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SPECIAL MEETING
STATE LANDS COMMISSION

In the Matter of:

CONSIDERATION OF COMPROMISE TITLE
SETTLEMENT AGREEMENT WITH THE
PORT OF OAKLAND

DEPARTMENT OF CONSUMER AFFAIRS

1020 N STREET

ROOM 102

SACRAMENTO, CALIFORNIA

ORIGINAL

WEDNESDAY, MARCH 18, 1981

3:30 P.M.

Michael Appelman, C.S.R.
License NO. 3448

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P R O C E E D I N G S

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3 CHAIRMAN ACKERMAN: Call the special meeting of
4 the State Lands Commission to order.

5 Mr. Northrop.

6 MR. NORTHROP: Mr. Chairman, before we start,
7 Jack Rump is sitting in for Bob Hight today. I think he
8 has a statement he'd like to make.

9 MR. RUMP: For the record, Mr. Jervis is here
10 representing the Controller in non-voting capacity.

11 MR. NORTHROP: And representing the Attorney
12 General is Rick Frank today, which we're pleased to have
13 Rick here.

14 Mr. Chairman, members, we have on the agenda one
15 item, calendar item No. 1, which is a proposed compromise
16 title settlement. And before we get into the item, for
17 the record I would like, as all of us, the commissioners and
18 the staff both have received some communication on this, I
19 think for that reason I'd like to clear the record.

20 I'd like to advise the commission that the staff
21 and the Attorney General advised the Port of Oakland of the
22 probable public trust on the tidelands within the Oakland
23 1911 Trust Grant by correspondance and meetings and telephone
24 conversations going back to July 14th, 1977. There has been
25 one completed title settlement concerning a parcel in the

1 Business Park, which you approved by minute item No. 15 at
2 your September 24th meeting, this settlement including a
3 quitclaim deed from the Port.

4 While the Equitec lease was dated December the 16th,
5 1980, staff did not receive notice until January 1981. And
6 the staff made a response in February 11, 1981. And subsequent
7 to that the executive officer sitting on the B.C.D.C. informed
8 B.C.D.C.'s staff of that problem. It was not until the February
9 the 27th, 1981 that our staff was advised of the March 23
10 deadline,

11 That completes the record, Mr. Chairman. I think
12 Mr. Cook will make the presentation for the staff on this
13 issue.

14 Mr. Cook.

15 MR. COOK: Now, this involves a portion of about
16 9.5 acres of the Oakland Airport Business Park subdivided
17 by the Port of Oakland. It involves an area which was
18 included within the Rancho San Antonio issued to Mr. Peralta.
19 However, it also included a very substantial slough. And
20 based on our evidence, it indicates that there was a landing
21 upstream, so it was certainly a navigable waterway to pass
22 through this particular parcel.

23 The Port of Oakland on several grounds believes
24 that there is no public trust interest, there is no state
25 interest in this particular parcel. They have entered into

1 a bounty line agreement a number of years ago. And in addition,
2 tion, the state's position is based on the result of the
3 Carmen-Ryles case, which is presently on appeal in southern
4 California. The state taking the position that the tide-
5 lands within Rancho did not pass free of the public trust,
6 and that there was that trust reserved.

7 The questions are certainly not clear cut. The
8 questions are certainly subject to dispute, and they're
9 certainly subject to several different alternate, perhaps,
10 interpretations. We feel, however, that they're sufficient
11 here to justify a disclaimer on the part of the state.

12 The Port actually leased the parcel to a party
13 called Equitec 79. The lease was for a term of 66 years.

14 Assuming that there is a public trust easement in
15 this parcel, the Port was granted by the legislature in 1911
16 all tidelands within this portion of the city limits. As
17 a result, if there is a state-reserved easement, it would
18 have been in the Port as a legislative trust grantee. The
19 trust grant had a specific provision that leases could not
20 be issued beyond 25 years with a 25-year renewal.

21 With this problem, the Port has advised us and we
22 have substantial information to the effect that this particular
23 office building which is to be constructed on this parcel
24 under this lease would employ large numbers of people
25 and will be a major asset to the City of Oakland and a major

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1 asset to the Port, and that it is, in fact, part and parcel of the
2 airport complex. As such, we, attempted to work out what
3 we felt would be a satisfactory solution.

