

MINUTE ITEM

This Calendar Item No. C100 was approved as Minute Item No. 100 by the California State Lands Commission by a vote of 3 to 0 at its 12/16/98 meeting.

**CALENDAR ITEM
C100**

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S 11

12/16/98
PRC 8055 W 25473
AD 362 D. Plummer
B. Stevenson

CONSIDER APPROVAL OF A COMPROMISE TITLE SETTLEMENT AGREEMENT BETWEEN THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE CALIFORNIA STATE LANDS COMMISSION, AND KAUFMAN AND BROAD SOUTH BAY, INC. REGARDING CERTAIN LANDS SITUATED WITHIN THE CITY OF REDWOOD CITY.

PARTY:

Kaufman and Broad South Bay, Inc.
c/o Kimberly Wertz
2201 Walnut Avenue, Suite 150
Fremont, California 94538

Staff of the Commission has been requested by a representative of Kaufman and Broad South Bay, Inc. (Kaufman) to determine the extent of State interest within a three acre parcel of land (SUBJECT PARCEL) located within the City of Redwood City. The SUBJECT PARCEL is described in Exhibit A (which is attached and incorporated by reference as a part of this item).

Commission staff has conducted a study of the evidence of title to the SUBJECT PARCEL and has drawn a number of factual conclusions, including those summarized below:

1. The SUBJECT PARCEL was purportedly patented by the State to W.C.R. Smith on July 26, 1861, as Survey No. 9, Swamp and Overflowed lands, San Mateo County.
2. Within the perimeter description of Swamp and Overflowed Survey No. 9 was a substantial tidal slough that traversed the area, and marshes which may have been subject to tidal action. By their definition, swamp and overflowed lands did not include the tide and submerged lands of 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 a public trust right, title, or interest in a portion of the SUBJECT PARCEL. The exact extent and nature of the State's interest is, however, subject to uncertainty and dispute.

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Kaufman contends that, in its last natural condition, the SUBJECT PARCEL was above the ordinary high water mark, and therefore not tide and submerged lands at all. Further, Kaufman contends that any portion of the SUBJECT PARCEL which may have been below the ordinary high water mark was conveyed or was intended to be conveyed by Survey Nos. 9, Swamp and Overflowed lands, San Mateo County. The position of Kaufman is that, if any Public Trust interests existed in the SUBJECT PARCEL, they have been extinguished by the filling of the property, payment of taxes, and curative acts of the Legislature.

Kaufman and the staff have reached a settlement of this dispute which has been memorialized in a title settlement agreement which is on file with the office of the California State Lands Commission. While the agreement sets forth all of the specific terms and conditions of the settlement, the basic terms of the Agreement in this case are as follows:

A. Kaufman will deed to the State an approximately one-half acre parcel, hereinafter referred to as the EXCHANGE PARCEL. The EXCHANGE PARCEL is described in Exhibit B (which is attached and incorporated by reference as a part of this item). The EXCHANGE PARCEL will be used for the purposes of public access including a ten-foot wide, 560 foot long decomposed granite path, ten benches, five trash containers, an entrance plaza, a drinking fountain, and a picnic area with a tot lot. Kaufman will construct all of the above mentioned improvements at no State expense, and as part of the settlement agreement, Kaufman or the homeowners association to be formed by Kaufman, will lease the EXCHANGE PARCEL for the purposes of maintaining the improvements.

B. The State shall quitclaim to Kaufman any and all of the State's rights by virtue of its sovereignty in the remainder of the SUBJECT PARCEL, which is hereinafter referred to as the TRUST TERMINATION PARCEL. The TRUST TERMINATION PARCEL is described in Exhibit C (which is attached and incorporated by reference as a part of this item).

C. 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.

The staff of the Commission recommends the approval and execution of the proposed Agreement in a form similar to that now on file in the Commission's offices.

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STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code: Div. 6, Parts 1 and 2; Div. 13.
- B. California Code of Regulations: Title 2, Div.3; Title 14, Div. 6.

PERMIT STREAMLINING ACT DEADLINE:

N/A

OTHER PERTINENT INFORMATION:

- 1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14 California Code of Regulations section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutorily exempt project. The project is exempt because it involves settlements of title and boundary problems.

Authority: Public Resources Code section 21080.11

EXHIBITS:

- A. Land Description of the SUBJECT PARCEL
- B. Land Description of the EXCHANGE PARCEL
- C. Land Description of the TRUST TERMINATION PARCEL

PERMIT STREAMLINING ACT DEADLINE:

N/A

IT IS RECOMMENDED THAT THE COMMISSION:

- 1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS SECTION 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTION 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
- 2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE THE PROPOSED TITLE SETTLEMENT AGREEMENT IN A FORM SUBSTANTIALLY SIMILAR TO THAT NOW ON FILE IN THE OFFICES OF THE CALIFORNIA STATE LANDS COMMISSION, INCLUDING THE FINDINGS TO TAKE EFFECT UPON RECORDATION OF THE AGREEMENT WHICH WILL RESULT IN A TERMINATION OF SOVEREIGN RIGHTS IN THE TRUST TERMINATION PARCEL.

