

MINUTE ITEM

This Calendar Item No. C30 was approved as Minute Item No. 30 by the California State Lands Commission by a vote of 3 to 0 at its 1-30-02 meeting.

**CALENDAR ITEM
C30**

A 18

1/30/02

S 10

AD 417 W 23965
B. Stevenson
D. Plummer

**APPROVAL OF A COMPROMISE TITLE SETTLEMENT AGREEMENT
CONCERNING APPROXIMATELY 121 ACRES OF LAND IN THE CITY OF
HAYWARD, ALAMEDA COUNTY.**

APPLICANTS:

Acacia Credit Fund 7, L.L.C.
c/o Duc Housing Partners, Inc.
14107 Winchester Blvd., Suite H
Los Gatos, CA 95032

BACKGROUND:

In 1987, an agent of the owner of the Oliver parcel contacted the State Lands Commission regarding the determination of possible State interest in this property. Commission staff completed initial studies in 1988 and determined that the State had an interest in the property due to the existence of historic tidelands and sloughs on the property. Development planning by the owner and local government proceeded and the parcel was ultimately divided into an east and west portion. The eastern portion, Oliver East, was the subject of an earlier settlement agreement approved by the Commission at its meeting of April 2001. Representatives of the owner now desire to enter into an agreement settling title to the western portion, hereinafter "Oliver West," which is the subject of this transaction.

The subject parcel, the location of which is shown on Exhibit A (attached and incorporated by reference), is presently in the record ownership of Acacia Credit Fund 7, LLC ("Owner"). The subject property has been reclaimed and is removed from San Francisco Bay. Additionally, the Environmental Impact Report (EIR) process was completed by the City of Hayward in early 1998 (SCH #95103079), in regards to a general plan amendment and specific plan.

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The purpose of the settlement now before the State Lands Commission is to enter an agreement as to the subject property. The staff of the Commission has completed research of land title records and topography of the site. The research has shown that:

1. The topographic chart dated 1857 depicts the subject property as marsh, and a portion of it as tidal sloughs; and
2. All or a part of the subject property remains subject to a public trust easement. The existence, nature, and extent of remaining sovereign interests in the subject property is disputed by the record owner.

The staff, working with representation of the record owner, has negotiated a settlement of sovereign title interests in the subject property. The settlement has been memorialized in a draft settlement agreement now on file in the offices of the Commission in Sacramento. Through the settlement, the State will quitclaim its interests in the subject parcel to the record owner using the authority conferred by Public Resources Code Sections 6307 and 8600-8633. In exchange, the private property will place the sum of \$594,000 into the Kapiloff Land Bank Fund for the purchase of other land useful for public trust purposes.

The staff has determined the economic value of the subject property, has evaluated the evidence relating to the title history of the property, and recommends entry into the settlement at the amount specified here. The settlement will allow development to proceed on a parcel of land not useful for public trust purposes, while contributing funds for the purchase of other land that would be useful for public trust purposes.

STATUTORY AND OTHER REFERENCES:

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

PERMIT STREAMLINING ACT DEADLINE

N/A

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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 CEQA as a statutorily-exempt project because it involves a settlement of title and boundary problems.

Authority: Public Resources Code 21080.11.

EXHIBITS:

- A. Location Map of the Subject Parcel
- B. Trust Termination Plat

RECOMMENDED ACTION:

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 21081.11, 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 STATE LANDS COMMISSION, INCLUDING THE FINDINGS TO TAKE EFFECT UPON RECORDING OF THE AGREEMENT WHICH WILL RESULT IN A TERMINATION OF SOVEREIGN RIGHTS IN THE SUBJECT PARCEL.