4 We're recommending, first, that with respect to the
5 question of whether this is in the trust grant, that the
6 Port quitclaim any right they might have in the trust
7 grant back to the State of California.

8 In turn, the State of California would issue a pat-
9 ent to the 9.5 acre parcel reserving a public trust ease-
10 ment over approximately 50,000 square feet in the upper
11 corner of this parcel at the proximity of this historic
12 slough. That, in turn, the state make the determination
13 that this particular construction work is a part and parcel
14 of the Port, and that it is not unduly interfering with the
15 public trust easement; and that the State Lands then would
16 approve the terms of this particular lease for the use of
17 this parcel for this lease for the term of 66 years, a very
18 long lease. In any event, that would be the solution.

19 Now, in addition to that, perhaps it would be in
20 the future in the best interest of both the state and the
21 Port and perhaps the lessee that whatever rights there be
22 in this parcel, that they be removed by exchange; that is
23 that the state's interest in this particular parcel be
24 given up in exchange for other land if we find suitable
25 land. At the present time we have no land available; the

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1 city had no land. We had no time to really locate another
2 parcel of land.

3 So we have an option. It's actually for a ten-
4 year period for this exchange. It's at the option of either
5 the state or the Port to enter into this exchange when a
6 parcel is found. If the exchange comes about, this trans-
7 action would be very similar to all the other transactions
8 we have been entering into, and it would be similar to the
9 transaction we've already entered into with the American Protective
10 Service in this very same industrial park last fall.

11 And so basically this is the solution that we have
12 come to, and we feel confident that we can recommend this
13 to the commission. There certainly are problems. There
14 are problems that the people have to start work apparently
15 on the 23rd. We have to close escrow by the 23rd. There
16 are lots of those things.

17 In any event, we feel that this is proper. We feel
18 that this is in the best interests of the state, consistent
19 with law. And we certainly recommend that the commission
20 favorably consider our proposal.

21 By the way, I should point out, and this is for the
22 benefit of the title company, basically this first phase of
23 this agreement is in the nature of a boundary agreement.
24 The historic slough passes through this upper corner of the
25 parcel. The only difference being we have somewhat squared

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1 it off. In trying to match up 1858 maps and present-day
2 maps, it's always anybody's guess, and it's always a pos-
3 sibility of some slight movement. But the line we think
4 is consistant with the Muchen Berger case which relatively
5 closely approximates the location of the slough.

6 CHAIRMAN ACKERMAN: I've heard of that case before.

7 MR. COOK: In any event, although title doesn't
8 say it specifically, that basically this is in the nature
9 of a bounty line agreement in the first phase.

10 CHAIRMAN ACKERMAN: At this point I think maybe
11 it would be appropriate -- I imagine there are members of
12 the audience both representing the City of Oakland and
13 Equitec. I think it would be appropriate for them to come
14 forward to indicate their response or any problems they
15 have with the staff recommendations.

16 You can just come forward and identify yourself
17 for the record.

18 MR. CLARK: My name is Tom Clark. I'm Deputy Port
19 Attorney for the Port of Oakland, the City of Oakland.

20 We naturally concur with Mr. Cook's recommendation
21 that you approve this agreement. We appreciate very much
22 the expedition that the staff for the commission has shown
23 in working this agreement out with us.

24 I would like to emphasize one thing a little further
25 that Mr. Cook just spoke about, and that is that this

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1 agreement does constitute an agreement on the boundaries of
 2 what is claimed to be this old slough, and it is the result
 3 of a bona fide attempt by all the parties to locate the
 4 actual, true, natural location of that boundry. And I
 5 noticed that in the agenda of the calendared item itself
 6 there is not an express finding that this is a fixing of
 7 the boundry. And I would request that you make it a part
 8 of your finding, that this is a fixing of the boundry, and
 9 that it has resulted from a bona fide, good faith effort
 10 by the parties to find the actual, true, natural boundry.

11 CHAIRMAN ACKERMAN: On advise of counsel, is there
 12 any problem in including that language? Can we approve
 13 that in spirit and have you draft up the appropriate lang-
 14 uage, or would you recommend that we pick specific wording
 15 right now?

16 MR. CLARK: I would refer, if I could, to the
 17 agreement itself. The agreement itself contains the lang-
 18 uage. It's just that it wasn't in the calendared item
 19 itself. And I wanted to make sure there was no misunder-
 20 standg of what was contained in the agreement.

