

MINUTE ITEM

THE CHIEF OF BUREAU No. 40

40

11/21/85

CALENDAR ITEM

A 20

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11/21/85  
W 23552  
AD 38  
Valentine

APPROVAL OF A COMPROMISE TITLE SETTLEMENT AGREEMENT  
SAN CARLOS, SAN MATEO COUNTY  
UNDER KAPILOFF LAND BANK ACT, P.R.C. 8600 ET SEQ.

PRIVATE PARTY: Sid Levin

A title dispute exists between the State in its sovereign capacity and Sid Levin, ("private party") concerning ownership of a 12-acre parcel of real property located in San Carlos, San Mateo County. The property is just northeast of the Bayshore freeway and southwest of the confluence of Smith and Steinberger Sloughs. The real property is referred to as the subject parcel, and is described in Exhibit "A", and is depicted on Exhibit "B".

Private party is the record owner of the subject parcel as successor in interest to a State patent which characterized the land as swamp and overflowed.

The private party contends that the State patent conveyed all right, title and interest of the State within the subject parcel without any reservations to the State, express or implied, and that they now hold title to the property free and clear of any State right, title or interest.

The staff of the State Lands Commission has conducted a study of the evidence of title to the subject parcel and has drawn a number of factual conclusions, including those summarized below:

1. The parcel is primarily filled and reclaimed historic wetlands which formerly consisted of marsh and sloughs.
2. It was in a natural state covered, at least in part, by the ordinary tides of San Francisco Bay, the precise extent of coverage being subject to dispute.

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The staff is of the opinion that the title evidence and the applicable legal principles lead to the conclusion that the State, in its sovereign capacity, is the owner of some public trust right, title or interest in the subject parcel. The exact extent and nature of the State's interest is, however, subject to uncertainty and dispute.

The private party has offered to resolve the title dispute by written agreement in compromise settlement of the legal and evidentiary issues. The staff of the State Lands Commission recommends approval of the settlement in substantially the form of the agreement now on file with the Commission.

While the agreement sets forth all the specific terms and conditions of the settlement, a brief summary of some of the principal terms and conditions of the settlement is set forth below, as follows:

1. The private party will deposit the sum of \$125,000 into the Kapiloff Land Bank Trust Fund which is administered as trustee by the State Lands Commission pursuant to P.R.C. 8600 et seq. The Commission will use this sum to acquire other lands more reasonably susceptible of public trust use than is the subject parcel.
2. In exchange for this transfer of funds to the State, the State will convey to private party all its right, title, and interest and will terminate the public trust interest in the subject parcel.
3. The agreement provides for an escrow and will be effective upon its recordation. Escrow fees and any title insurance will be without cost to the State.

Staff has appraised the subject parcel and has evaluated the law and the evidence bearing on the title dispute, and is of the opinion that the sum of \$125,000 is equal to or greater than the value of the State's interest in the subject parcel.

AB 884:

N/

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt

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from the requirements of the CEQA as a statutory exempt project. The project is exempt because it involves settlements of title and boundary problems.

Authority: P.R.C. 21080.11.

2. In taking action on this staff recommendation the Commission is acting as the trustee of the Kapiloff Land Bank Fund created by P.R.C. 8610.

EXHIBITS:

- A. Subject Parcel Description.
- B. Subject Parcel Plat.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 AS A STATUTORY EXEMPT PROJECT PURSUANT TO P.R.C. 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. FIND THAT WITH RESPECT TO THE PROPOSED COMPROMISE TITLE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST IN THE SUBJECT PARCEL FOR FUNDS WITH WHICH TO BUY AN EXCHANGE PARCEL:
  - a. THE AGREEMENT IS IN THE BEST INTEREST OF THE STATE.
  - b. THAT THE MONIES RECEIVED BY THE STATE ARE OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF THE INTERESTS IN THE SUBJECT PARCEL BEING RELINQUISHED BY THE STATE.
  - c. THE SUBJECT PARCEL HAS BEEN IMPROVED, RECLAIMED AND FILLED, HAS BEEN EXCLUDED FROM THE PUBLIC CHANNELS, AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING AND IS NO LONGER IN FACT TIDELAND OR SUBMERGED LAND.
  - d. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE RESPECTING THE PRIVATE-STATE TITLES WITHIN THE PARCEL.
  - e. THE PROPOSED AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED.

