

MINUTE ITEM 41

W 24642

AD 162

Fossum

Collins

Grimes

APPROVE A COMPROMISE TITLE SETTLEMENT AGREEMENT  
REGARDING CERTAIN REAL PROPERTY IN THE  
CITY OF HUNTINGTON BEACH, ORANGE COUNTY,  
PURSUANT TO THE KAPLOFF LAND BANK ACT

Bob Hight, Chief Counsel, presented Calendar Item 41 regarding the approval of a title settlement involving property in the City of Huntington Beach. He proposed that the Commission accept \$60,000 in the Kapiloff Land Bank in settlement of the State's claim of interest in this parcel.

At that time Chairman McCarthy asked that James Dorsey and Patricia Snyder, proponents of the matter step forward to testify. They advised they would like to speak only if they felt it was necessary to respond to the opponents. They stated they are in full agreement with the State on the settlement.

Mr. Jonathan Lehrer-Grawer, an attorney representing property owners in the Huntington Harbor area, asked that this Calendar Item be continued to the next meeting of the Commission in order to provide his clients a reasonable opportunity to present their opposition to the proposed title settlement agreement. He stated his clients are interested in the proposed settlement as property owners in the immediate area who have an interest in maintaining the public trust easement on the subject property so that it is used for marine related purposes only.

Mr. Hight then asked that Curtis Fossum, Senior Staff Counsel, working on this case address the Commissioners. Mr. Fossum stated the staff of the Commission had conducted an extensive review of the factual and legal issues relating to the subject property involved in the proposed settlement. He stated that the approval of the property reflected the value of the land based upon assumptions of certain land uses, zoned with commercial or residential. The appraised land value was concluded to be in excess of \$6,000,000. Mr. Fossum also stated that the analysis of factual and legal principles relating to the subject property concluded that \$60,000 was equal to or greater than the value of the State's claim of an easement within portions of the property.

Mr. Fossum pointed out that the subject 1.6 acres was entirely filled, bulkheaded and developed with 36 condominium units. He also stated that the property which involves the closing of the State's potential claim did not include the waterfront lot "D" which has been deducted and accepted as a public accessway.

The Commission determined that it would release the staff appraisal for public review and comment at the next Commission meeting.

After considerable discussion it was voted 2-1 that final consideration of the item be put over to the August 12, 1991 Commission meeting.

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APPROVE A COMPROMISE TITLE SETTLEMENT AGREEMENT  
REGARDING CERTAIN REAL PROPERTY IN THE  
CITY OF HUNTINGTON BEACH, ORANGE COUNTY,  
PURSUANT TO THE KAPILOFF LAND BANK ACT

PARTY:

Destiny II  
13001 Seal Beach Boulevard, Suite 300  
Seal Beach, California 90740

A title dispute exists between the State, acting by and through the State Lands Commission ("State") and Destiny II, a California general partnership concerning ownership of approximately 1.7 acres of real property within the City of Huntington Beach in Orange County ("Subject Property").

Commission staff has conducted a study of the evidence of title to the Subject Parcel and has drawn a number of factual conclusions, including, but not limited to, those summarized below:

1. Destiny II is the record owner of the Subject Property as successor in interest to the original patentee of Tideland Location 221, dated January 6, 1903.
2. The Subject Property includes bulkheaded, filled and reclaimed tidelands which historically included the bed of numerous tidal sloughs formerly within the Anaheim Bay tidal estuary.
3. At least a portion of the Subject Property was, in a natural state, as evidenced by historical data (including but not limited to the 1873 United States Coast Survey Topographic

sheet T - 1345), covered by the ordinary tides of these tidal sloughs; the precise extent of coverage being subject to dispute.

4. BLA 18 (PRC 2686.1(A)), dated December 22, 1960, by and between the State Lands Commission and Huntington Harbour Corporation established, pursuant to P.R.C. Section 6357, the ordinary low-water mark of certain portions of Anaheim Bay. That agreement established the boundary between the lands sold by the State pursuant to TLL 221 and the unsold submerged lands located within the perimeter description of TLL 221.
5. SLL 34 (PRC 2686.1(B)), dated December 22, 1960 as amended by the agreement dated November 22, 1961, by and between the State Lands Commission and Huntington Harbour Corporation exchanged, pursuant to P.R.C. Section 6307, 17.91 acres of submerged lands of the state for 66.47 acres of tidelands patented under TLL 221 and owned by Huntington Harbour Corp.
6. Destiny II, through its title insurance company and their attorneys dispute the effect to be given the boundary line and exchange agreements entered into in 1961 and 1962 (BLA 18 and SLL 34), respectively. Their conclusion is that the State terminated the Public Trust easement over the entire area encompassed within TLL 221, not just the 17.91 acres conveyed by the State.

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 Property. The exact extent and nature of the State's interest is, however, subject to uncertainty and continued dispute.

The Subject Property has been filled and reclaimed since the 1960's and the property is currently occupied by two condominium buildings which include a total of 36 units. Between the lots on which the condominiums are located and the waters of Huntington harbour exists a lot (Lot D as shown on Exhibit B), owned in fee by Destiny II, but which has been dedicated as a public accessway. The proposed agreement does not terminate the Public Trust Easement over Lot D.

Destiny II has offered to resolve the existing title dispute by entering into a compromise title settlement addressing the legal and evidentiary issues. The staff of the State Lands Commission

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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:

1. Destiny II will deposit the sum of \$60,000 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. In exchange for the above transfer of funds by Destiny II to the State, the State will convey to Destiny II all its right, title, and interest and will terminate the public trust interest in the Subject Property.
3. The agreement provides for an escrow period and is to be effective upon its recordation. The State will not incur any costs associated with escrow fees and title insurance.

Staff has appraised the Subject Property, has evaluated the law and evidence bearing on the title dispute, and is of the opinion that the sum of \$60,000 is equal to or greater than the value of the State's interest in the Subject Property.

AB 884:  
N/A

**OTHER PERTINENT INFORMATION:**

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutory exempt project. The project is exempt because it involves 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. Description of Subject Property.
- B. Site Map

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 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 SUBJECT PROPERTY FOR FUNDS WITH WHICH TO BUY AN EXCHANGE PARCEL:
  - A. THE AGREEMENT IS IN THE BEST INTEREST OF THE STATE AND CONSISTENT WITH PUBLIC TRUST NEEDS.
  - B. THAT THE MONIES RECEIVED BY THE STATE ARE OF A VALUE EQUAL OR GREATER THAN THE VALUE OF THE INTEREST IN THE SUBJECT PROPERTY BEING RELINQUISHED BY THE STATE.
  - C. THE SUBJECT PROPERTY HAS BEEN IMPROVED, RECLAIMED AND FILLED FOR THE IMPROVEMENT OF NAVIGATION AND ENHANCEMENT OF THE CONFIGURATION OF THE SHORELINE, 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 TIDE 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 FACT 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 SUBJECT PROPERTY WILL NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THE PUBLIC TRUST INTEREST MAY BE TERMINATED.

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3. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGEMENT, AND RECORDATION ON BEHALF OF THE COMMISSION OF THE FOLLOWING DOCUMENT:

THE COMPROMISE TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION.

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"**

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**LAND DESCRIPTION**

A parcel of land in the City of Huntington Beach, Orange County, State of California, more directly described as follows:

Lots 2, 3, 4, and 5, of Tract No. 11881, Miscellaneous Maps Book 542, pages 20 through 23 inclusive.

**END OF DESCRIPTION**

**PREPARED JULY, 1991 BY LLB**

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