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Name of the Item
35
Commission by title of
to at its 8/25/77 CALENDAR ITEM
meeting.

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W 20272
BLA 162
Cook

ERC 5380

35,

AGREEMENT FOR COMPROMISE SETTLEMENT
REGARDING PENDING ACQUISITION OF PARCELS
NEW CHICAGO, SANTA CLARA COUNTY

The Federal Fish and Wildlife Service contemplates the acquisition of numerous lots within the townsite of New Chicago, as part of the proposed South San Francisco Bay Federal Wildlife Refuge.

The parcels presently consist of open space, with marsh grass and remnants of former tidal sloughs, and are located in the southerly South San Francisco Bay estuary a short distance north of the town of Alviso. The portion of the New Chicago Townsite to be added to the Refuge (hereinafter referred to as "subject parcels") and subject to the proposed agreement is shown by the recorded survey prepared for the United States Fish and Wildlife Service in November 1975 by Murray McCormick, Inc., sheets 55, 56 and 57 recorded on August 27, 1976 in Book 378 of maps, pages 1 through 57, Official Records of the Santa Clara County Recorder, which recorded survey is incorporated by reference herein particularly describing the real property, the title to which is to be resolved by the proposed settlement agreement.

Record title to the subject parcels is now shown to be in other parties claiming as successors to the original State Swamp and Overflowed Lands Patents of Survey numbers 9, 67, and 74, Santa Clara County. However, the evidence shows that the areas described in the patent surveys included tidal and navigable waters thereby resulting in State ownership of either the fee title or the Tidelands Trust Easement to all or part of the areas shown by the patent surveys.

Whether the parcels were entirely or partially above or below the ordinary high water mark has never been established and is subject to a bona-fide dispute of fact and law concerning the patents validity and the nature and extent of State ownership therein which cannot be resolved without agreement or litigation.

The same applies to the question of whether any portions of the parcel consisted of submerged lands below the ordinary low water mark. It is in the best interest of the State to resolve the title questions by a compromise title settlement in lieu of litigation, without the costs and uncertainties of a lawsuit.

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CALENDAR ITEM NO. 35 (CONTD)

It is proposed that the Commission and the Federal Government enter into a compromise settlement of titles to the subject parcels by agreement summarized, as follows:

1. The State will acknowledge and confirm the validity of the underlying fee title in the United States to the subject parcels, as State patented tidelands being located between the ordinary high and low water marks with the exception of the lands described in paragraph 3 below.
2. The United States will acknowledge and confirm the tidelands trust easement in the State to the subject parcels, as State patented tidelands being located between the ordinary high and low water marks, with the exception of the lands described in paragraph 3 below.
3. The United States will acknowledge and confirm the sovereign fee title of the State, in trust, of the bed of the slough described on the original townsite maps as "Water Slough".
4. The State will issue its 66-year permit to the Fish and Wildlife Service of the State's easement and the State's fee title to said "Water Slough", for use as part of the Federal Wildlife Refuge, with amendment of the permit as additional portions of the subject parcels are acquired as hereinafter stated.
5. The agreement will become effective for each lot or parcel within the subject parcels, from time to time, upon the acquisition by the United States of the private interests to any such lot or parcel. The agreement is deemed severable with respect to each separate acquisition by the United States. To the extent there may be any lots or parcels within the subject parcels which have not been so acquired by the United States on or before one year from the date of the agreement, the agreement shall automatically terminate as to such unacquired lots or parcels.
6. Deeds, permits or other appropriate documents will be exchanged with the United States to carry out the above.

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The State Lands Division recommends the proposed settlement as satisfactorily and permanently resolving the heretofore uncertain title questions, as fully protecting and preserving existing States sovereign titles, and as being in the best interest of the State.

EXHIBITS: (A) Estuary Plat (B) NASA Air Photo Plat
(C) Quad Plat (D) Compilation Plat

IT IS RECOMMENDED THAT THE COMMISSION:

1. APPROVE THE PROPOSED AGREEMENT IN COMPROMISE SETTLEMENT OF THE TITLES TO THE SUBJECT PARCELS AND AUTHORIZE ITS EXECUTION ON BEHALF OF THE COMMISSION.
2. FIND THAT THE 66 YEAR TERM OF THE PROPOSED PERMIT IS IN THE BEST INTERESTS OF THE STATE BECAUSE THE FISH AND WILDLIFE VALUES TO BE PRESERVED REQUIRE LONG TERM MANAGEMENT AND PROTECTION.
3. AUTHORIZE THE STATE LANDS DIVISION AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER ACTIONS WHICH MAY BE NECESSARY OR APPROPRIATE TO CARRY OUT THE PROVISIONS OF THE SETTLEMENT, INCLUDING EXECUTION, ACKNOWLEDGMENT AND RECORDING OF SUCH DOCUMENTS OF TITLE, PERMITS, OR OTHER APPROPRIATE INSTRUMENTS, OR LITIGATION AS MAY BE NECESSARY OR APPROPRIATE TO CARRY OUT THE TERMS AND CONDITIONS OF THE AGREEMENT.
4. FIND THAT THE PROPOSED SETTLEMENT IS IN COMPROMISE SETTLEMENT OF DISPUTED TITLES IN LIEU OF LITIGATION AND THE PROVISIONS OF THE ENVIRONMENTAL QUALITY ACT ARE INAPPLICABLE, AND THAT THERE IS NO SIGNIFICANT EFFECT UPON THE ENVIRONMENTAL CHARACTERISTICS IDENTIFIED PURSUANT TO SECTION 6370.1, ET. SEQ., OF THE PUBLIC RESOURCES CODE AND CAL. ADM. CODE TITLE 2, ART. 11.