21 MR. NORTHROP: It would appear, Mr. Clark, that in
 22 view of the fact that it's on the record of this hearing,
 23 do you feel it's essential that it be a part of the minute
 24 item? If it is, we certainly see no reason why the commis-
 25 sion couldn't make that finding if they so desired. But if

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1 you want to, we can add that -- or recommend --

2 MR. CLARK: I would make that request just so there
3 is no ambiguity or uncertainty in the record.

4 COMMISSIONER MORGAN: Now that we're all in agree-
5 ment, would you please restate what it is you want?

6 MR. CLARK: Yes. I would like to have the commis-
7 sion find that the location of the state's public trust
8 easement as reflected in the proposed agreement is the
9 result of a bona fide effort by the Port of Oakland, City
10 of Oakland, and also by the State Lands Commission to
11 locate the true, natural boundaries of the claimed state
12 tideland in this parcel.

13 CHAIRMAN ACKERMAN: Any other questions? John?

14 COMMISSIONER JERVIS: No. Fine.

15 CHAIRMANIN ACKERMAN: Is there a staff problem
16 with including that language as part of the recommendation?

17 MR. NORTHROP: No, sir.

18 CHAIRMAN ACKERMAN: I just have one question. It
19 gets back to another case we were on several months ago.
20 We had a special meeting involving that case too, and it
21 involved a rather large settlement down in the Long Beach
22 area to where we got involved with a private company
23 appearing to negotiate and pursue things in good faith and
24 then getting caught between two public agencies. In this
25 case it was the City of Long Beach and the State Lands

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1 Commission. And it was really kind of holding up what a
2 private firm's good faith effort was on a contractual
3 arrangement.

4 I got a phone call a week ago expressing the same
5 concern here that Equitec was not made aware that there
6 seemed to be some actual interest in the State Lands
7 Commission staff of a vested interest here.

8 I don't know if this the appropriate forum to do
9 this, but I sure hope we don't get a third case like this
10 coming back because it seems to cause all sorts of problems
11 where a private investor who is exercising everything on
12 their part in good faith, and then suddenly a problem comes
13 to their attention that they weren't even aware of, where
14 the state, we're acting in good faith. But maybe the staff
15 in these points can maybe make a little extra effort, even
16 though it's not our responsibility I don't think, but make
17 an extra effort to make sure that all parties involved in
18 cases such as this are aware that the state, in fact, does
19 have interest.

20 Is that appropriate, Bill?

21 MR. NORTHROP: Yes, I think it probably is. We
22 attempt to raise it. I was accused of clouding title, but
23 I don't know how else I could have done it in this issue.

24 CHAIRMAN ACKERMAN: After that B.C.D.C. meeting is
25 when the phone starting ringing.

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1 MR. NORTHROP: It was a meeting that I knew the
2 subject two days before the meeting that there was a
3 problem, and I was disappointed that we had to do it that
4 way. We will take steps. We don't know what they are, but
5 we'll try to figure out some way to notify the grantee of
6 this problem.

7 COMMISSIONER MORGAN: Since you raised the question,
8 the appropriate person it seems to me is the Port since our
9 staff tells us that the Port was notified two years ago,
10 maybe a little longer ago, about the fact that there was
11 some question of violating the public trust.

12 MR. CLARK: That can obviously become a long
13 question. I don't know whether it's appropriate to get
14 into all the details today. The other cases that arose
15 arose in a different part of the park, involved a different
16 slough. We were provided maps of that slough area, not of
17 the slough area that's involved today.

18 I suppose in hindsight a lot of the parties might
19 have done a lot of different things. Title companies might have
20 written different preliminary title reports.

21 The best I can say is we're made obviously very
22 much aware of the problem now, and we're going to be very,
23 very much more careful before we enter into business
24 arrangements with private parties in the future.

25 MR. NORTHROP: Because we're prepared, the staff

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1 commission is prepared to move at all deliberate speed to
2 get these things done. I think today's exercise and the
3 previous exercises are examples of where we stop everything,
4 that section came to a grinding halt until we finished this
5 problem because we felt that we had entrepreneur who had
6 done what he thought was right and now was running into a
7 problem, and we were doing everything we could to clear it.

