

MINUTE ITEM

This Calendar Item No. 32
is a 3 Minute Item
of 3 State Lands
at its 9/28/83
meeting.

MINUTE ITEM
32.

9/28/83
W 22171
SLL 109
Valentine

APPROVAL OF A COMPROMISE TITLE SETTLEMENT
AGREEMENT CONCERNING LANDS IN
BELMONT, SAN MATEO COUNTY

During consideration of Calendar Item 32, attached, the following people appeared in:

SUPPORT

Robert G. Bezzant, Director, Department of Public Works,
City of San Mateo
Kenneth M. Dickerson, City Attorney, City of Belmont
Bill Moore, Mayor, City of Belmont
Karen Miller, U. S. Fish and Wildlife Services
Steve Salkind, Area Director, American Youth Soccer
Organization
Tom Adams, Adams, Broadwell and Russell, Attorneys for Kumam
Corporation

OPPOSITION

David C. Bomberger, Citizens for Orderly Growth
Gary Orton, Citizens for Orderly Growth
Lida F. Paetzke, Citizens for Orderly Growth

The Director of the San Mateo Department of Public Works appeared to suggest an amendment to ensure the unconditional removal of the culvert in the bed of O'Neill Slough to permit year-round free flow of tidal action to assure water quality to the adjacent lagoon.

After lengthy testimony and discussion on this matter, and upon motion made by Commission-Alternate Ordway and seconded by Commission-Alternate Jervis, the resolution in Calendar Item 32 was approved as presented by a vote of 3-0.

Attachment: Calendar Item 32.

CALENDAR PAGE	_____
MINUTE PAGE	<u>2276</u>

CALENDAR ITEM

32 4

9/28/83
W 22171
Valentine
SLL i09

APPROVAL OF A COMPROMISE TITLE SETTLEMENT AGREEMENT
CONCERNING LANDS IN BELMONT, SAN MATEO COUNTY

A title dispute exists between the City of Belmont and the State, acting through the State Lands Commission. At issue is ownership of a 20-acre parcel of land located in Belmont, San Mateo County. The owner of record is the City of Belmont. The property is just east of the Bayshore Freeway near Ralston Avenue. It is depicted on the attached plat.

The land was originally conveyed by the State to the City's predecessors in interest by patents issued pursuant to surveys of what was purportedly swamp and overflowed land. This characterization of the land was made notwithstanding the fact that in a natural condition the property was crossed by O'Neill Slough, then a tidal and navigable waterway of the State. Due to the existence of this waterway within the parcel, staff asserts that approximately six acres of the property are owned by the State in fee while claims of a public trust easement exist over other portions of the parcel. While not officially concurring in staff's analysis, the City, through its City Manager and elected officials, has entered into discussions with a view toward resolution of the dispute. The City has proposed settlement of the dispute in accordance with the following general terms. The area over which the majority of the State's sovereign fee claim exists would be developed as a public park and recreation area including athletic fields, landscaping, bike and pedestrian paths and benches along the present site of O'Neill Slough.

O'Neill Slough is not presently subject to full tidal action due to blockage in the slough. The City proposes to enhance the slough for recreational and ecological purposes and the City of San Mateo has requested that the slough be opened up to facilitate its possible use for flood control purposes. To accomplish these goals, obstructions to the natural flow of water through O'Neill Slough, including a collapsed culvert at the settlement parcel, will be removed unless staff of the Commission. 1) is made aware of clear and convincing evidence that to do so would cause flooding of the existing roadbed of Highway 101; or 2) is informed by the Endangered Species Office of the United States Fish and Wildlife Service that to do so would result in the

A 20

S 8

-1-

Added 9/27/83

CALENDAR PAGE	269
MINUTE PAGE	2277

destruction of specific endangered species inhabiting properties adjacent to O'Neill Slough in the immediate vicinity of or on the settlement parcel. The City of Belmont would convey to the State the public trust easement in the park ("Public Trust") parcel. The underlying fee to this park/recreational complex would then be quitclaimed by the State to the City of Belmont after staff approval of plans for development of the park complex. Staff and the City would agree to a mutually acceptable location of the 100-foot wide right-of-way across O'Neill Slough as previously granted, but not placed, pursuant to BLA 169.