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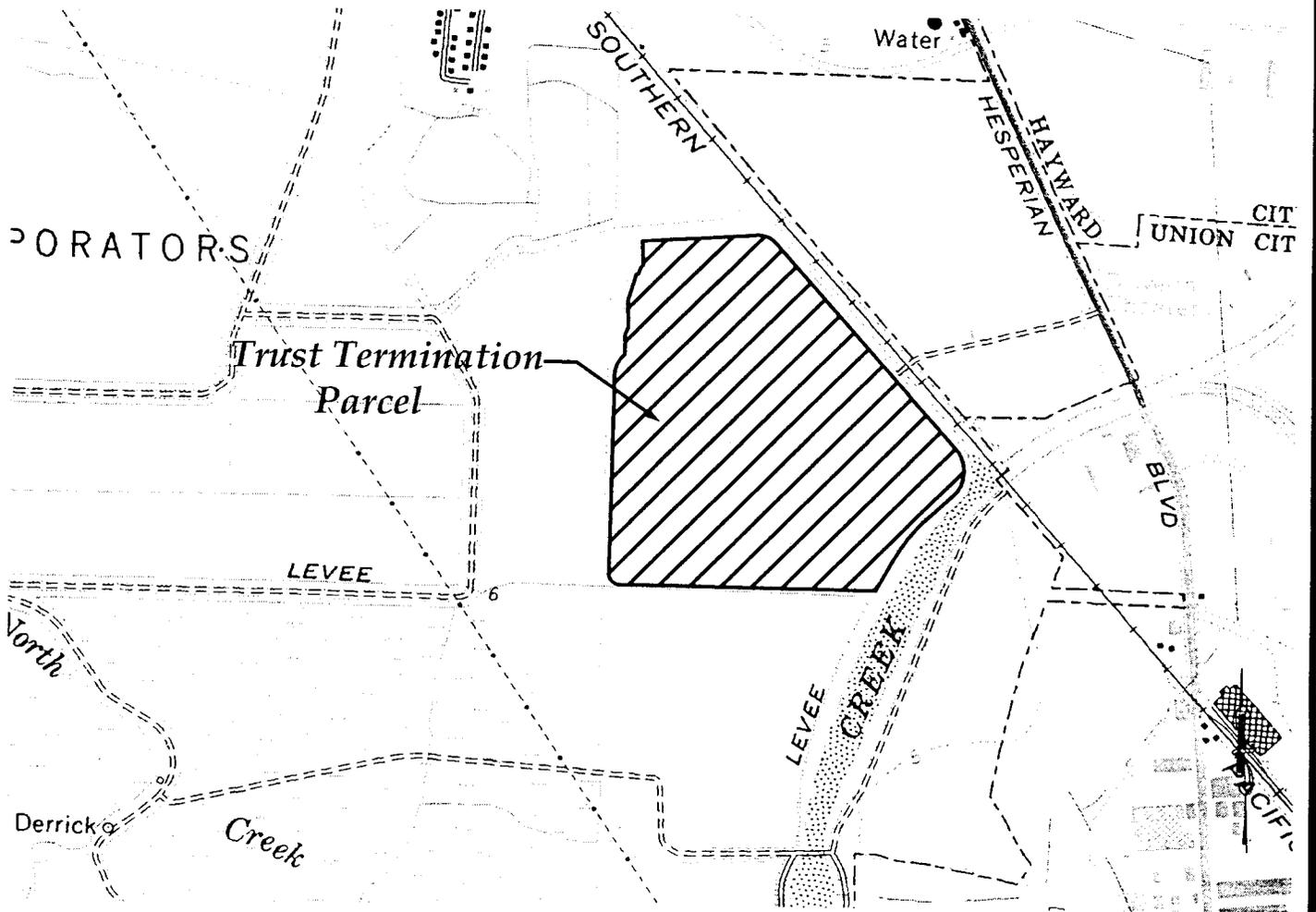
3. FIND, EFFECTIVE UPON RECORDATION OF THE PROPOSED SETTLEMENT, THAT:
- A. THE AGREEMENT IS IN THE BEST INTERESTS OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION; THE ENHANCEMENT OF THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND THE UPLAND; AND THE PROTECTION, PRESERVATION, AND ENHANCEMENT OF THE TIDELANDS AND SUBMERGED LANDS AND PUBLIC ACCESS THERETO.
 - B. THE AMOUNT OF FUNDS TO BE DEPOSITED INTO THE KAPILOFF LAND BANK FUND 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 PARCEL IN WHICH THE PUBLIC TRUST IS TO BE TERMINATED.
 - E. THE AGREEMENT CONSTITUTES A COMPROMISE OF CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED.
 - F. THE AGREEMENT IS ENTERED IN LIEU OF THE COSTS, DELAYS, AND UNCERTAINTIES OF LITIGATION AND IS CONSISTENT WITH AND IS AUTHORIZED BY LAW.

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- 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.
- 4. 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 SUBJECT PARCEL IN ALAMEDA COUNTY, DESCRIBED IN THE AGREEMENT AS THE TRUST TERMINATION PARCEL.
 - 5. 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, 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.

