

**CALENDAR ITEM
C26**

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06/18/02
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**CONSIDER ACCEPTANCE OF TITLE TO THE WESTERN EARLY TRANSFER
PARCEL, MARE ISLAND, AND ENTRY INTO RELATED AGREEMENTS AND
LEASES; CITY OF VALLEJO, SOLANO COUNTY**

BACKGROUND

The primary purpose of this calendar item is to seek authorization by the State Lands Commission (the "Commission") to accept a deed from the United States of America, acting by and through the Department of the Navy (the "Navy"), of a parcel of land referred to as the Western Early Transfer Parcel (the "WETP"), including access to it. The WETP is on the western side of the closed Mare Island Naval Shipyard in Vallejo, and is approximately 2,800 acres in size. It is made up of three types of land: dredge ponds used over many years for the placement of spoils dredged from the Napa River; tidal marsh; and the open water of San Pablo Bay. The WETP is described in Exhibit A-1, and is shown for reference in Exhibit A-2. Both Exhibits are attached to this calendar item, and are incorporated by reference as parts of it.

The second purpose of this calendar item is to seek approval to enter several other agreements and a land use covenant associated with the WETP. These agreements deal with the completion of regulatory closure for hazardous waste and dangerous materials at the site, the performance of long term obligations, compliance with the requirements of a land use covenant, indemnifications, security instruments, and insurance policies to protect the State, and also with leases of the property accepted. Several documents are in this category: (1) a Consent Agreement between the Commission, Roy F. Weston, Inc., a Pennsylvania corporation ("Weston"), the California Department of Toxics Substances Control ("DTSC"), and the City of Vallejo, which sets forth cleanup responsibilities of Weston in the WETP; (2) a Performance, Indemnification, and Access Agreement among Weston, the Commission, and the City of Vallejo. This agreement assures that regulatory closure of the site will be completed, that all ongoing obligations specified by DTSC now or in the future will be performed, and that Weston will indemnify the State and the City of Vallejo for any failure to perform operations and maintenance or any future cleanup responsibilities. It also requires that Weston purchase pollution liability insurance naming the State and the City as additional

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insureds, and that the obligations of Weston to perform operations and maintenance and clean-up actions be secured through a bond and escrow account to which the State has access; (3) an addendum to the existing Public Agency Lease with the City of Vallejo to add a portion of the WETP to the Lease property; and (4) a lease to the United States Fish and Wildlife Service ("USFWS") of the remainder of the WETP, to be added to the San Pablo Bay National Wildlife Refuge.

The WETP is comprised of sovereign lands which were granted to the United States through two legislative acts found at Chapter 81, Statutes of 1897 and Chapter 1452, Statutes of 1963. These statutes contain reversionary clauses stating that, upon the occurrence of specified events, the land would be returned to the State. The staff of the Commission has made it clear that state acceptance of title to reversionary property will not occur until the property has been analyzed for hazardous waste and dangerous materials and all necessary remediation performed, coupled with any necessary protections for the State through insurance, security instruments, and indemnification.

In the case of the WETP, the Navy will transfer fee title to the State pursuant to the "early transfer" provisions of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 and the sections following). Early transfers are typically of non-remediated properties. However, the WETP has been studied and remediated, and only the completion of regulatory closure remains. Portions of the western side of Mare Island were intentionally not included within the WETP, even though subject to the same state reversionary interests, because they still require substantial remediation. These include an old dump site, an ordnance demolition pit, and the western magazine area. The Commission may consider acceptance of these parcels at a later time and, as to some of the properties, may decide not to accept title.

There are several reasons to consider the acceptance of title to the WETP: first, the property has been thoroughly analyzed for hazardous waste and dangerous materials, and remediation has been completed; second, the ongoing operations and maintenance requirements and the land use covenant required by the DTSC are in the public interest and are not in conflict with the public trust character of the property; third, ongoing long-term obligations will be funded by the United States and will be performed by Weston; and fourth, state interests will be protected through performance agreements, funded security obligations, and insurance. Ultimately, the Navy, through covenants in its deed and provisions of federal law, remains responsible for any hazardous waste and dangerous materials within the site stemming from its use of the land.

