

MINUTE ITEM

This Calendar Item 33  
 was approved by the Board  
 No. 33 on the 3 de Lands  
 Committee by a vote of 3  
 to 0 at its 8/31/78  
 meeting.

CALENDAR ITEM

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PRE-EXCHANGE ESCROW

In 1976, condemnation litigation was initiated in the Alameda Superior Court No. T2-481, 340-4 by the City of Union City concerning certain lands located within a proposed realignment of Union City Boulevard. Along with putative title claimants, Todicio and Bernie C. Ortiz ("Ortiz") the State of California was named as a defendant based on a title report showing an interest in the State of California in the lands within the proposed right-of-way comprising the former bed of Alameda Creek, a tidal, navigable waterway since filled and no longer available for navigation. There are other similar condemnation cases between Union City and other parties involving the same general area between Union City and other parties where the State is also named as defendant. The Ortizes cross complained against the State seeking to quiet title to their entire parcel ("Ortiz parcel") only a portion of which was involved in the condemnation litigation.

The Ortizes claim title free of any State interest on the ground that they are successors in interest to the claimed owners of lands within the bed of Alameda Creek. The Ortiz parcel is between or partially within 2 ranchos.

The State's claim of ownership is based on the fact that the rancho surveys in the area meandered the banks of Alameda Creek, that Alameda Creek was both tidal and navigable and therefore came to the State as an incident of its sovereignty. The State has made no conveyance of its interest in Alameda Creek.

Alameda Creek at the location of the Ortiz parcel has become filled and reclaimed from navigation. The channel is no longer perceptible on the ground although aerial photographs show the channel in certain areas but not at the location of the Ortiz parcel.

An agreement has been reached as to the dollar value of the State's interest in the bed of Alameda Creek at the location of the Ortiz parcel with the Ortizes' title company, San Francisco Bay Title Company, and its insurer, St. Paul Insurance Company. Mr. Ortiz claims fee ownership of .36 acres also claimed by the State. The value of sovereign claims is \$39,204.

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CALENDAR ITEM NO. 33. (CONTD)

An exchange has been proposed in accordance with P.R.C. Section 6307. In accordance with such section the Commission would make the requisite findings and patent and quitclaim its interest in the Ortiz parcel. In return, the State will receive a deed to suitable exchange property.

The Ortizes now desire to withdraw the deposit in the condemnation action made by the City of Union City as security for the value of the property taken in the condemnation proceeding. The deposit is \$30,500. San Francisco Bay Title and St. Paul Insurance Company are willing to convey \$39,204 into an escrow account to act as security for the State's interest in the Ortiz Parcel so that the State would withdraw its objection to the Ortiz withdrawal of the security deposit and enter its approval of such withdrawal.

The Ortizes, whose property has been in the possession of Union City since 1976 without payment of compensation, have been patient and cooperative in the proposed settlement.

At the present time there are no exchange parcels available. However, there are several prospects in the near future for such parcels to become available for purchase by the Ortizes to complete the exchange.

During the interim it is proposed that an escrow be created for the funds for such purchase to be deposited to be used only for the purchase by the Ortizes of suitable exchange property acceptable to the State Lands Commission and for no other purpose. Since it is not now possible to find an exchange parcel, authorization is sought to hold these funds in escrow pending the discovery of a suitable exchange parcel, that the escrow be in an interest bearing form and that such interest inure to the benefit of San Francisco Bay Title and St. Paul Insurance Company and that the State have no responsibility for the costs of such escrow.

The proposed escrow will allow the resolution this very complex and fractious lawsuit. It will show the good faith of the Commission in allowing the Ortizes to withdraw the deposit when agreement has been reached as to valuation of exchange lands and awaits only the selection of lands suitable to the Commission for exchange purposes in accordance with P.R.C. Section 6307. At this time the Commission is asked only to allow the withdrawal of funds from the condemnation action not to disclaim its property interest.

CALENDAR ITEM NO. 33. (CONTD)

IT IS RECOMMENDED THAT THE COMMISSION:

1. APPROVE THE ENTRY INTO AN ESCROW AGREEMENT BY THE ATTORNEY GENERAL OR STATE LANDS COMMISSION STAFF CONCERNING THE ACCEPTANCE OF \$39,204 IN EXCHANGE VALUE FOR THE STATE'S INTEREST IN THE ORTIZ PARCEL, THE PURPOSE OF SUCH ESCROW BEING THAT SUCH FUNDS BE USED BY THE ORTIZES TO PURCHASE A PARCEL OF SUITABLE LAND ACCEPTABLE TO THE STATE LANDS COMMISSION OF EQUAL VALUE IN ACCORDANCE WITH P.R.C. SECTION 6307.
2. AUTHORIZE THE ATTORNEY GENERAL TO WAIVE THE OBJECTION OF THE STATE TO THE RELEASE OF FUNDS DEPOSITED BY THE CITY OF UNION CITY IN CONNECTION WITH THE ORTIZ PARCEL LITIGATION WITHOUT DISCLAIMING ANY RIGHT, TITLE OR INTEREST OF THE STATE IN THE ORTIZ PARCEL.