MINUTE ITEM
This Calendar Item No. 33
was approved as Minute Item
No. 33 by the State Lands
Commission by a vote of 3
to 0 at its 1/12/87
meeting.

CALENDAR ITEM
33

A 19

S 8

01/12/87
W 23990
J. Sekelsky
AD 56

APPROVAL OF A COMPROMISE TITLE SETTLEMENT AGREEMENT
SOUTH SAN FRANCISCO, SAN MATEO COUNTY
UNDER RAPILOFF LAND BANK ACT, P.R.C. 8600 ET SEQ.

PRIVATE PARTY: Tinmet Corporation, a Subsidiary of American Can Company

A title dispute exists between the State in its sovereign capacity, the City of South San Francisco, as grantee ("City"), and Tinmet Corporation, a Delaware Corporation and a Subsidiary of American Can Company ("Tinmet") concerning ownership of approximately 20 acres of real property located in South San Francisco, San Mateo County. The real property is referred to as the Settlement Parcel, and is described in Exhibit "A", and is depicted on Exhibit "B".

Tinmet is the record owner of the Settlement Parcel as successor in interest to a State patent which characterized the land as swamp and overflowed.

City, by Chapter 345 of the Statutes of 1913, as amended, was granted all right, title, and interest of the State on and to all the salt marsh, tidelands and submerged lands within the City, in trust for harbor purposes, subject to certain terms, conditions, and reservations.

Tinmet contends that the State patent conveyed all right, title and interest of the State within the Settlement Parcel without any reservations to the State, express or implied, and that it now holds title to the property free and clear of any State right, title or interest.

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

(ADDED 01/16/87)

below:

1. The parcel includes filled and reclaimed historic wetlands which formerly consisted of marsh and sloughs.

2. It was in a natural state covered, at least in part, by the ordinary tides of San Francisco Bay, the precise extent of coverage being subject to dispute.

3. The Settlement Parcel, in whole or in part, is within lands granted by the Legislature to the City pursuant to Chapter 345 of the Statutes of 1913, as amended.

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, and its grantee, the City of South San Francisco, are the owners of some public trust right, title or interest in the Settlement Parcel. The exact extent and nature of the State's and City's interest is, however, subject to uncertainty and dispute.

The property has been filled and reclaimed since before 1900 and has been used as an industrial site, and is no longer covered by the waters of San Francisco Bay.

Tinmet 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 $300,000 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. The City will quitclaim all right, title, and interest it may have in the Settlement Parcel by virtue of Chapter 345 of the Statutes of 1913, as amended, to the State for purposes of effectuating the compromise settlement agreement.

(ADDED 01/16/87)

3. In exchange for the above transfer of funds by Tinmet to the State, the State will convey to Tinmet all its right, title, and interest and will terminate the public trust interest in the Settlement Parcel.

4. City will use its best efforts to identify, and State, as trustee of the Land Bank Fund, will use its best efforts for three years to acquire, available lands within the City which are useful for public trust purposes, with the monies deposited into the Land Bank Fund pursuant to the compromise settlement agreement.

5. 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.

Staff has appraised the Settlement Parcel and has evaluated the law and the evidence bearing on the title dispute, and is of the opinion that the sum of $300,000 is equal to or greater than the value of the State's interest in the Settlement Parcel.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from the requirements of the CEQA because it falls within the statutory exemption for 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 Parcel Description.
B. Settlement Parcel Plat.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 UNDER THE STATUTORY EXEMPTION FOR SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS, PURSUANT TO P.R.C. 21080.11.

2. FIND THAT WITH RESPECT TO THE PROPOSED COMPROMISE TITLE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S AND CITY'S INTEREST IN THE SUBJECT PARCEL 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.

   B. THAT THE MONIES RECEIVED BY THE STATE ARE OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF THE INTERESTS IN THE SUBJECT PARCEL BEING RELINQUISHED BY THE STATE.

   C. THE SUBJECT PARCEL HAS BEEN IMPROVED, RECLAIMED AND FILLED, HAS BEEN EXCLUDED FROM THE PUBLIC CHANNELS, AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING AND IS 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 PARCEL.

   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 SUBJECT PARCEL 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.

(ADDED 01/16/87)

B. A PATENT OF THE SUBJECT PARCEL IN SAN MATEO 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"

LAND DESCRIPTION

W 23890

All that certain real property situate in the City of South San Francisco, County of San Mateo, State of California, described as follows:

PARCEL "A":

Beginning at a point on the southerly line of Swift Avenue (formerly called Walker Avenue), which point is distant north 293.64 feet and west 1828.14 feet from a granite monument set 10 chains north of corner common to Sections 22-23-26 and 27, Township 3 South, Range 5 West, Mount Diablo Base and Meridian, said point being also 8.25 feet westerly, at right angles, from the center line of the west tract of the railroad leading from the Belt Line Railroad to the Virden Packing Company; thence parallel and keeping said distance of 8.25 feet westerly from said center line of said tract S 33° 30' 12" W 114.52 feet, S 35° 13' 42" W 49.60 feet, S 39° 07' 12" W 49.21 feet, S 46° 13' 42" W 49.02 feet, S 52° 44' 12" W 49.14 feet, S 58° 09' 12" W 49.04 feet, S 66° 01' 42" W 49.00 feet and S 71° 57' 42" W 39.34 feet to a point, which is distant northerly 60 feet at right angles from the northerly line of the Growers Rice Milling Co. 2.233 acre tract; thence S 89° 55' 28" W 878.06 feet; thence N 33° 22' 42" E 907.78 feet to the southerly line of said Swift Avenue; thence along said southerly line of said Swift Avenue S 56° 37' 18" E 838.03 feet to the point of beginning.

