a controlled tidal slough. It is currently being utilized for Duck Club purposes. It is in close proximity to the State's Hammond Island Wildlife Management areas.

The Exchange Parcel was included within the perimeter description of the Swamp and Overflowed Lands Survey No. 564, on January 17, 1876. The evidence shows that historically it consisted of marsh with approximately 6 or 7 acres of open water of, or tributary to Tree Slough.

Lawler claims the unencumbered fee title to the Exchange Parcel as successor in interest to the State's Swamp and Overflowed Lands Patent. The State contends that it is the owner of substantial right, title, or interest within the parcel by reason of its historic physical characteristics as tidelands or submerged lands. The title dispute is bona fide and cannot be resolved except by agreement or litigation.

The Exchange Parcel has been appraised and the State's interest therein has been evaluated. The Staff has concluded that the purchase price reflects the market value of the private interest therein exclusive of existing State interests.

At the request of the private parties, the Division assisted in locating the Exchange Parcel.

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 open space estuarine lands.
3. The entire transaction involves land limited to the San Francisco-San Pablo Bay-Suisun Bay estuarine systems and the open space preservation in Suisun Bay 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.

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5. The exchange will remove serious title disputes concerning both parcels involved and will permit clarification of heretofore uncertain titles as part of the program for resolution of the State titles within the estuarine system.
6. 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 Exchange Parcel.

The City of San Mateo has expressed interest in limiting future exchange parcels to the area in which the State's interest is being given up, where this is possible, and has requested the opportunity of presenting its position to the Commission at the hearing on this transaction.

Copies of the proposed agreement necessary to accomplish this transaction is on file with the State Lands Commission and is 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 environmental impact reporting requirements by reason of the exemption contained in Section 6371, of the Public Resources Code.

The State is to receive, at the private parties' expense, a title policy or policies for the exchange parcel in the total sum of \$70,000.

- EXHIBITS:
- A. Estuary Map.
 - B. Disputed Parcel:
 - B-1 - An Air Photo Plat
 - B-2 - U.S.G.S. Quadrangle Plat
 - B-3 - Compilation Plat
 - B-4 - San Mateo County Recorded Map (21 PM 7)
 - B-5 - San Mateo County Assessors Map
 - B-6 - Description of Disputed Parcel.
 - C. Exchange Parcel:
 - C-1 - Air Photo Plat
 - C-2 - U.S.G.S. Quadrangle Plat
 - C-3 - Solano County Assessors Plat

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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 INTEREST OF THE STATE FOR AID IN RECLAMATION 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 OR INTEREST 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 AGREEMENT IN COMPROMISE SETTLEMENT OF THE TITLES TO THE DISPUTED PARCEL, A COPY OF WHICH IS ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF.
3. AUTHORIZE THE EXECUTION OF A STATE PATENT FOR THE REAL PROPERTY DESCRIBED IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE, PURSUANT TO THE TERMS OF SAID AGREEMENT.
4. ACCEPT AND AUTHORIZE THE RECORDATION OF A CONVEYANCE OR CONVEYANCES TO THE STATE AS PROVIDED IN SAID AGREEMENT.
5. FIND AND DECLARE THAT EFFECTIVE 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.
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, EXECUTION OF THE AGREEMENT, CONVEYANCES, ACCEPTANCE OF THE DEED, ESCROW INSTRUCTIONS AND 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.

EXHIBIT B-6

A parcel of land situate in the County of San Mateo, California,
described as follows:

Parcel 1, as shown on that Parcel Map filed June 13, 1973, in
Book 21 of Parcel Maps at page 7, in the Office of the County
Recorder of said county.