

This Calendar Item No. C44 was approved as Minute Item No. 44 by the California State Lands Commission by a vote of 3 to 0 at its 04-05-04 meeting.

CALENDAR ITEM
C44

A 6
S 3

04/05/04
W 503.1651
M. Rodriguez
A. Reynolds
B. Stevenson

**REQUEST FOR APPROVAL OF AMENDMENT TO
SETTLEMENT AGREEMENT AND LAND EXCHANGE IN CASE
ENTITLED WALDO POINT HARBOR V. STATE OF CALIFORNIA, ET AL.
(MARIN COUNTY SUPERIOR COURT; CASE NO. 137916), AFFECTING LAND IN
MARIN COUNTY**

The purpose of this calendar item is to seek State Lands Commission (the "Commission") authorization to amend a settlement agreement approved by the Commission in 1992 in the case entitled Waldo Point Harbor v. State of California, et al. (Marin County Superior Court; Case No. 137916). The primary focus of the Commission's participation in the settlement agreement involves a land exchange. As explained below, the land involved in that exchange has been amended through environmental impact review and recent project approvals, and new Commission action is necessary.

By way of background, Waldo Point Harbor is a houseboat marina along Richardson Bay in Marin County, and lies northwest of the City of Sausalito. The plat attached to this calendar item as Exhibit A shows the site for reference. The houseboat community at Waldo Point Harbor was authorized by a now-expired 1971 permit from the San Francisco Bay Conservation and Development Commission ("BCDC"). There are 269 houseboats and nine arks at the Harbor. Of these, 38 are boats within "Gates Cooperative" in the middle of the Harbor. The Gates Cooperative houseboats have never been permitted by BCDC.

The settlement agreement which is the subject of this calendar item contemplates that Waldo Point Harbor will obtain authorization for all boats and arks now within the Harbor, including Gates Cooperative houseboats, plus four ark replacement berths and a harbor maintenance area on a barge. As part of the approval process, Waldo Point Harbor has prepared a plan to reconfigure the marina, which includes new berths for the Gates boats primarily on a new dock in the middle of the Harbor. The County of Marin approved the plan on February 25, 2003. BCDC approved the plan on March 18, 2004, subject to various conditions, including subsequent approval of an amended land exchange by the State Lands Commission. BCDC also analyzed the public trust needs of Waldo Point Harbor, particularly where there are houseboats.

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CALENDAR PAGE

000548

MINUTE PAGE

CALENDAR ITEM NO. C44 (CONT'D)

The majority of Waldo Point Harbor is constructed on lots within Richardson Bay, which were sold by the state Board of Tidelands Commissioners in the late 1800's. These water-covered lots are privately owned, but are subject to a public trust easement held by the State of California. (City of Berkeley v. Alameda County Superior Court (1980) 26 Cal 3d 515). Portions of the docks and many of the houseboats extend onto water-covered streets reserved to the State and owned by it in fee. Some of the houseboats and their supporting upland facilities also extend into areas which had been set aside for open space and public access under the now-expired 1971 BCDC permit. The County of Marin, which has a legislative grant in this area (Chapter 497, Statutes of 1959, as amended, including Chapter 898, Statutes of 1975), has leased portions of the streets for the berthing of docks and for houseboats. This lease extends until 2028. The State Lands Commission was not notified of this lease until many years after it was signed, and has taken the position that Marin County cannot lease sovereign lands held in fee for residential purposes under its legislative grant.

Waldo Point Harbor has been the subject of controversy for many years. Waldo Point Harbor sued Marin County, BCDC, and the State Lands Commission in 1988, seeking a court determination that private use of publicly owned streets is consistent with the public trust and with the legislative grant of tide and submerged lands to Marin County. As an alternative position, Waldo Point Harbor has argued that BCDC, the State Lands Commission, and Marin County are estopped from denying this use of the Harbor. The Commission and BCDC have countered this position, and BCDC has alleged more than 20 permit violations of the McAteer-Petris Act (Government Code Sections 66600 and following).

There are several objectives of the existing settlement and the settlement as it is to be amended by the authorization requested in this calendar item:

1. Through a land exchange, residential uses will exist only on water-covered land in which the fee is privately owned, rather than on sovereign streets. These areas are shown on Exhibit A for reference as the "Waldo Point Harbor" parcels.
2. Through the exchange, the fee to historic unfilled streets occupied by houseboats and houseboat docks will be patented to Waldo Point Harbor, with the State retaining a public trust easement. These streets comprise parts of the "Waldo Point Harbor" parcels, and are shown by hatching. The remainder of the parcels are deeded BTLC lots to which Waldo Point already owns the fee, subject to a public trust easement.