In addition, a public agency permit would issue to the City of Belmont to cross O'Neill Slough with the 100-foot wide right-of-way.

The southerly portion of the parcel, over which staff has asserted at least a public trust easement claim, would be cleared of State interest in exchange for payment of \$90,000 into the land bank trust fund, of which the Commission is the trustee. All property involved in the proposed transaction has been filled except for the present bed of O'Neill Slough which the State owns and would retain in fee. The property to be cleared of State interest and the park, with the exception of the present O'Neill Slough, has been filled, reclaimed and removed from the public channels. The settlement parcel has been appraised and the strength of the State's claim of ownership has been analyzed by legal staff. Staff has concluded that the State will receive land or interest in land equal to or greater than the value of the land or interests being terminated pursuant to this agreement.

At its April 28, 1983 meeting, by Calendar Item 26, the Commission was asked by citizens of the City of Belmont to authorize staff to conduct a public hearing in Belmont on whether: (1) the proposed park development is the most appropriate public trust use for the State's claimed fee ownership; and (2) the proposed settlement is in the best interest of the State. Staff conducted the public hearing at the Belmont Council Chambers on May 17, 1983. Opinions, both oral and written, were received by staff. A certified shorthand reporter transcribed the oral comments.

The majority of those expressing opinions at the public hearing favored the park and hotel development, although some concern was expressed about the placement and traffic capacity of a road from Ralston Avenue through the parcel. The road will also serve an adjoining 45 acres, cleared of State sovereign interest by BLA 169, which has been

CALENDAR PAGE	269.1
DATE PAGE	2278

CALENDAR ITEM NO. 32 (CONTD)

proposed for residential development and which is not owned by the City.

After studying the record and reflecting on the issues raised in the public hearing, staff recommends that the proposed park/recreational complex is consistent with the State's public trust ownership of this parcel and that the settlement is in the best interest of the State.

AB 884: N/A.

