

MINUTE ITEM
This Calendar Item No. C63 was approved as
Minute Item No. 63 by the California State Lands
Commission by a vote of 3 to 0 at its
09-13-07 meeting.

**CALENDAR ITEM
C63**

A 20
S 10

09/13/07
AD527 W 26188
E. Milstein
J. McComas

**APPROVAL OF A COMPROMISE TITLE SETTLEMENT AGREEMENT
CONCERNING APPROXIMATELY 22 ACRES OF LAND IN THE CITY OF NEWARK
AND IN THE CITY OF FREMONT, ALAMEDA COUNTY
PURSUANT TO THE KAPILOFF LAND BANK ACT.**

PARTIES:

Janet O' Connor, as Custodian for Molly O'Connor, under the California Uniform Transfers to Minors Act; Janet O'Connor, as Custodian for Ryan O'Connor, under the California Uniform Transfers to Minors Act; Janet O' Connor, as Custodian for Kyle O'Connor, under the California Uniform Transfers to Minors Act; Bradley O'Connor, as Custodian for Amy O'Connor, under the California Uniform Transfers to Minors Act; Kerry A. O'Connor; Mary Ann O'Connor, as Custodian for Seamus John O'Connor, under the California Uniform Transfers to Minors Act; Mary Ann O'Connor, as Custodian for Timothy J. O'Connor; Mary Ann O'Connor, as Custodian for Chelsea Marie O'Connor, under the California Transfers to Minors Act and Katy S. O'Connor, as Trustee of the Katy S. O'Connor Revocable Trust, dated May 1, 2002

In 2006, an agent for the owners of the O'Connor parcel contacted staff of the State Lands Commission in order to determine whether any State interest exists in this property. Commission staff completed initial studies and determined that the State had an interest in the property due to evidence of the existence of historic tidelands and a slough on the property. It was agreed that a title settlement would be in the best interests of both the State and the O'Connors.

The subject parcel, the location of which is shown on Exhibit A (attached and incorporated by reference), is presently in the record ownership of the O'Connor family. The subject property has been diked-off from and is no longer, if ever, subject to inundation by waters from San Francisco Bay.

The purpose of the proposed settlement is to resolve title to the subject property. The staff of the Commission has completed research of land title records and topography of the site. The research has shown that:

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1. The topographic chart dated 1897 depicts the subject property as filled agricultural land, and a portion of it as tidal slough; and
2. A portion of the subject parcel was located within Swamp and Overflowed Survey (S & O) No. 238 and Tidelands Survey No. 69, Alameda County. Patents were issued in 1862 and 1865 respectively; and
3. Portions of the patented lands may remain subject to a public trust easement. The existence, nature, and extent of remaining sovereign interests in the subject property is disputed by the record owners.

The staff and the record owners have negotiated a proposed settlement of sovereign title interests in the subject property. The proposed settlement is memorialized in a draft agreement now on file in the offices of the Commission in Sacramento. Through the settlement, the State will quitclaim any interest, including any public trust easement interest, in the subject parcel to the O'Connor family, using the authority conferred by Public Resources Code Sections 6307 and 8600-8633. In exchange, the O'Connor family will place the sum of \$20,020 into the Kapiloff Land Bank Fund for the purchase of other land useful for public trust purposes.

The staff has determined the economic value of the state's interest claim within the subject property; has evaluated the evidence relating to the title history of the property; and recommends entry into the settlement at the amount specified here. The settlement will allow development to proceed on a parcel of land that is not useful for public trust purposes, while contributing funds for the purchase of other land that would be useful for public trust purposes.

STATUTORY AND OTHER REFERENCES:

- | | |
|---------------------------|-----------------------------------|
| A. Public Resources Code: | 6307 and 8600, et seq. |
| B. Cal. Adm. Code: | Title 2, Div. 3; Title 14, Div. 6 |

PERMIT STREAMLINING ACT:

N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, Section 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a statutorily exempt project because it involves settlements of title and boundary problems.