8 CHAIRMAN ACKERMAN: Another one of my concerns is
9 it seems to be this is the second instance where we've
10 gotten into a confrontation between two levels of govern-
11 ment and a private entrepreneur who is acting in good faith
12 and has got caught in the middle of it through no fault of
13 their own.

14 MR. NORTHROP: Mr. Chairman, off the record.

15 (Thereupon a short discussion was held
16 off the record.)

17 CHAIRMAN ACKERMAN: Are there other individuals in the
18 audience from Equitec who would care to address the commis-
19 sion?

20 Yes, sir. If you'd identify yourself.

21 MR. SPIELBERG: David Spielberg of Orrick,
22 Herrington & Sutcliffe, attorney for Equitec 79.

23 I would like to first thank the commission for its
24 efforts thus far to resolve any problem. The one point I
25 would like to bring to your attention is that we are only

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1 part way through it at this point. The resolution that we
2 have allows construction to proceed, but the trust interest
3 still remains as to a portion of the property. And there
4 is an intent to consummate an exchange of this for other
5 property that may at the current time be more useful for
6 trust purposes. I hope we will proceed with as much speed
7 as possible getting that exchange resolved so that by the
8 time construction is completed and problems with primary
9 financing and leasing of office space arise, that we will
10 have clear title to the entire parcel and won't have any
11 other problems left to resolve.

12 CHAIRMAN ACKERMAN: The way I understand it it's
13 a ten-year time limit to consummate the exchange.

14 MR. SPIELBERG: There is, that's correct. But we
15 just hope that the exchange will proceed a great deal quicker
16 than ten years. Hopefully as soon as the state can locate appropriate
17 exchange property, maybe within a matter of months if
18 at all possible.

19 MR. RUMP: If I may, from the staff's point of
20 view, make a request that all parties concerned, if they can
21 locate a satisfactory parcel, we would certainly appreciate
22 their assistance. It's rather difficult finding a satisfactory
23 exchange parcel. Hopefully we will have another land
24 bank soon, and hopefully this can be resolved in a very short
25 period of time if everything works correctly. The ten-year

1 limit is merely an outside shot.

2 CHAIRMAN ACKERMAN: It's a little long.

3 MR. RUMP: It is long, and perhaps it could have
4 been shorter.

5 CHAIRMAN ACKERMAN: What's the assessed value of
6 the state's interest?

7 MR. RUMP: Thirty-one thousand, five hundred dollars.

8 CHAIRMAN ACKERMAN: Exchange what, two or three
9 square feet?

10 MR. RUMP: Actually that represents approximately
11 it does represent 30 percent of the market value of the particu-
12 lar parcel, discounting and taking into consideration the
13 fact that the state's case would have some uncertainties
14 involved, and, in addition, that the state would have a
15 public trust easement which would not be the entire value
16 of the parcel. We calculated and evaluated that on that
17 kind of a basis, which is standard, the standard practice.
18 The prior settlement that we had in this area was, I think,
19 on the basis of 25 percent. And we felt that in this particular
20 instance that perhaps the facts were ~~unfavorable~~ favorable toward
21 the state ownership.

22 We still are faced with the uncertainty of the
23 ultimate appeal in the Carmen-Ryles case. It may turn out that
24 the state in effect didn't have anything in this parcel.
25 It's possible. But on the other hand, it could be the other

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1 way, too.

2 CHAIRMAN ACKERMAN: What if an exchange is consum-
3 mated and the case is actually decided that the state didn't
4 have an interest? Do you go back and undo the exchange or
5 is that water under the bridge?

6 MR. RUMP: No, sir. Basically the settlement is
7 in lieu of litigating this particular parcel. And the issues
8 are not identical. In fact, the issues in Carmen-Ryles
9 are somewhat more conducive toward the public trust because
10 it's open water. This is filled area.

11 But irrespective of that, the settlement is being
12 done as of now. The settlement is a completed agreement.
13 We can be proved wrong or we can be proved right. And we're
14 trying to determine what our best judgement is as to the
15 ultimate results of this.

16 Now, if we lose the Carmen-Ryles case, I think
17 that certainly should not jeopardize the state's title in
18 this area and should not jeopardize this agreement.

19 CHAIRMAN ACKERMAN: I agree with that.

20 MR. SPIELBERG: We are just anxious to get this
21 resolved so we can get title.

22 CHAIRMAN ACKERMAN: I understand your situation
23 very clearly.

24 Are there other parties in the audience that wish
25 to speak to the issue?

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1 Yes, sir. Come forward and identify yourself.

