

MINUTE ITEM

This Calendar Item No. 22  
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No. 22 by the State Lands  
Commissioner by a vote of 3  
to 0 at his 9/29/77 CALENDAR ITEM  
meeting.

22.

9/77  
W 20863  
Cook  
BLA 164

BOREL CREEK EXCHANGE AGREEMENT

The Legislature by Ch. 1099, of Statutes 1976, granted to the City of San Mateo, the State's right, title, and interest in all tidelands and submerged lands within the city limits, in trust and subject to the reservations, terms and conditions of the statute.

The titles to certain parcels of real property described in Exhibits C, D and E of the proposed agreement, on file with the office of the State Lands Commission, and herewith referred to as the "subject parcels", within said trust grants to the City are the subject of uncertainty and dispute concerning the existence and extent of private or sovereign titles.

The private parties claim to own the subject parcels clear of any State interest on the ground that they are the successors in interest to a State patent of Swamp and Overflowed Lands, Survey No. 65, patent recorded April 17, 1899, in Book 2 of Patents page 466, San Mateo County Official Records.

The State/City claim of ownership of either the tidelands trust easement or fee title to the parcels is based on the natural condition of the parcels which the State/City contend was, as follows:

1. The parcels were traversed by a major tributary of Seal Slough (now Marina Lagoon), a navigable/tidal waterway of the South San Francisco Bay.
2. The remainder of the parcels constituted salt marsh which was covered by the ordinary tides.

The parcels are now filled above the mean high tide line, except for a drainage ditch traversing the parcels; are privately occupied with certain improvements and adjoin improved public streets.

The City proposes an exchange in compromise settlement of the title dispute. The exchange provides for the State/City to receive title to the real property described in Exhibits

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A and B on file with the office of the State Lands Commission, of the proposed agreement, and herein referred to as the exchange parcels. (The State/City will receive a 38.664 percent undivided interest in the Exhibit B parcel). The State/City, in turn, will patent and quitclaim to the private parties any and all State/City right, title, and interest within the subject parcels.

The City grant statute requires that the proposed exchange is subject to the approval of the State Lands Commission. In addition, the City title to the subject parcels is subject to the reserved interest of the State and the Commission is required to join in the proposed conveyance of the subject parcels. Further, the private titles to the exchange parcels will be received as sovereign lands subject to the public trust and the reservations, terms and conditions of the grant.

The State Lands Division has made an appraisal of the fair market value of subject parcels; has reviewed the City's appraisal of the exchange parcels; has studied the existence and extent of the State/City right, title, and interest within all parcels; and concludes that the private interest being received within the exchange parcels is equal or greater than the State/City interests being given up within the subject parcels.

By reason of the present condition of the subject parcels, and their being separated from Marina Lagoon or other tidal/navigable waters, the subject parcels are no longer needed for trust purposes and the public trust can be terminated.

The private claimants will purchase the exchange parcels and cause them to be conveyed to the State/City as part of the proposed exchange.

The proposed exchange provides that the State/City is to receive an undivided partial interest within the Exhibit B exchange parcel. This has resulted from the excess value attributable to such parcel, over and above the value agreed upon in settlement of the titles to the subject parcels.

The City expects to acquire the remaining private interests within said parcel at a later date, by way of a possible future exchange. The State has no obligation to acquire such remaining interests. However, acquisition of such remaining interests, should there be later title settlements within the City, would be reviewed and must be in the State interest.

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The State/City will receive title insurance in the amounts of \$5,600 for the lands described in Exhibit A and \$54,400 for the lands described in Exhibit B.

The Exchange will resolve 2 pending lawsuits in the San Mateo Superior Court: Henry Earl Mitvalsky, Jr, et al V. State Lands Commission, Superior Court No. 206042 and Lew Williams Enterprises V. State Lands Commission Superior Court No. 206040.

The Exchange is exempt from the requirements of the California Environmental Quality Act (CEQA).

IT IS RECOMMENDED THAT THE COMMISSION:

1. APPROVE THE PROPOSED EXCHANGE IN COMPROMISE SETTLEMENT OF THE TITLE DISPUTE, A COPY OF WHICH IS ON FILE IN THE OFFICE OF THE STATE LANDS DIVISION.
2. FIND THAT THE LANDS TO BE ACQUIRED BY THE CITY AND THE MINERAL RIGHTS TO BE TRANSFERRED TO THE STATE ARE OF EQUAL OR GREATER VALUE THAN THE LANDS AND MINERAL RIGHTS FOR WHICH THEY ARE TO BE EXCHANGED.
3. 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 EXCLUDED FROM THE PUBLIC CHANNELS AND WATERWAYS AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING, AND FOR OTHER TRUST USES AND PURPOSES, AND IS NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS AND THEREFORE SHALL BE FREED FROM SUCH PUBLIC TRUST.
4. AUTHORIZE THE STATE LANDS DIVISION, ON BEHALF OF THE COMMISSION TOGETHER WITH THE CITY OF SAN MATEO, TO EXECUTE, ACKNOWLEDGE, DELIVER, AND SUBMIT FOR RECORDATION, A PATENT AND A QUITCLAIM TO THE OWNERS OF RECORD OF THE SUBJECT PARCELS DESCRIBED IN EXHIBITS C, D AND E OF THE PROPOSED AGREEMENT, ON FILE WITH THE OFFICE OF THE STATE LANDS COMMISSION, AND TO ACCEPT A GRANT DEED TO THE CITY AND THE STATE OF THE EXCHANGE PARCELS DESCRIBED IN EXHIBITS A AND B OF THE AGREEMENT, AND TO ACCEPT A GRANT DEED FROM THE CITY FOR THE MINERALS IN THE LANDS SO ACQUIRED.

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5. AUTHORIZE THE STATE LANDS DIVISION AND/OR THE OFFICE OF THE ATTORNEY GENERAL, TO TAKE SUCH FURTHER ACTION AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT SAID EXCHANGE.
6. FIND THAT THE PRIVATE RIGHT, TITLE, AND INTEREST IN THE EXCHANGE PARCELS IS BEING ACQUIRED IN EXCHANGE FOR THE PUBLIC SOVEREIGN INTEREST IN THE SUBJECT PARCELS AND THAT THE TITLE SO ACQUIRED CONSTITUTES REAL PROPERTY HELD BY THE CITY IN TRUST FOR THE PUBLIC PURPOSES OF COMMERCE, NAVIGATION AND FISHERIES AND FOR OTHER PURPOSES CONSISTENT THEREWITH, SUBJECT TO THE STATES RESERVED INTEREST THEREIN ACCORDING TO THE RESERVATIONS, TERMS AND CONDITIONS OF CHAPTER 1099, STATUTES OF 1976.
7. FIND THAT THIS AGREEMENT IS IN SETTLEMENT OF TITLE AND BOUNDARY LITIGATION AND THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ARE INAPPLICABLE.