

MINUTE ITEM

This Calendar Item No. 65
was approved as Minute Item
No. 65 by the State Lands
Commission by a vote of 3
to 0 at its 2/6/89
meeting.

CALENDAR ITEM

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02/07/89
W 23324
AD 87
Plummer

**APPROVAL OF A COMPROMISE TITLE SETTLEMENT AND
EXCHANGE AGREEMENT, CITY OF PETALUMA, SONOMA COUNTY**

APPLICANT: Dairyman's Feed and Supply
Cooperative, Inc.
Attn: Andy Moulyn
256 Petaluma Boulevard North
Petaluma, California 94952

A title dispute exists between the State, in its sovereign capacity, and Dairyman's Feed and Supply Cooperative, Inc., referred to hereinafter as ("Dairyman's") concerning ownership of approximately 3.8 acres of real property located on either side of the Petaluma River in the City of Petaluma, Sonoma County. The real property, referred to as the Subject Parcels, is described in Exhibit "A", and depicted on Exhibit "B".

Dairyman's is the current record owner of the Subject Parcels as successor-in-interest to State patents which characterized the land as swamp and overflowed and to a deed from the State issued pursuant to Chapter 762 of the Statutes of 1933.

Dairyman's contends that the State patents and deed conveyed all right, title, and interest of the State within the Subject Parcels without any reservations to the State, expressed 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 Subject Parcels and has drawn a number of factual conclusions, including those summarized below:

1. The parcels include filled and reclaimed historic wetlands which formerly consisted of marsh and sloughs.

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2. The parcels were in their last natural state, covered, at least in part, by the ordinary tides of the Petaluma River, a tributary of San Pablo Bay, the precise extent of coverage being subject to dispute.

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, is the owner of some public trust right, title, or interest in the Subject Parcels. The exact extent and nature of the State's interest is, however, subject to uncertainty and dispute.

The property has been filled and reclaimed and is no longer covered by the waters of San Pablo Bay. The property has improvements to the water's edge which have been used since 1938 for agriculture-related industrial purposes.

Dairymen's 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. Dairymen's will quitclaim to the State all right, title, and interest within the 1989 channel of the Petaluma River, as described in Exhibit "C", attached hereto.
2. Dairymen's will deed an easement for public access along the right bank of the Petaluma River, as described in Exhibit "D", attached hereto.
3. Dairymen's will deposit the sum of \$20,000 into the Kapiloff Land Bank Fund which is administered by the State Lands Commission, as trustee, pursuant to P.R.C. 8600 et seq.
4. In exchange for the above transfer of funds by Dairymen's to the State, the State will convey to Dairymen's all its sovereign right, title, and interest landward of the 1989 channel of the Petaluma River. The State quitclaim area is referred to hereinafter as the "Patent Parcels", described in Exhibit "E", attached hereto.

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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 Subject Parcels and has evaluated the law and evidence bearing on the title dispute, and is of the opinion that the sum of \$20,000 is equal to or greater than the value of the State's interest in the Patent Parcels.

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. Subject Parcel Description.
- B. Subject Parcel Plat.
- C. Dairymen's Quitclaim Parcel
- D. Public Access Easement
- E. Patent Parcels

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 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. FIND THAT, WITH RESPECT TO THE PROPOSED COMPROMISE TITLE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST IN THE PATENT PARCELS FOR FUNDS WITH WHICH TO BUY AN EXCHANGE PARCEL:

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- 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 PATENT PARCELS BEING RELINQUISHED BY THE STATE.
 - C. THE PATENT PARCELS HAVING BEEN IMPROVED, RECLAIMED AND FILLED, HAVE BEEN EXCLUDED FROM THE PUBLIC CHANNELS, AND ARE NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING AND ARE 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 SUBJECT PARCELS.
 - 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, AND 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 PATENT PARCELS 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 PATENT PARCELS IN SONOMA COUNTY, CALIFORNIA, FREE OF THE PUBLIC TRUST.
 - C. CERTIFICATES OF ACCEPTANCE AND CONSENT TO RECORD DEEDS TO THOSE LANDS TO BE RECEIVED BY THE STATE.