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Authority: Public Resources Code section 21080.11

EXHIBIT:

A. Site and Location Map

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTION 2108.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE THE PROPOSED TITLE SETTLEMENT AGREEMENT IN A FORM SUBSTANTIALLY SIMILAR TO THAT NOW ON FILE IN THE OFFICES OF THE STATE LANDS COMMISSION, INCLUDING THE FINDINGS TO TAKE EFFECT UPON THE RECORDING OF THE AGREEMENT WHICH WILL RESULT IN A TERMINATION OF ANY AND ALL SOVEREIGN PROPERTY RIGHTS IN THE SUBJECT PROPERTY.
3. FIND, EFFECTIVE UPON RECORDATION OF THE PROPOSED SETTLEMENT, THAT:
 - A. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTEREST WITHIN THE PARCEL IN WHICH THE PUBLIC TRUST IS TO BE TERMINATED.
 - B. THE AGREEMENT CONSTITUTES A COMPROMISE OF CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED.
 - C. THE AGREEMENT IS ENTERED IN LIEU OF THE COSTS, DELAYS AND UNCERTAINTIES OF LITIGATION AND IS CONSISTENT WITH AND IS AUTHORIZED BY LAW.
 - D. THE EXCHANGE IS FOR ONE OR MORE OF THE PURPOSES LISTED IN SUBDIVISION (C) OF PUBLIC RESOURCES CODE SECTION 6307, SPECIFICALLY TO RESOLVE A TITLE DISPUTE;

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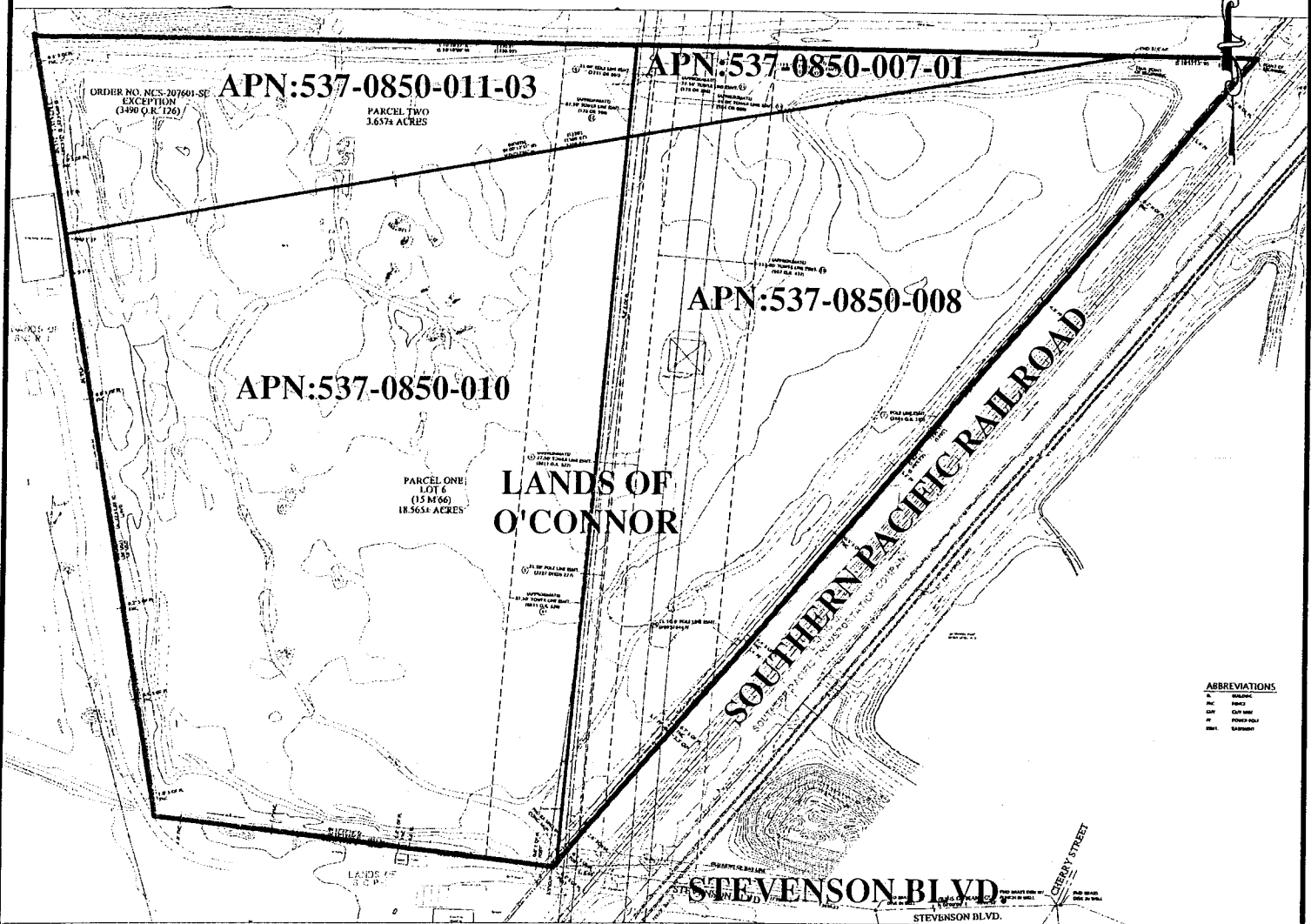
- E. THE LANDS OR INTERESTS IN LANDS TO ULTIMATELY BE ACQUIRED IN THE EXCHANGE WILL PROVIDE A SIGNIFICANT BENEFIT TO THE PUBLIC TRUST;
 - F. THE EXCHANGE DOES NOT SUBSTANTIALLY INTERFERE WITH PUBLIC RIGHTS OF NAVIGATION AND FISHING;
 - G. THE AMOUNT OF FUNDS TO BE DEPOSITED INTO THE KAPILOFF LAND BANK FUND IS EQUAL TO OR GREATER THAN THAT OF THE LANDS OR INTERESTS IN LANDS GIVEN BY THE TRUST IN EXCHANGE, SPECIFICALLY THE VALUE OF SOVEREIGN INTERESTS, IF ANY, IN THE SUBJECT PARCEL IS LESS THAN OR EQUAL TO \$20,020;
 - H. THE LANDS OR INTEREST IN LANDS GIVEN IN EXCHANGE HAVE BEEN CUT OFF FROM WATER ACCESS AND NO LONGER ARE IN FACT TIDELANDS OR SUBMERGED LANDS OR NAVIGABLE WATERWAYS, BY VIRTUE OF HAVING BEEN FILLED OR RECLAIMED, AND ARE RELATIVELY USELESS FOR PUBLIC TRUST PURPOSES; AND
 - I. THE AREA OF THE STATE'S CLAIM IS A RELATIVELY SMALL PARCEL (22+/- ACRES) OF FORMER MARSH NOW LOCATED APPROXIMATELY 4 MILES FROM THE SAN FRANCISCO BAY SHORELINE.
 - j. THE EXCHANGE IS IN THE BEST INTERESTS OF THE STATE.
4. APPROVE RECORDATION ON BEHALF OF THE COMMISSION OF THE FOLLOWING DOCUMENTS:
- A. TITLE SETTLEMENT AGREEMENT IS SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE IN THE OFFICES OF THE COMMISSION.
 - B. A PATENT OR PATENTS OF THE SUBJECT PARCEL IN ALAMEDA COUNTY, DESCRIBED IN THE AGREEMENT AS THE TRUST TERMINATION PARCEL.
5. AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION, ACTING ON ITS OWN BEHALF AND AS TRUSTEE OF THE KAPILOFF LAND BANK FUND, AND THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE

