

MINUTE ITEM

2

10/07/87
W 24019
Sekelsky

Calendar Item 2 was pulled from the agenda prior to the meeting, no item being prepared.

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APPROVAL OF A COMPROMISE TITLE SETTLEMENT AGREEMENT
REGARDING A PARCEL OF REAL PROPERTY IN OAKLAND, ALAMEDA COUNTY
PURSUANT TO THE KAPILOFF LAND BANK ACT, P.R.C. 8600 ET SEQ.

A title dispute exists between the State, in its sovereign capacity, acting by and through the State Lands Commission ("State"), the City of Oakland, as grantee of the State's interests in the subject area ("City"), Lakeport Towers, Inc. ("Lakepoint"), and Kumam Corporation ("Kumam") concerning ownership of approximately one acre of real property located within the City. The real property is referred to as the Settlement Parcel, and is described in Exhibit "A", and depicted on Exhibit B.

The City, by Chapter 107 of the Statutes of 1852, was granted in trust the lands within its corporate limits lying between high tide and ship channel (low tide), which granted lands included a portion of the Settlement Parcel. The granted lands were to be retained as common property or disposed of for public trust purposes and related improvements. Pursuant to this authority, the City sold a portion of the granted tidelands into private ownership. After subsequent conveyances between private parties, some of these lands were returned to the City for park purposes. The lands returned to the City for park purposes abut the uplands within the Settlement Parcel which is the subject of the agreement proposed herein. Lakepoint is the current record owner of the Settlement Parcel. Kumam holds a lien against the Settlement Parcel in an amount approximately equal to the value of the property, to secure Kumam's financing of Lakepoint's development plans.

A dispute exists between the State, the City, Lakepoint, and Kumam regarding the condition of title to the Settlement Parcel.

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The State contends that the granted tidelands within the subject parcel were conveyed by the City into private ownership, and back into City ownership, subject to the public trust, and that the property remains subject to sovereign public trust claims to this date. Lakepoint and Kumam claim that the Settlement Parcel is free and clear of any such sovereign public trust claims. Further, Lakepoint and Kumam assert that even if there are sovereign interests in the Settlement Parcel, they disagree with the State as to the nature and extent of those interests.

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 below.

1. The Settlement Parcel includes filled and reclaimed historic wetlands which formerly consisted of the bed of Lake Merritt, an extension of San Francisco Bay.
2. The Settlement Parcel 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 has been filled and reclaimed since before 1900 and has been used as commercial site, and is separated from the waters of Lake Merritt by a major roadway and park lands adjacent to the Lake.
4. The Settlement Parcel, in whole or in part, is within lands granted by the Legislature to the City pursuant to Chapter 107 of the Statutes of 1852, 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 Oakland, 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.

Lakepoint and Kumam Corporation have proposed 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.

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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 parties will deposit the sum of \$ _____ 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 107 of the Statutes of 1852, as amended, to the State for purposes of effectuating the compromise settlement agreement.
3. In exchange for the above transfer of funds by Lakepoint and Kumam to the State, the State will convey to Lakepoint and Kumam all its right, title, and interest and will terminate the public trust interest in the Settlement Parcel.
4. The Commission, acting as Trustee of the Land Bank, will accept the monies to be deposited into the Land Bank in order to purchase lands useful for trust purposes, which lands will be held as sovereign lands subject to the public trust. City will make its best efforts to identify, and State will make its best efforts for a period of two years to acquire, such lands within the City.
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 evidence bearing on the title dispute, and is of the opinion that the sum of \$ _____ is equal to or greater than the value of the State's and City's interest in the Settlement Parcel.

EXHIBITS: A. Description.
 B. Site Map.

AB: N/A

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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 SETTLEMENT 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 SETTLEMENT PARCEL BEING RELINQUISHED BY THE STATE.

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- C. THE SETTLEMENT 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 SETTLEMENT 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 SETTLEMENT 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.
 - B. A PATENT OF THE SETTLEMENT PARCEL IN ALAMEDA 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.

CALENDAR ITEM

NO. 2

W.O.: W 24019

CAL. DATE: 10/7/87

NEGOTIATOR: Mochon-
Sekelsky

LAKEPOINT TOWERS, INC.

(TITLE)

EXHIBITS NOT AVAILABLE AT TIME OF PRINT

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