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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, SURVEY, 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.

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EXHIBIT "A"
SUBJECT PARCEL DESCRIPTIONS

All of that real property situated in Section 33, T.5 N., R. 7 W., M.D.M., in the City of Petaluma, County of Sonoma, State of California, described as follows:

PARCEL ONE

Those parcels of land described as First Parcel and Second Parcel in Exhibit "A" of the Deed from Nulaid Foods, Inc. to Dairymen's Feed and Supply Co-operative Association, Document 83-085652, filed December 22, 1983 in Official Records of Sonoma County.

PARCEL TWO

That parcel of land described in the Deed from D. Soren to Dairymen's Feed and Supply Co-operative, Inc., Recorded April 28, 1961 in Book 1820, Page 926, in the Official Records of Sonoma County.

END OF DESCRIPTION

PREPARED JANUARY 25, 1989 BY BIU 4, RAND LAFORCE, SUPERVISOR.

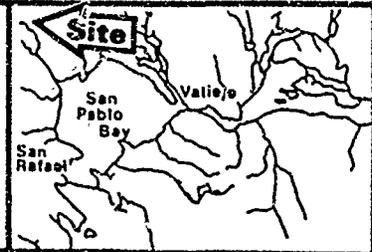
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0.714



STATE LANDS COMMISSION

SUBJECT PARCEL PLAT



Prepared by: B. Lee

Date: 1-28-88

A: 9 S: 2

EXHIBIT **B**

Title Study: Dairymen's Feed & Supply

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EXHIBIT "C"
DAIRYMEN'S QUITCLAIM PARCEL

All of that portion of the 1989 Channel of the Petaluma River in Section 33, T. 5 N., R. 7 W., M.D.M., City of Petaluma, Sonoma County, California, lying waterward of the following described lines:

LINE ONE

Commencing at California State Lands Commission Monument D 105, an aluminum cap on rebar set in concrete and stamped "California State Lands Commission D 105", said monument having California Coordinate System, Zone 2 coordinates of Y = 208402.206 and X = 1816413.249 and bears N 16° 53' 28" E 435.79 feet from Petaluma City Monument 24 as shown on the Official Re-Survey of the City Limit Line, City of Petaluma, as established by City Charter dated March 1, 1911 and filed in the Office of the City Engineer of the City of Petaluma, File No. T-6; thence N 10° 46' 45" E to the southerly line of a parcel of land, described as First Parcel in Exhibit "A" of the Deed from Nulaid Foods, Inc. to Dairymen's Feed and Supply Co-operative Association, Document 83-085652, filed December 22, 1983 in Official Records of Sonoma County, said point being the TRUE POINT OF BEGINNING; thence continuing N 10° 46' 45" E to California State Lands Commission Monument D 104, an aluminum cap on rebar set in concrete and stamped "California State Lands Commission D 104", said monument having California Coordinate System, Zone 2 coordinates of Y = 208511.416 and X = 1816434.041; thence N 0° 28' 26" W 110.21 feet to California State Lands Commission Monument D 103, an aluminum cap on rebar set in concrete and stamped "California State Lands Commission D 103", said monument having California Coordinate System, Zone 2 coordinates of Y = 208621.622 and X = 1816433.129; thence N 06° 02' 04" E 254.59 feet to California State Lands Commission Monument D 102, an aluminum cap on rebar set in concrete and stamped "California State Lands Commission D 102", said monument having California Coordinates System, Zone 2 coordinates of Y = 208874.802 and X = 1816459.893; thence N 03° 23' 53" W to the northerly line of that parcel of land described as First Parcel in Exhibit "A" of said Deed from Nulaid Foods, Inc. to Dairymen's Feed and Supply Co-operative Association.

