

MINUTE ITEM

This Calendar Item No. 44
was approved as Minute Item
No. 44 by the State Lands
Commission by a vote of 3
0 at its 9/27/89
meeting.

CALENDAR ITEM

A 11
S 7

44

09/27/89
W 23969
AD 101
Plummer

APPROVAL OF A COMPROMISE TITLE SETTLEMENT AGREEMENT
CITY OF MARTINEZ, CONTRA COSTA COUNTY
UNDER KAPILOFF LAND BANK ACT, P.R.C. 8600 ET SEQ.

APPLICANT: Hayworth-Fabian Investments,
a partnership
c/o Roberta S. Brown
Terry J. Ravazzini
a professional corporation
2150 Franklin Street, Suite 571
Oakland, California 94612

A title dispute exists between the State in its sovereign capacity and Hayworth-Fabian Investments, a partnership ("Hayworth-Fabian"), concerning ownership of approximately 0.54 acres of real property located in the City of Martinez, Contra Costa County. The real property is referred to as the Settlement Parcels, and is described in Exhibit "A", and is depicted on Exhibit "B".

Hayworth-Fabian is the record owner of the Settlement Parcels as successor-in-interest to the recipient of a State patent which labeled the land as tidelands.

Hayworth-Fabian contends that subsequent to the issuance of the tideland patent the lands were subject to natural processes which changed the character of the land from tidelands to swamp and overflowed and are free and clear of any State right, title or interest.

CALENDAR ITEM NO. 44 (CONT'D)

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approved by the State Lands Commission
by vote of _____
at _____
date _____

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

1. The parcels are located entirely within Tide Land Survey No. 4 as surveyed in 1864 and patented in 1867.
2. It was in a natural state covered, at least in part, by the ordinary tides of the Straits of Carquinez, the precise extent of coverage being subject to dispute.

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 Settlement Parcels. The exact extent and nature of the State's interest is, however, subject to uncertainty and dispute.

The property has been filled, reclaimed and improved, and is no longer covered by the waters of the Straits of Carquinez.

Hayworth-Fabian 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 \$8,400 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. In exchange for the above transfer of funds by Hayworth-Fabian to the State, the State will convey to Hayworth-Fabian all its right, title, and interest and will terminate the public trust interest in the Settlement Parcels.
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.

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Staff has appraised the Settlement Parcels and has evaluated the law and the evidence bearing on the title dispute, and is of the opinion that the sum of \$8,400 is equal to or greater than the value of the State's interest in the Settlement Parcels.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code of Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutorily 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 Parcels Description.
B. Settlement Parcels Plat.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A STATUTORILY 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 SETTLEMENT PARCELS 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 TIDELANDS AND SUBMERGED LANDS AND PUBLIC ACCESS THERETO, PURSUANT TO THE PUBLIC TRUST.

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- B. THAT THE \$8400 RECEIVED BY THE STATE PURSUANT TO THE AGREEMENT IS EQUAL TO OR GREATER THAN THE VALUE OF THE INTERESTS IN THE SETTLEMENT PARCELS BEING RELINQUISHED BY THE STATE.
 - C. THE SETTLEMENT PARCELS HAVE BEEN IMPROVED, RECLAIMED AND FILLED, HAVE BEEN EXCLUDED FROM THE PUBLIC CHANNELS, AND ARE NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE TO BEING USED FOR NAVIGATION AND FISHING AND ARE NO LONGER IN FACT TIDELAND OR SUBMERGED LAND.
 - D. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS WITHIN THE PARCELS.
 - E. THE PROPOSED AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED.
 - 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 SETTLEMENT PARCELS 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 PARCELS IN CONTRA COSTA 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"
SETTLEMENT PARCELS DESCRIPTIONS

Those parcels of land situated in T2N, R3W, MDM, City of Martinez, Contra Costa County, California and more particularly described as follows:

PARCEL ONE

All of that land described as "Exhibit A" in the grant deed from Salvatore Belleccini, aka Salvatore Billeci, Salvatore Aiello & Lydia Rose Aiello, Rose M. Aiello, Frances Aiello, and Lucido Mary Bellecci to Hayworth - Fabian Investments, a partnership, Recorded October 22, 1982 in Book 10979, Page 216, Official Records of Contra Costa County.

PARCEL TWO

All of that land described as Parcel One and Parcel Two in "Exhibit A" in the grant deed from Nino Carone to Hayworth - Fabian Investments, a partnership, Recorded November 3, 1982 in Book 10993, Page 285, Official Records of Contra Costa County.

PARCEL THREE

All of that land described as Parcel One and Parcel Two in "Exhibit A" in the grant deed from Frances Lucido to Hayworth - Fabian Investments, a partnership, Recorded in Book 11221, Page 345, Official Records of Contra Costa County.

PARCEL FOUR

All of that land described as Parcel One, Parcel Two, and Parcel Three in Exhibit "A" in the grant deed from Dorothy S. Lucido to Hayworth - Fabian Investments, a partnership, Recorded in Book 12856, Page 673, Official Records of Contra Costa County.