CALENDAR ITEM NO. C44 (CONT'D)

3. In exchange for the State's patent of a fee in street areas occupied by houseboats and docks, the State will receive from Waldo Point open water lots or parts of lots within and near the Harbor, together with dry land along the Harbor. These areas are shown by cross-hatching on Exhibit A. At the conclusion of the exchange, the State will own all land within the areas marked as the "State of California" parcels on Exhibit A. A portion of those parcels are historic streets already owned by the State. It is lots which are being added to State ownership.
4. All of the property received by the State is anticipated to be used for public viewing, recreation, and preserving areas as open water under a lease connected with this settlement and exchange as will be considered by the State Lands Commission at a subsequent meeting.
5. Through the permit issued by BCDC, public use areas along the Harbor will be improved by Waldo Point Harbor at its cost with walkways and a public viewing platform.

The need for the amendment of the existing settlement and exchange agreement stems from changes in the configuration of the 1992 settlement parcels already approved by the Commission. These changes primarily result from the proposal to locate a new dock within the central part of the Harbor to accommodate houseboats of the Gates Cooperative. This new dock is a significant element of the preferred alternative in the Environmental Impact Report certified by Marin County for Waldo Point Harbor on February 25, 2003. The construction of the new dock will diminish the breadth of public viewing within the central area of the Harbor and the quality of the public access at the site. Under the amended settlement, this loss is offset in several ways:

1. By the creation of a public viewing platform extending into the Harbor, to be funded and constructed by Waldo Point Harbor.
2. By having two additional private water lots become public trust fee land, to be subsequently leased for open space.
3. By the acquisition of certain land known as the "Dunphy Park Parcel" by the City of Sausalito to be made subject to the public trust and the City's legislative grant. Waldo Point Harbor will assist the City in this acquisition by contributing

CALENDAR ITEM NO. C44 (CONT'D)

\$100,000 toward the purchase price. The addition of the Dunphy Park Parcel to the public trust and the City's legislative grant will be implemented through a separate agreement to be developed by staff with the City of Sausalito. This property is described for reference in Exhibit B to this calendar item (with the actual description to be verified by Commission staff). The Dunphy Park Parcel offers increased public access to the shoreline and views to San Francisco Bay to offset the diminished value of the access and loss in views caused by the new dock to be constructed within Waldo Point Harbor.

The staff, with advice and assistance from the Office of the Attorney General, recommends entry into an amended settlement agreement in the Waldo Point Harbor case. The amendment will insure that, at the completion of the exchange, sovereign fee ownership will exist as shown on Exhibit A, subject to the preparation of descriptions to complete the exchange. Also, the State will retain a public trust easement in all areas in which the fee within historic streets is deeded by the State to Waldo Point Harbor. Staff has reviewed the privately prepared appraisal for this amended exchange and agrees with its conclusion that the value of land to be brought into the public trust equals or exceeds the value of the fee in the streets that will be patented, subject to a public trust easement.

The completion of the amended settlement and exchange is in the statewide public interest for several reasons: it will remove residential uses from sovereign lands held in fee by the State; it will remove substantial water-covered lands from private fee ownership and bring them into public fee ownership; through BCDC's permit and permit conditions, it will require the construction of shoreline improvements at private expense for public access and viewing; and it will lead to bringing the Dunphy Park Parcel, which has views to San Francisco Bay, into the public trust and Sausalito grant.

STATUTORY AND OTHER REFERENCES:

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

PERMIT STREAMLINING ACT:

N/A

OTHER PERTINENT INFORMATION:

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

CALENDAR ITEM NO. C44 (CONT'D)

a statutorily exempt project. The project is exempt because it involves settlements of title and boundary problems.

Authority: Public Resources Code 21080.11

EXHIBITS:

- A. Location map of Waldo Point Harbor, showing final configuration of State property and Waldo Point Harbor property subject to the public trust easement.

- B. Copy of vesting deed for Dunphy Park Parcel, with description for reference.

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 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.

