

MINUTE ITEM

This Calendar Item No. 52
was approved as Minute item
No. 52 by the State Lands
Commission by a vote of 9
to 0 at its 1-21-88
meeting.

CALENDAR ITEM

A 13
S 9

52

01/21/88
W 24019 G 01-05
A D 71
J. Sekelsky

APPROVAL OF A COMPROMISE TITLE SETTLEMENT AGREEMENT
REGARDING CERTAIN REAL PROPERTY IN THE CITY OF OAKLAND,
ALAMEDA COUNTY, PURSUANT TO KAPILOFF LAND BANK ACT

A title dispute exists between the State, acting by and through the State Lands Commission ("State"), the City of Oakland, as legislative grantee ("City"), and Kumam Corporation, a California corporation ("Kumam") concerning ownership of approximately .9875 acres of real property near Lake Merritt in the City of Oakland. That real property is hereinafter referred to as the Settlement Parcel, and is more particularly described in Exhibit "A" and depicted on Exhibit "B" and "C".

As of January 1, 1988, record ownership of the Settlement Parcel is in Lakepoint Towers, Ltd., a California Limited Partnership, subject to a substantial lien in favor of Kumam, a secured lender. Kumam has begun foreclosure proceedings against Lakepoint; Lakepoint has subsequently filed bankruptcy. The effect of the bankruptcy filing is an automatic stay of all proceedings against the bankrupt, including foreclosure proceedings.. Kumam has requested relief from stay in the bankruptcy proceeding and has been given a hearing date of February 22, 1988, at which time they hope to be permitted to complete foreclosure of the Settlement Parcel.

By Chapter 107 of the Statutes of 1852, the Legislature granted to the City, in trust, those tidelands within the City's corporate limits.

The City has no independent authority to settle title disputes regarding its granted lands. Commission staff has conducted a study of the evidence of title to the Settlement Parcel and has drawn a number of factual conclusions, including those summarized below:

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1. The Settlement Parcel includes filled and reclaimed historic tidelands which formerly consisted of the bed of Lake Merritt, an extension of San Francisco Bay.
2. A portion of the Settlement Parcel was in a natural state covered by the ordinary tides of Lake Merritt, the precise extent of coverage being subject to dispute.
3. A portion of the Settlement Parcel is within lands granted by the Legislature to the City pursuant to Chapter 107 of the Statutes of 1852, as amended.

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, and its grantee, the City of Oakland, are the owners of some public trust right, title, or interest in the Settlement Parcel. The exact extent and nature of the State's and City's interest is, however, subject to uncertainty and dispute.

The Settlement Parcel has been filled and reclaimed since before 1900 and has been used as a commercial site, and is separated from the waters of Lake Merritt by a major roadway and park lands adjacent to the Lake.

Kumam 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. Kumam will deposit the sum of \$165,000 into the Kapiloff Land Bank Fund which is administered by the State Lands Commission as trustee pursuant to P.R.C. 8600 et seq.
2. The City will quitclaim all right, title, and interest it may have in the Settlement Parcel by virtue of Chapter 107 of the Statutes of 1852, as amended, to the State for purposes of effectuating the compromise settlement agreement.

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3. In exchange for the above transfer of funds by Kumam to the State, the State will convey to the record owner of the Settlement Parcel all its right, title, and interest and will terminate the public trust interest in the Settlement Parcel.
4. City will use its best efforts to identify, and State, as trustee of the Land Bank Fund, will use its best efforts for three years to acquire, with the monies deposited into the Land Bank Fund by Kumam, available lands within the City which are useful for public trust purposes.
5. 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 Settlement Parcel and has evaluated the law and evidence bearing on the title dispute, and is of the opinion that the sum of \$165,000 is equal to or greater than the value of the State's and City's interest in the Settlement Parcel.

AB 884: N/A.