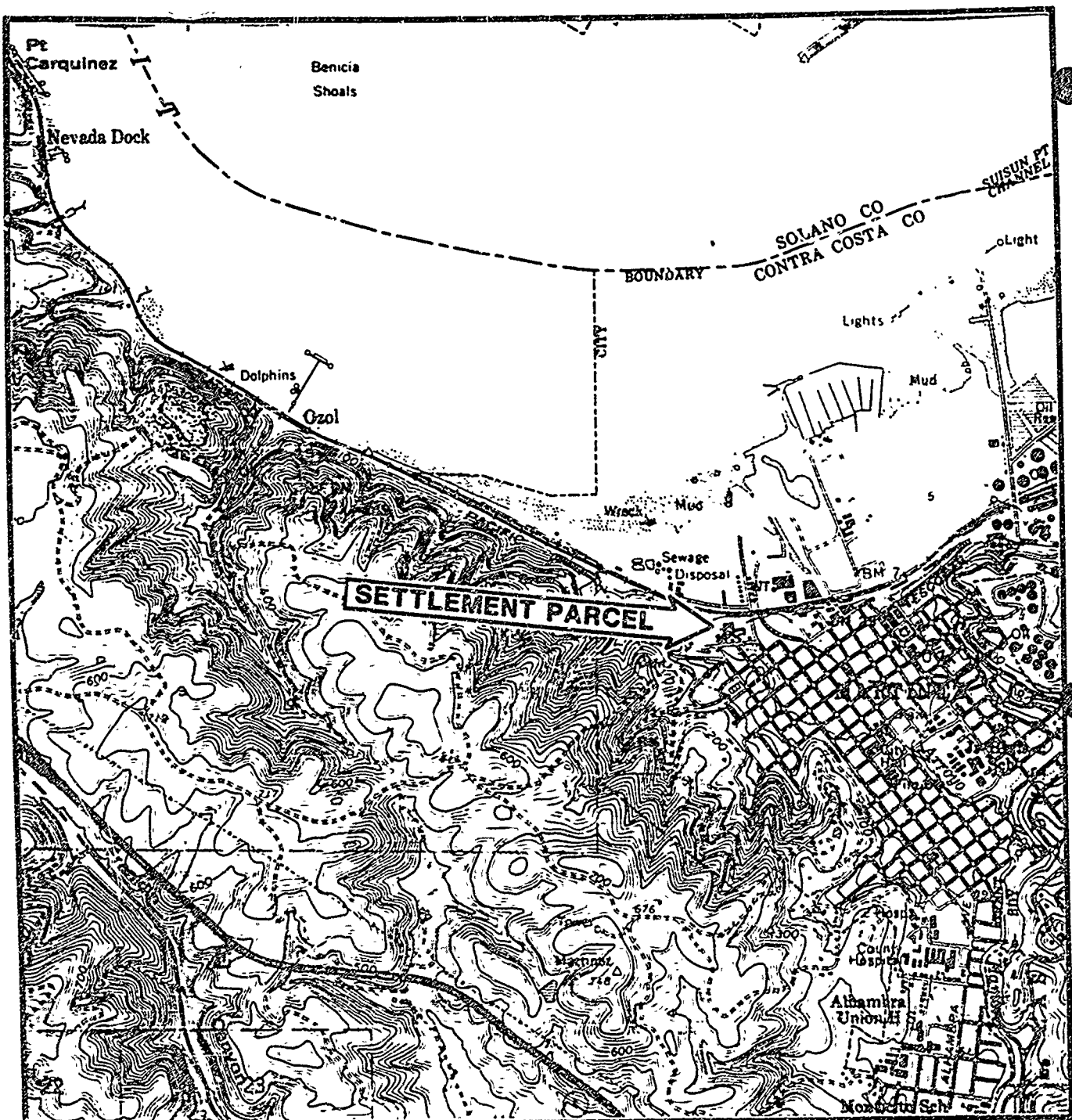
PARCEL FIVE

All of that land described in Exhibit "A" in the grant deed from Earl D. Dunivan and Joanne Dunivan to Hayworth - Fabian Investments, a partnership, Recorded in Book 15144, Page 822, Official Records of Contra Costa County.

END OF DESCRIPTION

PREPARED SEPTEMBER 25, 1989 BY BIU 4, RAND LAFORCE, SUPERVISOR

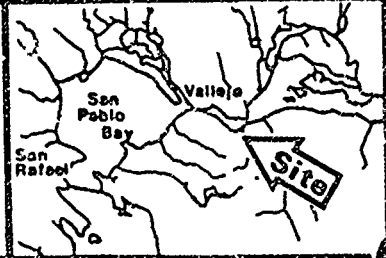
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STATE LANDS COMMISSION

SETTLEMENT PARCEL PLAT

A Portion of USGS Quadrangle
Benicia, P.R. 1980.



Prepared by: D. Crum Date: 3/9/1988 A: 11 S: 7

EXHIBIT B

Title Study MARTINEZ/WHITEHORN & RAVAZINI W 23969

Z3 -N 55-E 152

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