2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE AND TO DELIVER INTO ESCROW FOR RECORDATION IN THE OFFICE OF THE COUNTY RECORDER OF MARIN COUNTY, THE SUBJECT LITIGATION SETTLEMENT INCLUDING A LAND EXCHANGE AND THE ASSOCIATED DEEDS AND PATENTS INCLUDED IN THE SETTLEMENT AGREEMENT IN FORMS SUBSTANTIALLY SIMILAR TO THOSE NOW ON FILE WITH THE COMMISSION, AS SHALL BE AMENDED TO REFLECT THE SETTLEMENT AS REAUTHORIZED; AND TO RECEIVE AND ACCEPT DEEDS TO PUBLIC TRUST PARCELS UNDER THE SETTLEMENT, INCLUDING A DEED AS NECESSARY FROM MARIN COUNTY OF ITS GRANTED LANDS INTEREST WITHIN WALDO POINT HARBOR.

3. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE AN AGREEMENT (IN CONJUNCTION WITH THE SETTLEMENT AGREEMENT) WITH THE CITY OF SAUSALITO REGARDING THE DUNPHY PARK PARCEL TO INSURE THAT IT IS MADE SUBJECT TO THE PUBLIC TRUST AND TO THE GRANT TO THE CITY OF SAUSALITO, IN A FORM ACCEPTABLE TO THE EXECUTIVE OFFICER AND THE OFFICE OF THE ATTORNEY GENERAL.

CALENDAR ITEM NO. C44 (CONT'D)

4. FIND, EFFECTIVE UPON RECORDATION OF THE TITLE SETTLEMENT AND EXCHANGE AGREEMENT, THAT:
 - A. THE EXISTING BOUNDARY CONFIGURATION OF STREETS AND LOTS AT WALDO POINT HARBOR WAS PREMISED UPON FILLING WHICH HAS NOT OCCURRED, WITH STREETS TO BE USED FOR PUBLIC PEDESTRIAN AND VEHICULAR ACCESS. THIS PREMISE IS NO LONGER VALID;
 - B. EXISTING STATE OWNERSHIP IN NARROW STREETS WITHIN WALDO POINT HARBOR IS NOT AS USEFUL TO THE PUBLIC TRUST FOR PURPOSES OF COMMERCE, NAVIGATION, FISHERIES, RECREATION, AND OPEN SPACE AS IS OWNERSHIP OF LARGER AREAS TO BE RECEIVED IN EXCHANGE THROUGH THE SETTLEMENT AGREEMENT;
 - C. THE SETTLEMENT AGREEMENT AND EXCHANGE WILL BENEFIT THE STATEWIDE PUBLIC BY CONSOLIDATING PROPERTY IN THE STATE'S OWNERSHIP INTO A MORE USEFUL CONFIGURATION, WILL INCLUDE SHORELINE AREAS TO BE USED FOR PUBLIC ACCESS AND VIEWING, AND WILL END PRIVATE RESIDENTIAL USE OF PUBLIC TRUST FEE LAND;
 - D. THE STATE'S PATENT IN CERTAIN HISTORIC STREETS WILL BE OF THE FEE ONLY, AND THE STREETS PATENTED WILL REMAIN SUBJECT TO THE PUBLIC TRUST EASEMENT;
 - E. THE RETENTION OF THE SOVEREIGN FEE INTEREST WITHIN THE STREETS IS NOT NECESSARY OR USEFUL FOR COMMERCE, NAVIGATION, OR FISHERIES, AND THE INTERESTS OF THE PUBLIC TRUST ARE BETTER SERVED BY THE ACQUISITION OF TITLE TO THE CURRENTLY PRIVATE FEE INTEREST IN LOTS AS PART OF THE SETTLEMENT AND THE ANTICIPATED FUTURE LEASE OF THESE AND OTHER AREAS FOR PUBLIC TRUST PURPOSES OF OPEN SPACE, PARKS, AND PUBLIC WALKWAYS;
 - F. THE SOVEREIGN FEE INTERESTS WITHIN THE STREETS TO BE PATENTED CONSTITUTE A RELATIVELY SMALL PORTION

CALENDAR ITEM NO. C44 (CONT'D)

OF THE TIDE AND SUBMERGED LANDS WITHIN RICHARDSON BAY, MARIN COUNTY;