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 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. Settlement Parcel Description.
- B. Settlement Plat Area.
- C. Settlement 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 PRC 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 AND CITY'S INTEREST IN THE SETTLEMENT PARCEL FOR FUNDS WITH WHICH TO BUY AN EXCHANGE PARCEL:
 - A. THE AGREEMENT IS IN THE BEST INTEREST OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION; THE ENHANCEMENT OF THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND THE UPLAND; AND THE PROTECTION, PRESERVATION, AND ENHANCEMENT OF THE TIDE AND SUBMERGED LANDS AND PUBLIC ACCESS THERETO, PURSUANT TO THE PUBLIC TRUST.
 - B. THAT THE MONIES RECEIVED BY THE STATE ARE OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF THE INTEREST IN THE SETTLEMENT PARCEL BEING RELINQUISHED BY THE STATE.
 - C. THE SETTLEMENT 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 TIDE OR SUBMERGED LAND.
 - D. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS WITHIN THE SETTLEMENT PARCEL.
 - E. THE PROPOSED AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND FACT UPON WHICH THE DISPUTE IS BASED.
 - F. THE AGREEMENT IS IN LIEU OF THE COSTS, DELAYS AND UNCERTAINTIES OF TITLE LITIGATION, AND 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 SETTLEMENT 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 SETTLEMENT PARCEL IN ALAMEDA 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, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AND PAYMENTS 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.

EXHIBIT "A"

The following described real property is situated in the City of Oakland, County of Alameda, State of California.

PARCEL ONE

Beginning at a point on the northern line of Lake Street, distant thereon easterly 455 feet from the point of intersection thereof with the eastern line of Jackson Street; running thence easterly along said line of Lake Street, 85 feet; thence at right angles northerly 173.82 feet; thence at right angles westerly 85 feet; thence southerly 173.82 feet to the point of beginning.

PARCEL TWO

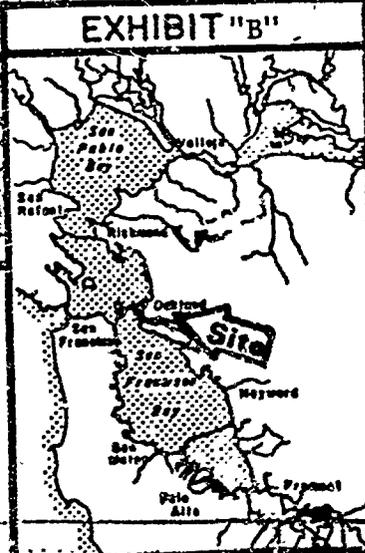
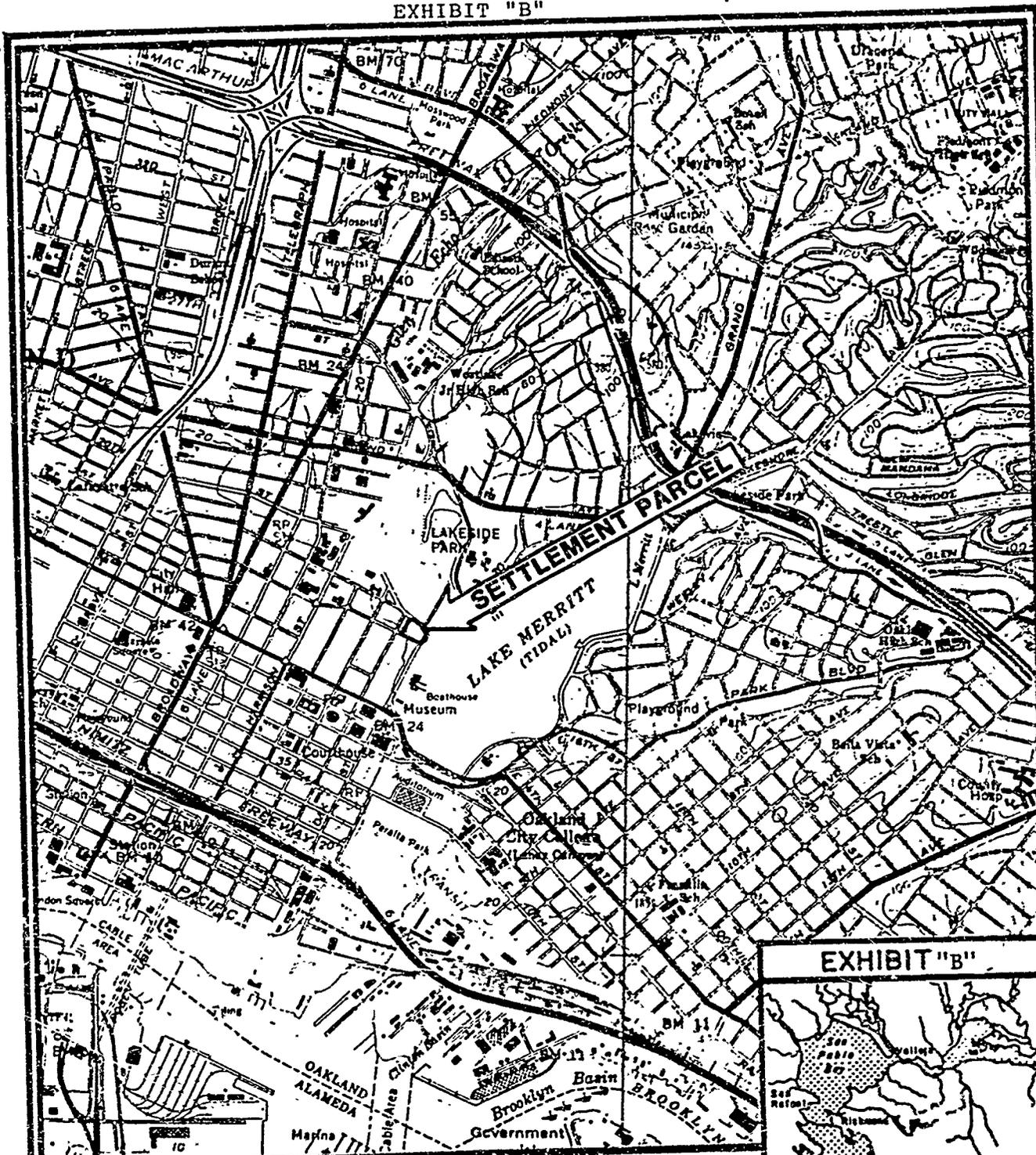
Beginning at a point on the northern line of 17th, formerly Lake, Street distant thereon 540 feet easterly from the eastern line of Jackson Street; thence easterly along said line of 17th Street, 60 feet; thence leaving said line of 17th Street, northerly at right angles thereto, 173.82 feet; thence at right angles westerly 60 feet; and thence southerly at right angles to the northern line of 17th Street, 173.82 feet to the point of beginning.