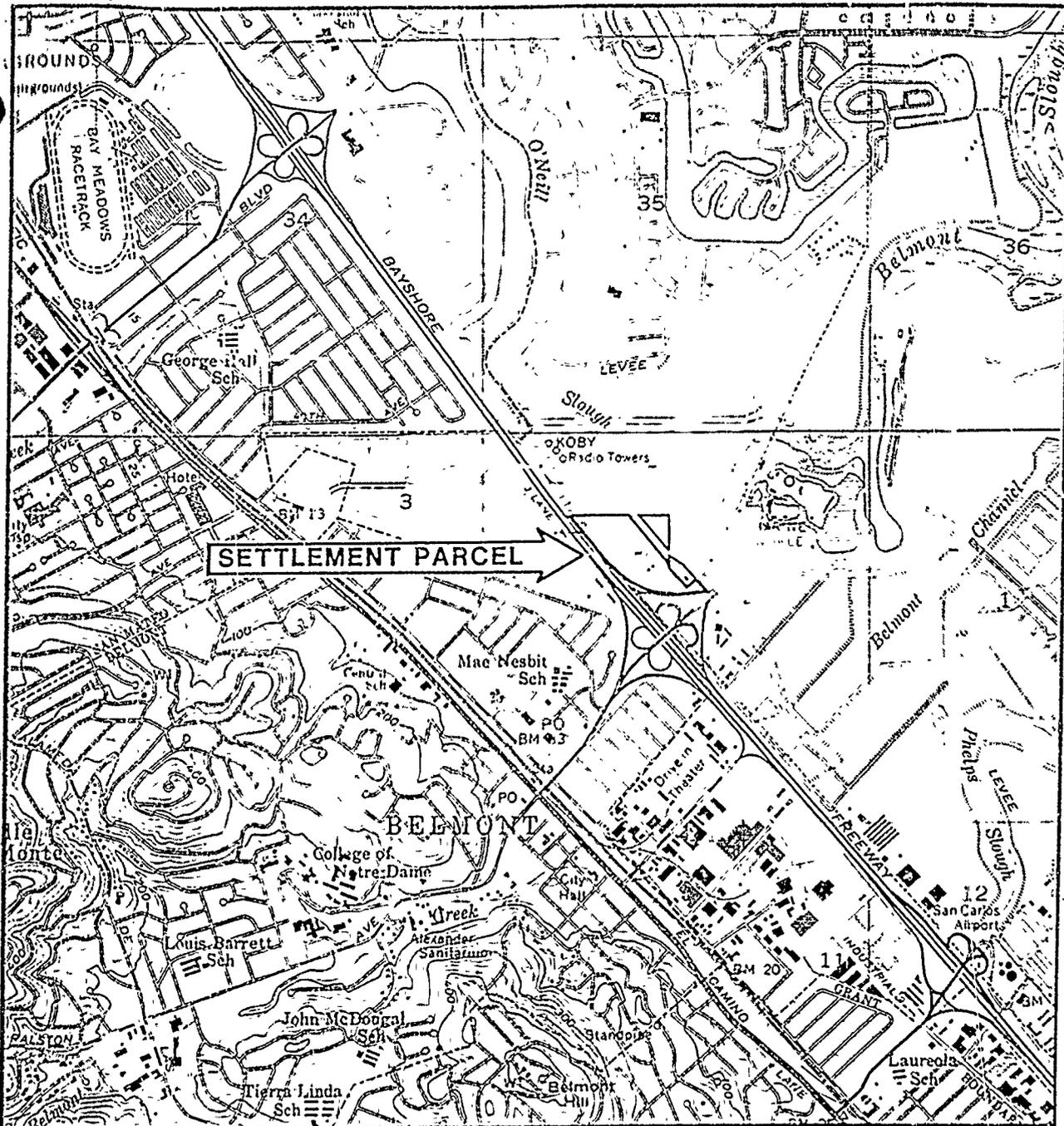
EXHIBIT: A. Plat of Settlement Parcel.

IT IS RECOMMENDED THAT THE COMMISSION:

1. APPROVE THE EXCHANGE IN SETTLEMENT OF THIS DISPUTE AS PROPOSED AND AUTHORIZE THE EXECUTION OF THE COMPROMISE SETTLEMENT AGREEMENT SUBSTANTIALLY IN THE FORM ON FILE IN THE OFFICE OF THE COMMISSION. THE AGREEMENT IS INCORPORATED HEREIN BY REFERENCE.
2. FIND THAT THE PROPOSED COMPROMISE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST IN THE TRUST TERMINATION PARCEL FOR MONIES TO BE USED TO ACQUIRE AN EXCHANGE PARCEL, IS IN THE BEST INTERESTS OF THE STATE, FOR THE IMPROVEMENT OF NAVIGATION, FOR FLOOD CONTROL PROTECTION, AND TO ENHANCE THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND UPLAND; THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING; AND THAT THE STATE WILL RECEIVE LANDS AND INTERESTS IN LANDS EQUAL TO OR GREATER IN VALUE THAN ANY LANDS OR INTERESTS IN LANDS RELINQUISHED BY THE STATE PURSUANT TO SAID COMPROMISE SETTLEMENT AGREEMENT.
3. FIND THAT THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE RESPECTING THE PRIVATE-STATE TITLES WITHIN THE SUBJECT PROPERTY; THAT THE PROPOSED COMPROMISE SETTLEMENT AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND FACT UPON WHICH THE DISPUTE IS BASED; THAT THE SETTLEMENT IS IN LIEU OF THE COSTS, DELAYS AND UNCERTAINTIES OF TITLE LITIGATION; THAT SETTLEMENT IS CONSISTENT WITH AND IS AUTHORIZED BY THE REQUIREMENTS OF LAW, AND THE STATE'S POWER TO RESOLVE AND SETTLE CONTROVERSIES IN LIEU OF LITIGATION.
4. FIND AND DECLARE THAT UPON THE DELIVERY OF THE PATENT AND ITS RECORDATION IN SAN MATEO COUNTY THE TRUST TERMINATION PARCEL HAS BEEN IMPROVED, FILLED AND RECLAIMED; HAS

BEEN CUT OFF FROM THE PUBLIC CHANNELS AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING; IS NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS; AND THEREFORE SHALL BE FREED FROM THE PUBLIC TRUST FOR NAVIGATION AND FISHING.