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- f. THE AGREEMENT IS IN LIEU OF THE COSTS, DELAYS AND UNCERTAINTIES OF TITLE LITIGATION, IS CONSISTENT WITH AND IS AUTHORIZED BY THE REQUIREMENTS OF LAW.
  - g. ON THE EFFECTIVE DATE OF THE AGREEMENT AND CONSISTENT WITH ITS TERMS, THE SUBJECT PARCEL WILL NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THE PUBLIC TRUST INTEREST MAY BE TERMINATED.
- 3. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGEMENT AND RECORDATION ON BEHALF OF THE COMMISSION OF THE FOLLOWING DOCUMENTS:
  - a. THE COMPROMISE TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION.
  - b. A PATENT OF THE SUBJECT PARCEL IN SAN MATEO COUNTY, CALIFORNIA, DESCRIBED IN EXHIBIT "A" FREE OF THE PUBLIC TRUST
- 4. AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGEMENT AND RECORDATION OF ALL DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE COMPROMISE TITLE SETTLEMENT AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

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The land referred to herein is described as follows:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN CARLOS,  
COUNTY OF SAN MATEO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY BOUNDARY LINE OF THE  
BAYSHORE FREEWAY, AS DESCRIBED IN THE DEED FROM HARBOR DEVELOPMENT  
CORPORATION, TO THE STATE OF CALIFORNIA, DATED FEBRUARY 21, 1944  
AND RECORDED MARCH 28, 1944 IN BOOK 1115 OF OFFICIAL RECORDS OF SAN  
MATEO COUNTY AT PAGE 96, SAID POINT BEING DISTANT THEREON SOUTH 42°  
00' 00" EAST 2048.46 FEET FROM THE INTERSECTION THEREOF WITH THE  
NORTHWESTERLY LINE OF THAT CERTAIN 40.00 FOOT WIDE PRIVATE ROAD,  
DESCRIBED IN THE DEED FROM W.F. CHIPMAN ET AL TO ELLIETTE O'BRIEN,  
DATED JANUARY 17, 1921 AND RECORDED JANUARY 26, 1921 IN BOOK 3 OF  
OFFICIAL RECORDS OF SAN MATEO COUNTY AT PAGE 359, SAID POINT OF  
BEGINNING BEING THE MOST WESTERLY CORNER OF THE LANDS DESCRIBED IN  
THE DEED FROM HARBOR DEVELOPMENT CORPORATION TO THE CITY OF SAN  
CARLOS, A MUNICIPAL CORPORATION, DATED MAY 17, 1951 AND RECORDED  
AUGUST 23, 1951 IN BOOK 2118 OF OFFICIAL RECORDS OF SAN MATEO  
COUNTY AT PAGE 664, INSTRUMENT NO. 55772-J; THENCE FROM SAID  
POINT OF BEGINNING, SOUTH 42° 00' 00" EAST, ALONG SAID NORTHEASTERLY  
LINE OF THE BAYSHORE FREEWAY, 1000.00 FEET; THENCE NORTH 48° 00' 00"  
EAST 547.00 FEET, TO THE NORTHEASTERLY BOUNDARY LINE OF THE LANDS  
DESCRIBED IN THE ABOVE MENTIONED DEED TO THE CITY OF SAN CARLOS;  
THENCE NORTH 42° 00' 00" WEST, ALONG THE LAST MENTIONED BOUNDARY  
LINE, 1000.00 FEET TO THE MOST NORTHERLY CORNER OF SAID LAST  
MENTIONED LANDS; THENCE SOUTH 48° 00' 00" WEST, ALONG THE NORTHWESTERLY  
BOUNDARY OF SAID LANDS OF THE CITY OF SAN CARLOS, 547.00 FEET TO THE  
POINT OF BEGINNING.

EXHIBIT A

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