LINE TWO

Commencing at California State Lands Commission Monument D 106, an aluminum cap on rebar set in concrete and stamped "California State Lands Commission D 106", said monument having California Coordinate System, Zone 2 coordinates of Y = 208408.928 and X = 1816321.749 and bears N 04° 44' 17" E 425.16 feet from Petaluma City Monument 24 as shown on the Official

Re-Survey of the City Limit Line, City of Petaluma, as established by City Charter dated March 1, 1911 and filed in the Office of the City Engineer of the City of Petaluma, File No. T-6; thence N 01° 38' 34" E to the most southerly line of a parcel of land described in the Deed from D. Soren to Dairyman's Feed and Supply Co-operative, Inc., Recorded April 28, 1961 in Book 1820, Page 926, in the Official Records of Sonoma County, said point being the TRUE POINT OF BEGINNING: thence N 01° 38' 34" E to the northeasterly line of that parcel of land described in said Deed from D. Soren to Dairyman's Feed and Supply Co-operative, Inc.

All bearings and distances shown are grid and based on the California Coordinate System, Zone 2.

END OF DESCRIPTION

PREPARED JANUARY 26, 1989 BY BIU 4, RAND LAFORCE, SUPERVISOR.

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EXHIBIT "D"
PUBLIC ACCESS EASEMENT

BEGINNING at California State Lands Commission Monument D 106, an aluminum cap on rebar set in concrete and stamped "California State Lands Commission Monument D 106", said monument having California Coordinate System, Zone 2 coordinates of Y = 208408.928 and X = 1816321.749 and bears N 04° 44' 17" E 425.16 feet from Petaluma City Monument 24 as shown on the Official Re-Survey of the City Limit Line, City of Petaluma, as Established by City Charter dated March 1, 1911 and filed in the Office of the City Engineer of the City of Petaluma, File No. T-6; thence N 38° 02' 16" W 53.69 feet; thence N 04° 48' 58" E 69.09 feet; thence N 02° 30' 23" E 31.57 feet; thence N 0° 04' 21" E 26.85 feet; thence N 03° 33' 15" E 68.85 feet; thence S 26° 46' 19" E 59.73 feet to California State Lands Commission Monument D 107, an aluminum cap on rebar set in concrete and stamped "California State Lands Commission D 107", said monument having California Coordinate System, Zone 2 coordinates of Y = 208593.844 and X = 1816327.052 ; thence S 01° 38' 34" W 184.99 feet to California State Lands Commission Monument D106 and the point of beginning; EXCEPT that portion lying north of the northeasterly line of that parcel of land described in the Deed from D. Soren to Dairyman's Feed and Supply Co-operative, Inc., Recorded April 28, 1961 in Book 1820, Page 926, in the Official Records of Sonoma County, and lying south of the southerly line of the parcel of land described in said Deed from D. Soren to Dairyman's Feed and Supply Co-operative, Inc.

All bearings and distances shown are grid and based on the California Coordinate System, Zone 2.

END OF DESCRIPTION

PRPARED JANUARY 25, 1989 BY BIU 4, RAND LAFORCE, SUPERVISOR.

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EXHIBIT "E"
PATENT PARCELS

PARCEL ONE

A parcel of land situated in Section 33, T. 5 N., R. 7 W., M.D.M., in the City of Petaluma, Sonoma County, California, described as follows:

All of that land described as the First Parcel and Second Parcel in Exhibit "A" of the Grant Deed from Nulaid Foods, Inc. to Dairymen's Feed and Supply Co-operative Association, Document 83-085652, Recorded December 22, 1983 in Official Records of Sonoma County, California, EXCEPT that portion lying waterward of the following described line: Beginning at California State Lands Commission Monument D 105, an aluminum cap on rebar set in concrete and stamped "California State Lands Commission D 105", said monument having California Coordinate System, Zone 2 coordinates of Y = 208402.206 and X = 1816413.249 and bears N 16° 53' 28" E 435.79 feet from Petaluma City Monument 24, as shown on the Official Re-Survey of the City Limit Line, City of Petaluma, as established by City Charter dated March 1, 1911 and filed in the Office of the City Engineer of the City of Petaluma, File No. T-6; thence N 10° 46' 45" E 111.17 feet to California State Lands Commission Monument D 104, an aluminum cap on rebar set in concrete and stamped "California State Lands Commission D 104", said monument having California Coordinate System, Zone 2 coordinates of Y = 208511.416 and X = 1816434.041; thence N 0° 28' 26" W 110.21 feet to California State Lands Commission Monument D 103, an aluminum cap on rebar set in concrete and stamped "California State Lands Commission D 103", said monument having California Coordinate System, Zone 2 coordinates of Y = 208621.622 and X = 1816433.129; thence N 06° 02' 04" E 254.59 feet to California State Lands Commission Monument D 102, an aluminum cap on rebar set in concrete and stamped "California State Lands Commission D 102", said monument having California Coordinates System, Zone 2 coordinates of Y = 208874.802 and X = 1816459.893; thence N 03° 23' 53" W 62.15 feet to California State Lands Commission Monument D 101, an aluminum cap on rebar set in concrete and stamped "California State Lands Commission D 101", said monument having California Coordinate System, Zone 2 coordinates of Y = 208936.844 and X = 1816456.209; thence N 20° 40' 44" W 111.48 feet to California State Lands Commission Monument D 100, an aluminum cap on rebar set in concrete and stamped "California State Lands Commission D 100", said monument having California Coordinate System, Zone 2 coordinates Y = 209041.138 and X = 1816416.844 and bears N 54° 48' 54" W 1118.50 feet from Petaluma City Monument 17, as shown on the Official Re-Survey of the City of Petaluma, as established by City Charter dated March 1, 1911 and filed in the Office of the City Engineer of the City of Petaluma, File No. T-6.

All bearings and distances shown are grid and based on the California Coordinate System, Zone 2.

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PARCEL TWO

A parcel of land situated in Section 33, T. 5 N., R. 7 W., M.D.M., in the City of Petaluma, Sonoma County, California, described as follows:

All of that parcel of land described in the deed from D. Soren to Dairyman's Feed and Supply Co-operative, Inc., Recorded April 28, 1961 in Book 1820, Page 926, of the Official Records of Sonoma County, EXCEPT that portion lying waterward of the following described line: Beginning at California State Lands Commission Monument D 106, an aluminum cap on rebar set in concrete and stamped "California State Lands Commission D 106", said monument having California Coordinate System, Zone 2 coordinates of Y = 208408.928 and X = 1816321.749 and bears N 04° 44' 17" E 425.16 feet from Petaluma City Monument 24 as shown on the Official Re-Survey of the City Limit Line, City of Petaluma, as Established by City Charter dated March 1, 1911 and filed in the Office of the City Engineer of the City of Petaluma, File No. T-6; thence N 01° 38' 34" E 184.99 feet to California State Lands Commission Monument D 107, an aluminum cap on rebar set in concrete and stamped, "California State Lands Commission D 107", said monument having California Coordinate System, Zone 2 coordinates of Y = 208593.844 and X = 1816327.052 and bears N 78° 53' 13" W 1023.12 feet from City of Petaluma Monument 17 as shown on the Official Re-Survey of the City Limit Line, City of Petaluma, as established by City Charter dated March 1, 1911 and filed in the Office of the City Engineer of the City of Petaluma, File No. T-6.

All bearings and distances shown are grid and based on the California Coordinate System, Zone 2.

END OF DESCRIPTION

PREPARED JANUARY 25, 1989 BY BIU 4, RAND LAFORCE, SUPERVISOR.