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3. AUTHORIZE ISSUANCE TO KAUFMAN OR HIS SUCCESSOR OR ASSIGNS A 49 YEAR GENERAL LEASE FOR THE PURPOSES OF CONSTRUCTING AND MAINTAINING PUBLIC ACCESS INCLUDING A TEN-FOOT WIDE, 560 FOOT LONG DECOMPOSED GRANITE PATH, TEN BENCHES, FIVE TRASH CONTAINERS, AN ENTRANCE PLAZA, A DRINKING FOUNTAIN, AND A PICNIC AREA WITH A TOT LOT, THE CONSIDERATION BEING THE PUBLIC USE AND BENEFIT.

4. FIND, UPON RECORDATION OF THE PROPOSED TITLE SETTLEMENT AGREEMENT, THAT:
 - A. THE AGREEMENT IS IN THE BEST INTERESTS 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.

 - B. THE VALUE OF THE LANDS THE STATE IS TO RECEIVE THROUGH THE AGREEMENT IS OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF SOVEREIGN INTERESTS IN THE PARCEL IN WHICH THE STATE IS TO TERMINATE THE PUBLIC TRUST.

 - C. THE PARCEL IN WHICH THE TRUST IS TO BE TERMINATED 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 TIDE OR SUBMERGED LANDS IN FACT.

 - D. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS WITHIN THE SUBJECT PARCEL.

 - E. THE AGREEMENT CONSTITUTES A COMPROMISE OF CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED.

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- F. THE AGREEMENT IS ENTERED IN LIEU OF THE COSTS, DELAYS, AND UNCERTAINTIES OF LITIGATION AND IS CONSISTENT WITH AND IS AUTHORIZED BY LAW.
 - G. THE TRUST TERMINATION PARCEL IS NO LONGER NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THAT THE PUBLIC TRUST IS TERMINATED IN IT.
5. APPROVE RECORDATION ON BEHALF OF THE COMMISSION OF THE FOLLOWING DOCUMENTS:
- A. THE TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE IN THE OFFICES OF THE COMMISSION.
 - B. A PATENT OF THE LANDS DESCRIBED IN THE AGREEMENT AS THE TRUST TERMINATION PARCEL.
 - C. A CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDATION FOR THAT PARCEL OF LAND DESCRIBED IN THE SETTLEMENT AGREEMENT AS THE EXCHANGE PARCEL.
6. AUTHORIZE AND DIRECT THE STAFF OF THE CALIFORNIA STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE CALIFORNIA STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS 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.

Brian Kangas Foulk

Engineers • Surveyors • Planners

December 4, 1998

B.K.F. Job No. 970092-10

EXHIBIT A LAND DESCRIPTION OF SUBJECT PARCEL

All that real property situate in the city of Redwood City, County of San Mateo, State of California being all of the lands shown on that certain map filed for record on August 26, 1998 in Book 128 of Maps at Pages 93 through 107 inclusive, in the Office of the Recorder of San Mateo County, and being more particularly described as follows:

Lots 1 through 4, inclusive, as said lots are shown on said map, and Parcel A as said parcel is shown on said map.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.


Bradley A. Bilbo P.L.S. 6141
Expires 3/31/2002

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12/7/98
Date

Brian Kangas Foulk

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December 4, 1998

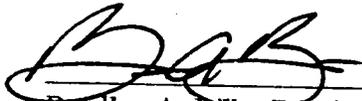
B.K.F. Job No. 970092-10

EXHIBIT B LAND DESCRIPTION OF EXCHANGE PARCEL

All that real property situate in the City of Redwood City, County of San Mateo, State of California, being a portion of the lands shown on that certain map filed for record on August 26, 1998 in Book 128 of Maps at Pages 93 through 107 inclusive, in the Office of the Recorder of San Mateo County, and being more particularly described as follows:

All of Parcel A, as said parcel is shown on said map.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.



Bradley A. Bilbo P.L.S. 6141

Expires 3/31/2002

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12/7/98
Date

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Brian Kangas Foulk

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December 4, 1998

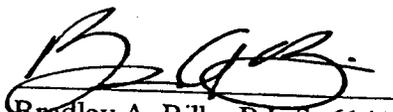
B.K.F. Job No. 970092-10

EXHIBIT C LAND DESCRIPTION OF TRUST TERMINATION PARCEL

All that real property situate in the City of Redwood City, County of San Mateo, State of California, being a portion of the lands shown on that certain map filed for record on August 26, 1998 in Book 128 of Maps at Pages 93 through 107 inclusive, in the Office of the Recorder of San Mateo County, and being more particularly described as follows:

All of Lots 1 through 4, inclusive, as said lots are shown on said map.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.


Bradley A. Bilbo P.L.S. 6141
Expires 3/31/2002
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12/7/98
Date

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