PARCEL "B":

Beginning at a point on the southerly line of Swift Avenue, being also the northwesterly corner of that certain 12 acre acre tract of land conveyed by South San Francisco Land and Improvement Company to the Metal and Thermit Corporation, by deed dated July 15, 1920 and recorded in Book 293 of Deeds at Page 394, records of San Mateo County and which point is also North 754.70 feet and West 2527.96 feet from a granite monument set 10 chains north of corner common to Sections 22-23-26 and 27, Township 3 South, Range 5 West, Mount Diablo Base and Meridian; running thence along the westerly line of said 12 acre tract S 33° 22' 42" W 907.78 feet to the southwesterly corner of said 12 acre tract; thence S 89° 55' 28" W 80.71 feet; thence on a curve to the right having a radius of 570 feet, a distance of 198.18 feet, the chord of said curve bearing N 64° 14' 18" W 197.19 feet; thence N 33° 22' 42" E 342.29 feet; thence N 00° 07' 30" W 538.89 feet to the southerly line of Swift Avenue; thence along said line of Swift Avenue N 89° 52' 30" E 338.34 feet and S 56°37' 18" E 278.12 feet to the point of beginning.

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PARCEL "C":

(One) Beginning at a point on the southerly line of Swift Avenue in the City of South San Francisco, said point being distant S 89° 52' 30" W 701.67 feet and S 29° 25' 30" W 57.18 feet from a granite monument set in the center line of Swift Avenue, at a point 2715.69 feet easterly from the intersection of said center line of Swift Avenue with the center line of Grand Avenue; running thence from said point of beginning along the westerly line of the Metal and Thermit Corporation's 6.249 acre tract S 29° 25' 30" W 24.37 feet, S 00° 14' 20" E 544.67 feet; thence on a curve to the left having a radius of 570 feet, a distance of 528.71 feet, the chord of said curve bearing S 47° 37' 31" E 509.96 feet; thence along the northerly line of the Belt Railroad S 89° 55' 28" W 712.2 feet; thence on a curve to the right having a radius of 349.26 feet; a distance of 376.09 feet, the chord of which curve bears N 30° 55'27" W 358.18 feet; thence N 00 04' 32" W 158.30 feet; thence on a curve to the right having a radius of 349.26 feet, a distance of 426.70 feet, the chord of which curve bears N 34° 57' 44" E 401.03 feet; thence N 70° 00' E 179.79 feet; thence on a curve to the left having a radius of 369.26 feet, a distance of 113.98 feet, the chord of which curve bears N 61° 09' 25" E 113.53 feet to the southerly line of Swift Avenue; thence along said southerly line N 89° 52' 30" E 31.23 feet to the point of beginning.

(Two) Beginning at a point on the southerly line of Swift Avenue in the City of South San Francisco, which point is north 906.95 feet and west 3098.53 feet from a granite monument set 10 chains north of the corner common to Sections 22-23-26 and 27, Township 3 South, Range 5 West, Mount Diablo Base and Meridian; running thence from said point of beginning S 00° 07' 30" E 538.89 feet; thence S 33° 22' 42" W 342.29 feet; thence on a curve to the right having a radius of 570 feet, a distance of 330.53 feet, the chord of said curve bearing N 37° 39' 56" W 325.93 feet; thence N 00° 14' 20" W 544.67 feet; thence N 29° 25' 30" E 24.37 feet to the southerly line of Swift Avenue; thence along said southerly line N 89° 52' 30" E 376.63 feet to the point of beginning.

Excepting from one and two above so much that lies within the lands described in deed from Metal & Thermit Corporation, a New Jersey Corporation, to Grace F. Guerin, dated June 17, 1947 and recorded July 24, 1947 in Book 1352 of Official Records of San Mateo County at Page 373, Instrument No. 77876-G, more particularly described as follows:

Commencing at the point of intersection of the easterly boundary of the South San Francisco Belt Railways right of way with the southerly boundary of East Grand Avenue, as said right of way and avenue are delineated on the Offiical Map of South