ANALYSIS OF THE WESTERN EARLY TRANSFER PARCEL AND REMEDIATION

The principle issue presented by the WETP was the presence of Ordnance and Explosive ("OE") in parts of the site near dredge pipe outfalls and in levees near the outfalls. By definition, OE has not been fired, primed, or fuzed, and is less dangerous

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than unexploded ordnance ("UXO"), which has. OE came to be on the site because of the Navy practice of discarding old or unneeded small arms and other small caliber ammunition from ships by dropping them into the Mare Island Straits. With the dredging of the Straits, OE was brought up by a dredge along with silt and water, pumped across the Island, and deposited into the dredge ponds. Radium-containing dials from ships also found their way into the ponds in this manner and have been removed. As the ponds became filled, the levees surrounding the ponds were built up to increase capacity by using material from the bottoms of the ponds, including OE which had fallen out at and near outfalls. The WETP was never used to store ammunition, nor to detonate live ammunition or other explosive material. Because of this, there is virtually no concern regarding UXO in the WETP.

There have been several studies and removal actions of OE within the WETP from 1994 through 2001. The Navy, the Supervisor of Shipbuilding, Conversion and Repair - Portsmouth Virginia Environmental Detachment (often referred to as "SSPORTS"), and Weston have comprehensively screened the property for OE, and have removed discovered items. The first study was the Ordnance Site Investigation geophysical search in 1994. In 1995, PRC Environmental, Inc. completed an Ordnance Preliminary Assessment, which recommended further investigation and removal actions. The Ordnance Preliminary Assessment also concluded that, because of its weight, ordnance would be concentrated in areas around the dredge pipeline outfalls and in perimeter levees, and would not be found far into the ponds. This assessment was later verified by extensive removals of materials from areas near outfalls, and the absence of OE away from outfalls.

The search for OE and other anomalies was carried out using magnetometers, metal detectors, and visual observation. The outfall areas and pond levees were subjected to a 100% magnetometer search since most ordnance material was believed to be concentrated there. The absence of OE in the dredge ponds away from the outfalls was confirmed by a sampling of all pond areas. No OE was found in the pond bottoms.

A total of 390 "anomalies" were found in a search of 476 acres for possible OE performed between July 1994 and October 1995. It is important to note that not all anomalies were OE or small arms munitions, and often were metal debris of various types. The 390 anomalies were located with an instrument named the MK-26, which was the state-of-art equipment at the time of the investigation. Approximately 90% of the anomalies were located near outfalls or berms. Excavation was required to determine what the anomalies actually represented.

Two removal actions were completed to identify and characterize the anomalies in the dredge ponds, and to determine if the oufall/berm model was accurate. Weston conducted both of these additional investigations. The first investigation was performed between 1998 and 2001, and was labeled the "intrusive investigation." When the anomalies were dug up, it was found that, of the 390, 16 were very large masses of

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metal materials and OE corroded and rusted together at the outfalls. These were broken up by crushing and hammering using heavy equipment, without accidental detonation. The remaining 374 anomalies were a mix of 4 pieces of OE and harmless scraps of metal. Of all OE found, 99.9% was located at outfalls, and no OE items were encountered in the dredge pond bottoms. All OE recovered had been unfired, and the associated fuze components were frequently missing or inoperable due to corrosion.

Another survey was performed in 2001 by Weston to identify and to characterize anomalies in the berms and outfall areas by survey and removal. This work, referred to as the "OE Confirmation Survey," used newer electromagnetic technology which detects ferrous and non-ferrous materials. Unlike the MK-26 used in the earlier search, this technology reports all detected metal as an anomaly, without reference to the judgment of the machine operator as to what might be scrap metal. Many more anomalies were turned up using this new technology---11,816---and digging up and removal was required to verify what was OE versus scrap metal, bolts and nuts, or even pockets of rust. A subsequent survey of verification grid sites was performed, and 342 anomalies were dug up. No OE was found. However, one item was found on the surface near one of the grids. A subsequent visual survey was done of the crowns of all berms, and nothing more was found.

The 2001 OE Confirmation Survey and its validation grids supported what had been found in earlier surveys and removal actions---that the vast majority of OE was at outfalls, where removal had occurred. As a final study, eight more areas were surveyed and anomalies dug up. Seven of these areas were concluded to be the most probable locations of any remaining OE at the dredge ponds in areas not studied earlier. The last one was selected because it was unlikely to have OE. Of the 484 anomalies found within the eight sites, seven were OE which was removed. No OE items were found at the one site where no OE was expected, supporting past studies and removal actions.