NO SCALE

SITE MAP



Trust Termination, Alameda County

NO SCALE

Location Map

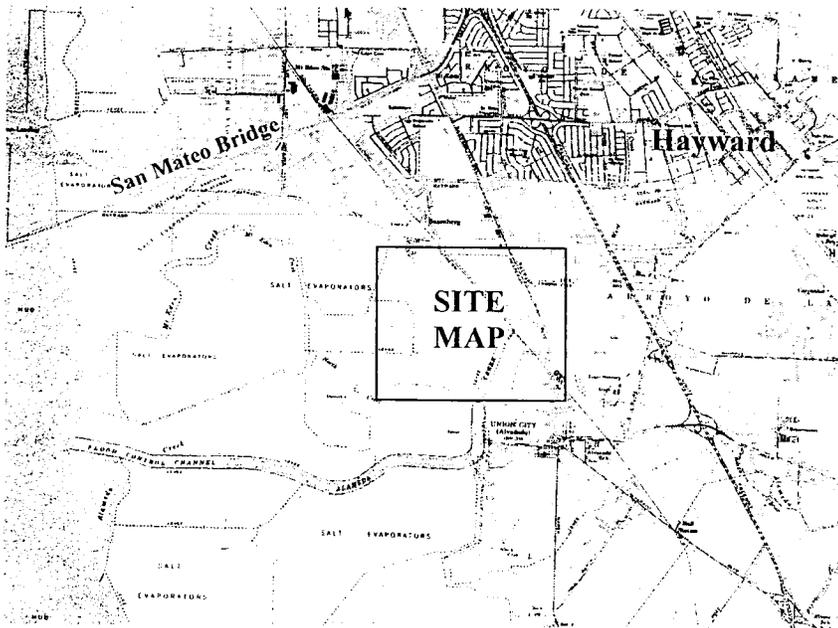


Exhibit A

W 23965

Oliver West

ALAMEDA COUNTY



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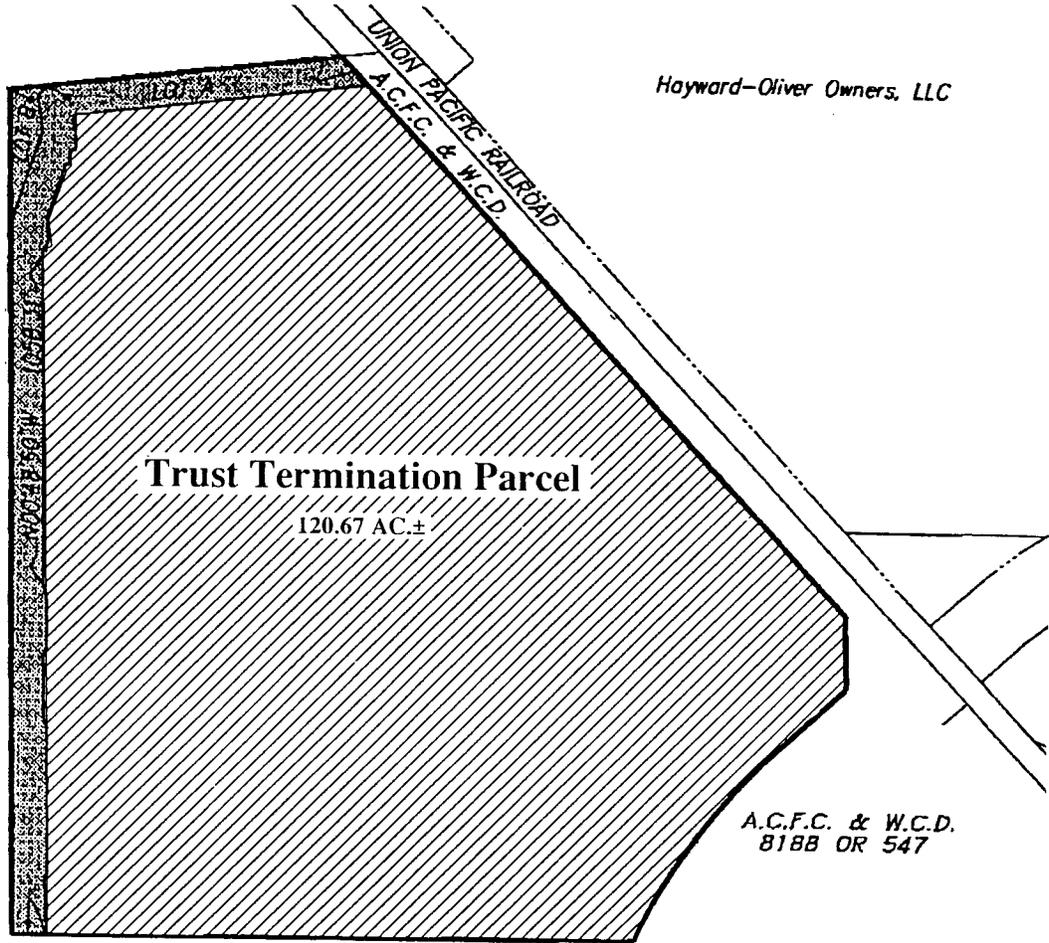
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This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any state interest in the subject or any other property.

EXHIBIT B



STATE OF CALIFORNIA



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Oliver West
Title Settlement
Trust Termination Plat
Alameda County, California

CALIFORNIA STATE
LANDS COMMISSION

DRAWN BY: MJJ

FILE NO.: W23965

DATE: 01/15/02

NO SCALE

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