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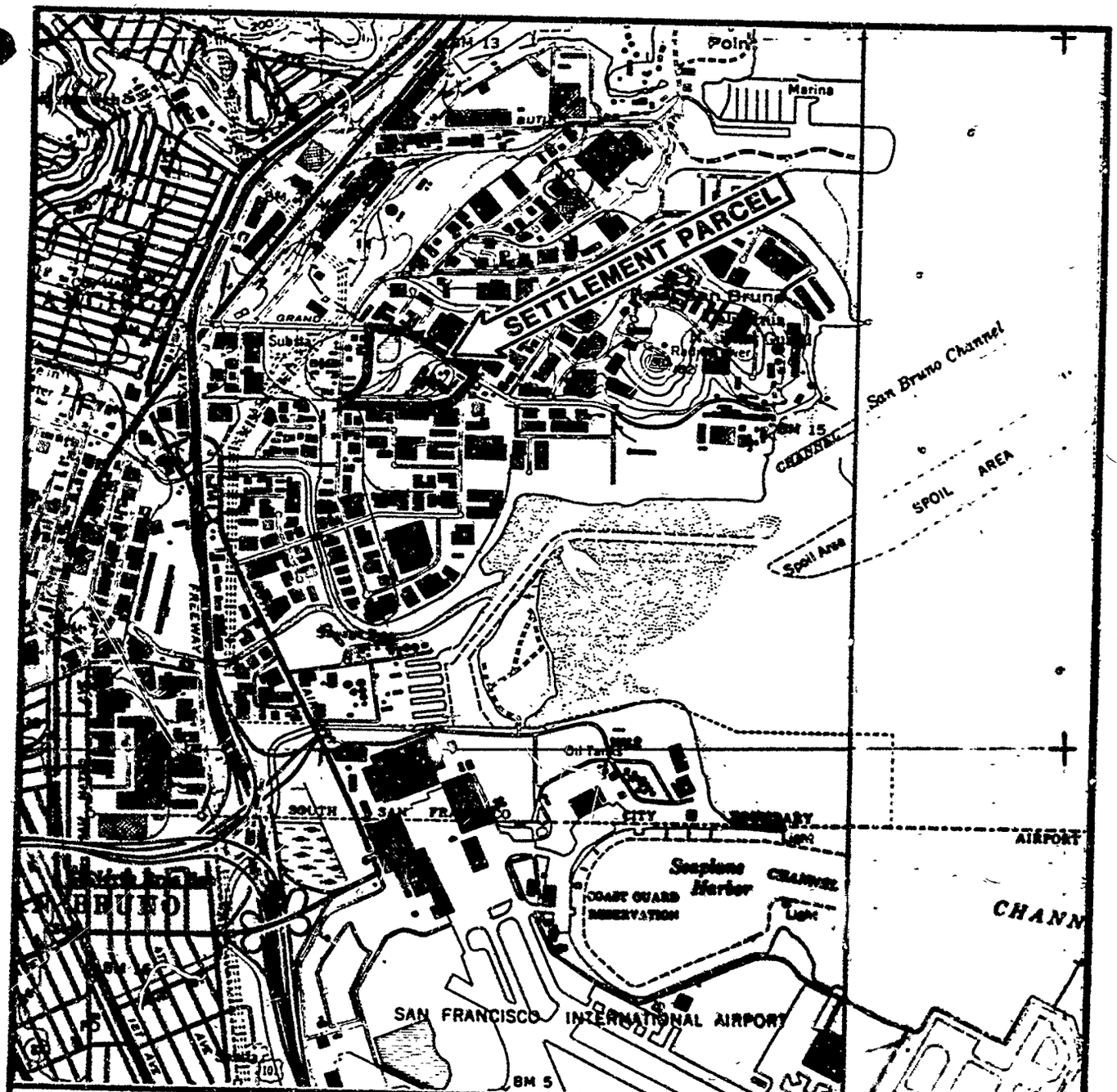
San Francisco; thence from said point of commencement along said southerly boundary of East Grand Avenue N 89° 52' 30" E 412.20 feet; thence leaving said boundary S 0° 06' 30" W 545.75 feet, S 33° 21' 30" W 246.45 feet and S 52° 10' 30" W 258.68 feet to a point in the northerly boundary of said South San Francisco Belt Railways right of way; thence along said boundary S 89° 55' 28" W 384.90 feet; thence along above mentioned easterly boundary of South San Francisco Belt Railways Right of Way, on the arc of a curve to the right of radius 349.26 feet; a distance of 376.09 feet to a point; the tangent to said curve at said last mentioned point being N 0° 04' 32" W; thence N 0° 04' 32" W 158.30 feet; thence on the arc of a curve to the right of radius 349.29 feet; said curve being tangent at said last mentioned point of said last mentioned course, a distance of 426.70 feet; thence N 70° 00' E 179.79 feet; thence on the arc of a curve to the left of radius 369.26 feet; said curve being tangent at said last mentioned point to said last mentioned course, a distance of 113.98 feet to the point of commencement.

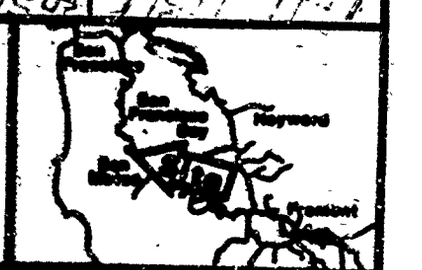


STATE LANDS COMMISSION

TITLE SETTLEMENT PLAT

Portion of San Francisco South Quadrangle

1956, Photorevised 1980



Prepared by: JKHering Date: 1-14-87 A:10 S:8

Title Study: TINMET W 23890

EXHIBIT B

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