The studies and removal actions performed at the WETP were done with the advice and direction of staff at the Office of Military Facilities within DTSC. The studies and removal actions have enabled DTSC to conclude that the continued risk from OE is very low at the outfalls and berms, and of an even lower magnitude within pond bottoms. This work framed the requirements set forth in the Consent Agreement and Land Use Covenant described below, to which the Commission is a party. These requirements are not too onerous to support taking back the property and leasing it to the City of Vallejo and the USFWS, particularly given that anticipated costs for operations and maintenance will be met by Weston, and backed up by the a funded escrow account it will create for the State.

There are two subject areas which will require conditional approval by the Commission. The first pertains to an area approximately 800 square feet in size at an old outfall used to discharge industrial and storm water runoff until 1976. DTSC has required, and Weston is undertaking, a removal of approximately 155 cubic yards of material at the

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site of the outfall which have unacceptable levels of PCB's and mercury. It is anticipated that this area will be remediated by the time that title to the WETP is accepted. If it is not, the area will be cut out of the WETP, and title will only be accepted when DTSC has determined that remediation is complete.

The second condition to the acceptance of title to the WETP is necessary because the WETP has been included within a Resource Conservation and Recovery Act (RCRA) facility. The RCRA law is found at 42 USC 6901 and the sections following. The WETP is not within a RCRA permitted hazardous waste unit or a solid waste management unit.

The RCRA facility designation covers all of the former Mare Island Naval Shipyard, including the Napa River and San Pablo Bay. On May 17, 2002, the Navy filed a request for permit modification with DTSC to remove the WETP from the facility designation. The staff recommends that title not be accepted until the required permit modification is complete, and the facility designation has been removed.

DOCUMENTS RELATED TO ACCEPTANCE OF TITLE AND HAZARDOUS WASTE AND DANGEROUS MATERIALS ISSUES

To complete acceptance of the WETP, the Commission must approve the following:

1. Acceptance of a Quitclaim Deed from the United States of America, acting through the Department of the Navy, including access to the WETP. The Quitclaim Deed is on file at the offices of the Commission and is incorporated by reference as a part of this calendar item. Terms in the Quitclaim Deed require that the United States warrant, following regulatory closure, that all response

actions to protect human health and the environment have been taken. The Quitclaim Deed also contains a covenant that the United States will complete any additional remediation found to be necessary after the date that the Commission accepts the Quitclaim Deed.

2. Execution of a Consent Agreement between the Commission, DTSC, Weston, and the City of Vallejo. The Consent Agreement is on file in the offices of the Commission and is incorporated by reference as a part of this calendar item.
 - a. The Consent Agreement describes the responsibilities of the parties related to clean-up, regulatory closure, and operations and maintenance. The obligation of the Commission under the Consent Agreement is to record the Covenant to Restrict Use of Property, described below. The main obligations of the Consent Agreement lie with Weston.
 - b. The Consent Agreement recognizes that a Remedial Action Plan (a "RAP") has been prepared for the WETP, and that no clean-up actions remain, other than in the area of the outfall described above. Through the RAP, DTSC will set out several protections for the public and wildlife which use and enjoy the WETP. Among the protections are regular visual

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monitoring of the entire WETP; periodic sampling of the soils within the WETP, including at historic weirs, to ascertain that neither toxic substances nor metals have increased in concentration; and the implementation of the requirements in the Covenant to Restrict Use of Property, described immediately below.

3. Execution and recordation in the offices of the Solano County Recorder of a Covenant to Restrict Use of Property (“Land Use Restriction”). The Land Use Restriction is on file in the offices of the Commission and incorporated by reference as a part of this calendar item. The Land Use Restriction requires that the WETP not be used for hospitals, residences, schools, or day care centers. It bars the alteration of groundwater conditions within the WETP through activities such as groundwater pumping, and requires that disturbance of soil or groundwater through activities such as digging, landscaping, and regrading occur only after DTSC has approved a work plan or in an emergency. The Land Use Restriction also contains affirmative obligations related to public access. It requires that a public access path be constructed to certain specifications on top of dredge pond levees within two years after the recordation of the Land Use Restriction, along with barriers at entrances to bar vehicles (other than emergency, government, lessee, or Weston vehicles) and to deter bicycles. These affirmative obligations are dealt with in the agreement described immediately below, and their performance assured through a bond or security instrument.
4. Entry into the Performance, Indemnification, and Access Agreement (the “Performance and Indemnification Agreement”) between the Commission, Weston, and City of Vallejo. The Performance and Indemnification Agreement is on file in the offices of the State Lands Commission, and is incorporated by reference as a part of this calendar item.
 - a. In the Performance and Indemnification Agreement, Weston will agree to perform all actions to achieve regulatory closure, all affirmative obligations under the Land Use Covenant, and all operations and maintenance in the WETP indefinitely. To guarantee that regulatory closure and the affirmative obligations of the Land Use Restriction are achieved, Weston will post a “Completion Bond” in favor of the State. To guarantee that long-term operations and monitoring are done, Weston will establish an “Escrow Account” in favor of the State in an amount that represents the present value of the anticipated cost of operations and monitoring, and the account will be adjusted each 5 years to reflect actual costs. The costs related to these activities have been reviewed by the staff of the Commission. The Completion Bond and the Escrow Account will be funded at the time the State accepts title.
 - b. Through the Performance and Indemnification Agreement, Weston will indemnify the State for the failure to perform the tasks for regulatory closure, the affirmative obligations, and operations and maintenance. As