5. FIND THAT BECAUSE THIS TRANSACTION IS IN SETTLEMENT OF A TITLE DISPUTE THE PROVISIONS OF CEQA ARE INAPPLICABLE (P.R.C. SECTION 21080.11).
6. AUTHORIZE ACCEPTANCE OF THE CONVEYANCE TO THE STATE OF THE PUBLIC TRUST EASEMENT IN THE PUBLIC TRUST PARCEL AS TIDE AND SUBMERGED LANDS SUBJECT TO THE PUBLIC TRUST, AND AUTHORIZE EXECUTION OF A CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDING OF SAID CONVEYANCE.
7. AUTHORIZE ISSUANCE OF A PATENT OF THE TRUST TERMINATION PROPERTY IN SAN MATEO COUNTY, CALIFORNIA, FREE OF THE PUBLIC TRUST AND AUTHORIZE ISSUANCE OF A PATENT OF THE UNDERLYING FEE AT THE PUBLIC TRUST PARCEL.
8. AUTHORIZE THE STAFF OF THE STATE LANDS COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY OR APPROPRIATE TO IMPLEMENT THE ABOVE SETTLEMENT, INCLUDING BUT NOT LIMITED TO THE EXECUTION, ACKNOWLEDGEMENT AND RECORDATION OF ALL DOCUMENTS OF TITLE, CONVEYANCES, STIPULATIONS, ESCROW INSTRUCTIONS, AGREEMENTS, CERTIFICATES OF ACCEPTANCE, AND COURT DOCUMENTS; AND TO FILE ANY DOCUMENTS AND APPEAR IN ANY LEGAL PROCEEDINGS NECESSARY OR REQUIRED TO ACCOMPLISH THE TERMS AND PROVISIONS OF THE COMPROMISE SETTLEMENT AGREEMENT.
9. AUTHORIZE STAFF OF THE STATE LANDS COMMISSION TO REVIEW AND EITHER APPROVE OR DISAPPROVE DEVELOPMENT PLANS FOR THE PARK/RECREATIONAL COMPLEX ON THE PUBLIC TRUST PARCEL AND TO LOCATE A 100-FOOT WIDE VEHICULAR AND UTILITY ACCESS ACROSS O'NEILL SLOUGH OVER STATE-OWNED SOVEREIGN LANDS.
10. FIND, UPON STAFF REVIEW AND APPROVAL OF THE PLANS FOR DEVELOPMENT OF THE PUBLIC TRUST PARCEL, THAT THE PUBLIC PARK AND RECREATIONAL COMPLEX AS PROPOSED, IS CONSISTENT WITH THE STATE'S SOVEREIGN OWNERSHIP OF THE PUBLIC TRUST EASEMENT.
11. AUTHORIZE STAFF TO ISSUE A PUBLIC AGENCY PERMIT TO ALLOW A 100-FOOT RIGHT-OF-WAY TO CROSS O'NEILL SLOUGH IN THE VICINITY OF THE SETTLEMENT PARCEL.



SETTLEMENT PARCEL →

STATE LANDS COMMISSION
SETTLEMENT PLAT
 PORTION OF U.S.G.S. QUAD
 SAN MATEO, REVISED 1980
 PLOTTING APPROXIMATE



Prepared by: R.L. BELL Date: 9-13-83 A: 20 S: 8

EXHIBIT

Title Study: BELMONT ISLAND PARK W22171

Z3 N37-38 E148

Added 9/27/83

CALENDAR PAGE	269.4
MINUTE PAGE	2281