PARCEL THREE

Beginning at the point of intersection of the northwestern boundary line of that certain piece or parcel of land described in that certain deed to Emma May Burnham and recorded January 30, 1902 in Book 816 of Deeds, page 387, Records of Alameda County, with the northeastern line of 17th Street, formerly Lake Street; running thence north $26^{\circ} 15'$ east along the said northwestern boundary line of said land conveyed to said Emma May Burnham, 173.82 feet; thence south $63^{\circ} 45'$ east 7.88 feet to a point from which the center of a circle having a radius of 112.14 feet bears south $26^{\circ} 15'$ west 112.14 feet; thence in a southerly direction along the arc of said circle, 232.31 feet to a point from which the center of a circle having a radius of 15 feet bears north $35^{\circ} 03' 20''$ west distant 15 feet and thence westerly along the arc of said last mentioned circle, 16.04 feet; thence north $63^{\circ} 45'$ west along the northeastern line of 17th Street, 93.04 feet to the point of beginning.

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EXHIBIT "B"



STATE LANDS COMMISSION

SETTLEMENT PLAT

Portion of USGS Quadrangle Oakland East & west
1959 (PR 1980)

Prepared by: R. D. La Force

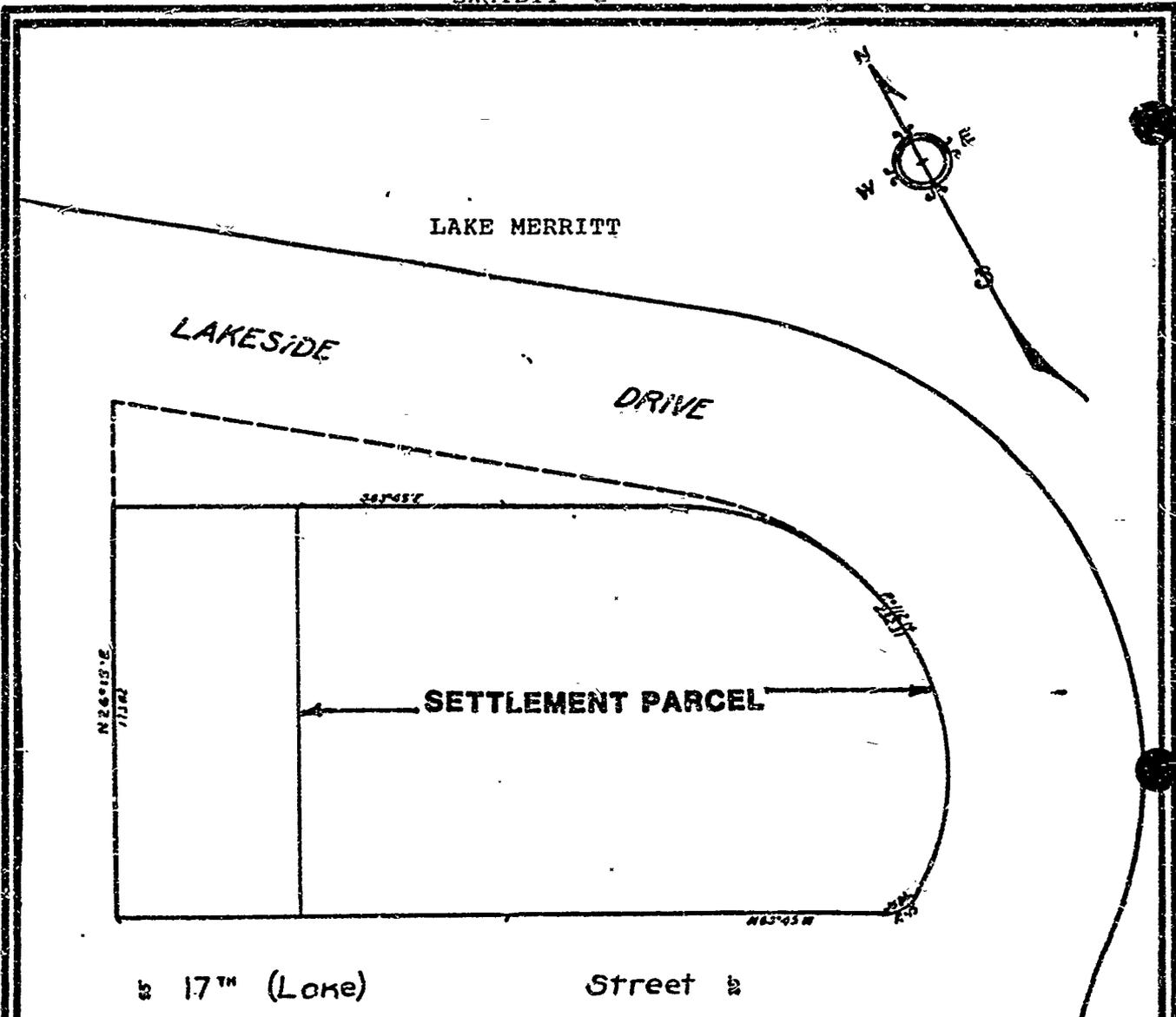
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Title Study Lake Merritt

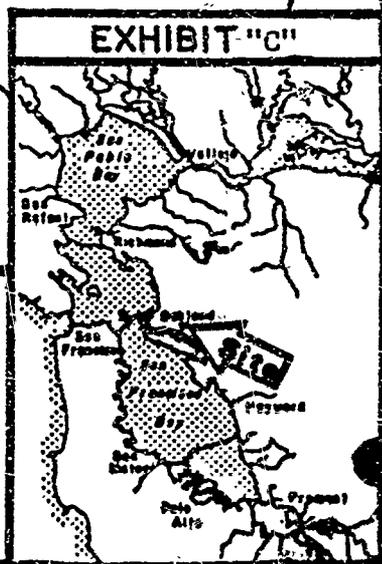
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EXHIBIT "C"



17th (Lake) Street



STATE LANDS COMMISSION

SETTLEMENT PLAT

Portion of Alameda County Assessors Map 8-633

Prepared by: R.D. La Force

Date: 10/5/87 A: 13S: 9

Title Study: Lake Merritt

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