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a back-up to the continuing responsibility of the United States, Weston will also indemnify the State against liability for hazardous waste and dangerous materials which may exist in the WETP for the length of the Public Agency Lease to the City of Vallejo, which is 20 years.

- c. As a condition to the State's acceptance of title, Weston will also fund a pollution liability policy naming the City of Vallejo and the State in the aggregate amount of \$100 million.

- 5. Entry into a First Lease Addendum to Public Agency Lease P.R.C. 8180 (the "First Lease Addendum") with the City of Vallejo. The First Lease Addendum is on file at the offices of the State Lands Commission, and is incorporated by reference as a part of this calendar item. The purpose of the First Lease Addendum is to add the portion of the WETP which is made up of managed dredge ponds to the existing Public Agency Lease.

- 6. Entry into a 49 year lease to the USFWS of the remainder of the WETP not leased to the City of Vallejo. The proposed lease is on file in the offices of the State Lands Commission, and is incorporated by reference as a part of this calendar item. The areas to be leased to the USFWS are made up of unmanaged dredge ponds, tidal marsh, and tide and submerged lands in San Pablo Bay, and either possess or have potential for high wildlife values. These areas will be added to the San Pablo Bay National Wildlife Refuge.

The documents presented to the Commission have been negotiated by the joint efforts of Commission staff and the Office of the Attorney General, with the assistance and advice of DTSC staff. Commission staff supports the acceptance of title to the property because it has been studied and remediated, the use restrictions are acceptable, and because ongoing costs are to be met by Weston and secured by a bond and escrow account. The WETP will be an asset to the State and its lessees, the City of Vallejo and the USFWS.

STATUTORY AND OTHER REFERENCES:

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

AB 884: 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 the leases of the WETP to the City of Vallejo and to the USFWS are activities which are exempt from the requirements of the CEQA as statutorily exempt projects. The projects are exempt

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because they involve settlement of title and boundary problems and leases in connection with those settlements.

Authority: Public Resources Code 21080.11

2. 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 execution of the Certificate of Acceptance of the Quitclaim Deed, Consent Agreement, Land Use Restriction, and Performance and Indemnification Agreement are not subject to the requirements of the CEQA because they are not "projects" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

3. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, and the sections following. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A-1. Description of the Western Early Transfer Parcel.
- A-2. Site Map of the Western Early Transfer Parcel.

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDINGS:

1. FIND THAT THE LEASES OF THE WESTERN EARLY TRANSFER PARCEL TO THE CITY OF VALLEJO AND TO THE US FISH AND WILDLIFE SERVICE ARE EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS STATUTORILY EXEMPT PROJECTS PURSUANT TO PUBLIC RESOURCES CODE SECTION 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. FIND THAT EXECUTION OF THE CERTIFICATE OF ACCEPTANCE OF THE QUITCLAIM DEED, CONSENT AGREEMENT, LAND USE COVENANT, AND PERFORMANCE AND INDEMNIFICATION AGREEMENT ARE NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THESE ACTIVITIES ARE NOT PROJECTS AS DEFINED BY PUBLIC RESOURCES CODE

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SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

SIGNIFICANT LANDS INVENTORY FINDING:

1. FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTION 6370, AND THE SECTIONS FOLLOWING.

AUTHORIZATIONS:

1. APPROVE AND AUTHORIZE THE EXECUTION AND RECORDATION IN THE OFFICES OF THE SOLANO COUNTY RECORDER OF A CERTIFICATE OF ACCEPTANCE OF THE QUITCLAIM DEED, WITH ACCESS, FROM THE UNITED STATES OF AMERICA OF THE WESTERN EARLY TRANSFER PARCEL IN SUBSTANTIALLY THE FORM NOW ON FILE IN THE SACRAMENTO OFFICES OF THE COMMISSION.
2. APPROVE AND AUTHORIZE THE EXECUTION AND RECORDATION IN THE OFFICES OF THE SOLANO COUNTY RECORDER OF THE COVENANT TO RESTRICT USE OF PROPERTY BETWEEN THE STATE LANDS COMMISSION AND THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL IN SUBSTANTIALLY THE FORM NOW ON FILE IN THE SACRAMENTO OFFICES OF THE COMMISSION.
3. APPROVE AND AUTHORIZE THE EXECUTION OF THE CONSENT AGREEMENT AMONG THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL, ROY F. WESTON, INC., A PENNSYLVANIA CORPORATION, THE CITY OF VALLEJO, AND THE STATE LANDS COMMISSION PERTAINING TO THE WESTERN EARLY TRANSFER PARCEL IN SUBSTANTIALLY THE FORM NOW ON FILE IN THE SACRAMENTO OFFICES OF THE COMMISSION.
4. APPROVE AND AUTHORIZE THE EXECUTION OF THE PERFORMANCE AND INDEMNITY AGREEMENT AMONG ROY F. WESTON, INC., A PENNSYLVANIA CORPORATION, THE CITY OF VALLEJO, AND THE STATE LANDS COMMISSION, IN SUBSTANTIALLY THE FORM NOW ON FILE IN THE SACRAMENTO OFFICES OF THE COMMISSION.
5. APPROVE AND AUTHORIZE THE EXECUTION AND RECORDATION IN THE OFFICES OF THE SOLANO COUNTY RECORDER OF A NO COST 49-YEAR PUBLIC AGENCY LEASE TO THE U. S. FISH AND WILDLIFE SERVICE OF UNMANAGED DREDGE PONDS, TIDAL MARSHES, AND

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OPEN WATERS WITHIN THE WESTERN EARLY TRANSFER PARCEL IN A FORM OF LEASE SUBSTANTIALLY SIMILAR TO THAT NOW ON FILE IN THE SACRAMENTO OFFICES OF THE COMMISSION. THE COMMISSION FINDS THAT A STATEWIDE PUBLIC BENEFIT ACCRUES FROM THE LEASE.

6. APPROVE AND AUTHORIZE THE EXECUTION AND RECORDATION IN THE OFFICES OF THE SOLANO COUNTY RECORDER OF THE FIRST ADDENDUM TO PUBLIC AGENCY LEASE NO. 8180 BETWEEN THE STATE LANDS COMMISSION AND THE CITY OF VALLEJO TO INCLUDE THE MANAGED DREDGE PONDS WITHIN THE WESTERN EARLY TRANSFER PARCEL. THE FORM OF THE FIRST ADDENDUM TO PUBLIC AGENCY LEASE NO. 8180 SHALL BE SUBSTANTIALLY SIMILAR TO THAT NOW ON FILE IN THE SACRAMENTO OFFICES OF THE COMMISSION.
7. CONDITION THE AUTHORIZATIONS IN PARAGRAPHS ONE THROUGH SIX AS FOLLOWS:
 - a. TITLE SHALL NOT BE ACCEPTED TO THE WESTERN EARLY TRANSFER PARCEL UNLESS AND UNTIL THE EXISTING RCRA PERMIT HAS BEEN MODIFIED TO REMOVE THE WESTERN EARLY TRANSFER PARCEL FROM THE RCRA FACILITY DESIGNATION.
 - b. TITLE SHALL NOT BE ACCEPTED TO THE OUTFALL AREA UNTIL THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL HAS DETERMINED IN WRITING THAT REMEDIATION HAS BEEN COMPLETED. WHEN THAT DETERMINATION HAS BEEN MADE, TITLE MAY BE ACCEPTED AND THE LEASE TO U. S. FISH AND WILDLIFE SERVICE AMENDED TO INCLUDE THE REMEDIATED LAND, PROVIDED THAT THE TERMS OF THE ALL OTHER AGREEMENTS APPLY TO THE REMEDIATED LAND.
8. AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTIONS ON BEHALF OF THE COMMISSION IN REGARDS TO THE AUTHORIZATIONS IN PARAGRAPHS ONE THROUGH SEVEN, INCLUDING REPRESENTATION OF THE COMMISSION IN COURT, IF NECESSARY.