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STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE 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.

NO SCALE

SITE



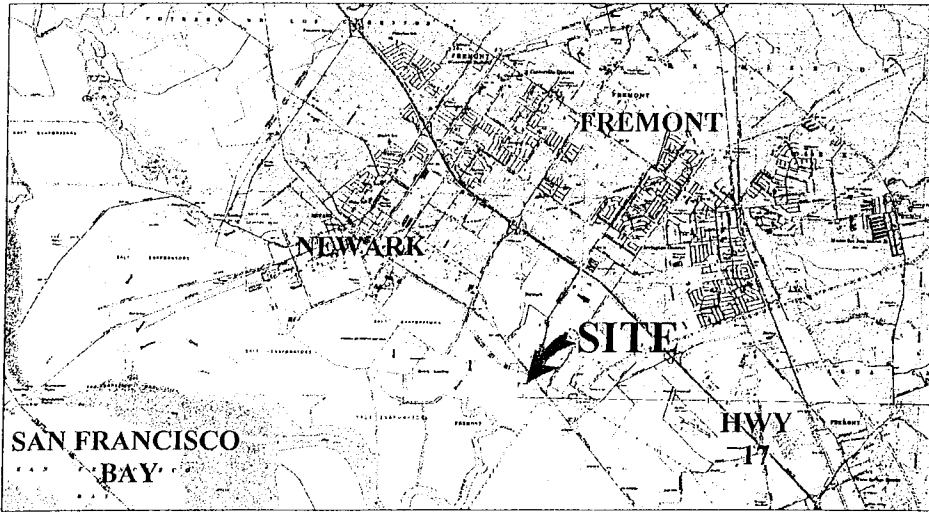
ABBREVIATIONS

X	ENCLOSURE
PC	POWER
SM	STREET
PO	POWER POLE
ST	STREET

Stevenson Blvd., Newark

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

W 26188
 O'CONNOR
 APN:537-0850-008, 537-0850-010,
 537-0850-007-01, 537-0850-011-03
 TITLE SETTLEMENT
 ALAMEDACOUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

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