2 MR. DAVIES: Sure. Thank you. I'm Dean Davies,
3 president of Equitec properties company, one of the people
4 responsible for this project.

5 I'd just like to reinforce what our counsel has
6 said. In addition, we are very pleased with the efforts of
7 both the Port and the State Lands Commission to resolve this
8 issue. The issue is not completely resolved. As you know,
9 title is a complicated matter. And we're not going to get
10 the title insurance that we desire on the property. However,
11 that is not saying that this phase one agreement does not allow us
12 to move on. And we are going to move on next Monday and provide,
13 we hope, 2500 jobs to some people who need it.

14 For the record, I would like to have Mr. Ackerman
15 and the staff know that we advised the State Lands Commission
16 as early as May 5th, 1980 of our intentions on this parcel.
17 And, in fact, worked with the B.C.D.C. staff through the
18 fall and up to, of course, the B.C.D.C. hearing.

19 We're just happy we can move on and get this behind
20 us. And we're prepared to go elsewhere, but we think we're
21 going to stay where we're at and do it. Thank you.

22 CHAIRMAN ACKERMAN: I'm pleased for that.

23 Is there anyone else in the audience that wishes to
24 address the commission on the item before us?

25 Any question from any of the commissioners on the

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1 recommendation?

2 COMMISSIONER MORGAN: I want to ask whether this
3 commission would have any involvement in the long-term lease.

4 MR. RUMP: Only to the extent that the commission
5 determines that the uses under this long-term lease are not
6 unduly interfering with the public trust needs of this
7 particular parcel considering the conditions of this particular par-
8 cel that's surrounded by industrial development, etc.

9 CHAIRMAN ACKERMAN: Does that lease have to come
10 back before the commission for final approval?

11 MR. RUMP: No. The lease is not being approved
12 formally by the commission. It's merely being determined
13 that the uses under the lease -- that the commission will
14 not and certainly is in effect barred by the contract from
15 attempting to interfere with the use of this parcel for this
16 particular office building under the terms of the lease for
17 66 years.

18 CHAIRMAN ACKERMAN: John, do you have any questions?

19 COMMISSIONER JERVIS: No.

20 COMMISSIONER MORGAN: How about you?

21 CHAIRMAN ACKERMAN: I think I've already asked mine.

22 I again express my satisfaction for the staff's
23 effort in this area. I know what happens, and we've had
24 several of these before, where we just pull the staff off
25 whatever assignments they're on to facilitate and expedite

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1 the matter. I hope we don't have too many more occurrences,
2 but I have to say if and when you do, that the effort put
3 forth is admirable. I think it's appreciated by both the
4 public and private sectors.

5 I'll entertain a motion.

6 COMMISSIONER MORGAN: I'll move approval.

7 CHAIRMAN ACKERMAN: It's moved by Miss Morgan.

8 COMMISSIONER MORGAN: The motion will incorporate
9 the language suggested relating to the true, natural boundry.

10 CHAIRMAN ACKERMAN: The motion is accepted as being
11 in order. I will second the motion.

12 All those in favor say aye?

13 (Ayes)

14 CHAIRMAN ACKERMAN: Not hearing any other comments,
15 the item will be deemed approved, and the meeting is
16 adjourned.

17 (Thereupon the State Lands Commission meet-
18 ing was adjourned at 3:58 P.M.)

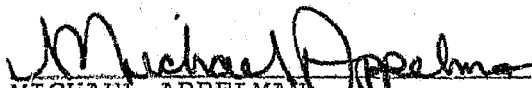
CERTIFICATE OF SHORTHAND REPORTER

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2
3 I, Michael Appelman, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

5 That I am a disinterested person herein; that
6 the foregoing State Lands Commission meeting was reported
7 in shorthand by me, Michael Appelman, and thereafter
8 transcribed into typewriting.

9 I further certify that I am not of counsel or
10 attorney for any of the parties to said meeting, nor in
11 any way interested in the outcome of said meeting.

12 IN WITNESS WHEREOF, I have hereunto set my hand
13 this 13th day of April, 1981.

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17 
18 MICHAEL APPELMAN
19 Certified Shorthand Reporter
20 License No. 3448
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