- G. THE SETTLEMENT AGREEMENT IS IN THE BEST INTEREST OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION AND COMMERCE; FOR THE ENHANCEMENT OF THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF WATER AND UPLAND AND FOR PUBLIC ACCESS TO AND ALONG THE SHORELINE AND WATERFRONT; AND FOR THE PROTECTION, PRESERVATION, AND ENHANCEMENT OF PUBLIC TRUST INTERESTS IN THE REMAINING TIDELANDS AND SUBMERGED LANDS;
 - H. THE ECONOMIC VALUE OF THE FEE IN THE LOTS AND PORTIONS OF LOTS TO BE CONVEYED TO THE STATE EXCEEDS THE ECONOMIC VALUE OF THE FEE IN STREETS TO BE CONVEYED SUBJECT TO THE PUBLIC TRUST;
 - I. THE SETTLEMENT AGREEMENT AND EXCHANGE WILL NOT DIMINISH THE AMOUNT OF PROPERTY AT WALDO POINT HARBOR POTENTIALLY AVAILABLE FOR PUBLIC TRUST USES BECAUSE THE FEE IN ANY FORMER STREETS PATENTED TO WALDO POINT HARBOR WILL REMAIN SUBJECT TO A PUBLIC TRUST EASEMENT, NOR WILL THE SETTLEMENT SUBSTANTIALLY INTEREFORE WITH THE RIGHTS OF NAVIGATION AND FISHERIES IN THE WATERS INVOLVED; AND
 - J. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THE VALIDITY OF THE LEASE ISSUED BY MARIN COUNTY TO WALDO POINT HARBOR, WHICH LEASE IS TO BE TERMINATED THROUGH THE SETTLEMENT. THE SETTLEMENT AGREEMENT, OF WHICH THE LAND EXCHANGE IS A SIGNFICANT PART, IS A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND FACT, IS IN LIEU OF THE COSTS, DELAY, AND UNCERTAINTIES OF LITIGATION, AND IS CONSISTENT WITH AND AUTHORIZED BY THE REQUIREMENTS OF LAW.
5. THE FINDINGS MADE BY THE STATE LANDS COMMISSION ARE NOT INTENDED TO AND DO NOT AFFECT THE AUTHORITY,

CALENDAR ITEM NO. C44 (CONT'D)

JURISDICTION, OR EXTENT OF REGULATION OR CONTROL OF ANY OTHER STATE, FEDERAL, OR LOCAL AGENCY HAVING AUTHORITY OR JURISDICTION OVER THE AREA THAT IS THE SUBJECT OF THE SETTLEMENT AND EXCHANGE.

6. AUTHORIZE AND DIRECT THE STAFF OF THE COMMISSION AND/OR THE OFFICE OF THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE SETTLEMENT AND EXCHANGE AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL OR ADMINISTRATIVE PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

Recorded
WS

Exhibit B
W503.1561
Grant Deed
Dunphy Park Parcel

RECORDING FEE

2003-0148372

Recorded
Official Records
County Of
Marin
JOAN C. THAYER
Recorder

REC FEE
REC FEE .00

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

LAW OFFICES OF MARY WAGNER
30 CHESTER AVENUE
FAIRFAX, CA 94930

08:00AM 09-Dec-2003 Page 1 of 4

THIS SPACE FOR RECORDER'S USE ONLY:

Title Order No.: 4-30800TC

Escrow No.: 4-30800TC:TC

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX is \$NONE

- computed on full value of property conveyed, or
- computed on full value less value of liens or encumbrances remaining at time of sale.
- Unincorporated area City of AND

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

ZACK'S, INC., A CALIFORNIA CORPORATION

hereby GRANT(s) to: CITY OF SAUSALITO, A MUNICIPAL CORPORATION

the real property in the County of Marin, State of California, described as:
LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND MADE A PART HEREOF

REPUBLIC OF FRANCE, CITY OF NICE

CONSULAR AGENCY OF THE UNITED STATES OF AMERICA

DATED November 6, 2003

STATE OF CALIFORNIA

COUNTY OF

On November 25, 2003

Before me, Lucien Le Lievre

A Notary Public in and for said State, personally appeared

Eben Gossage

ZACK'S, a California Corporation

BY Eben Gossage, President

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
WITNESS my hand and official seal.

Handwritten signature of Lucien R. Le Lievre

Signature Lucien R. Le Lievre, Consular Agent (This area for official notarial seal)
MAIL TAX STATEMENTS TO PARTY SHOWN BELOW; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE:

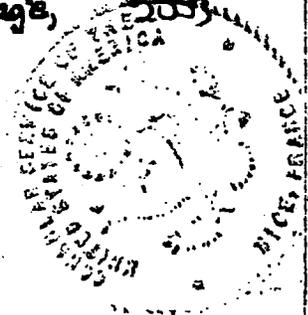


Exhibit B
W503.1561

Grant Deed
Dunphy Park Parcel

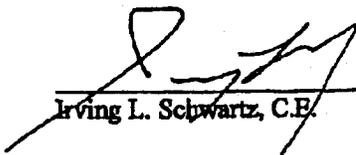
EXHIBIT A

LEGAL DESCRIPTION
OF THE
WATERFRONT PARCEL

All that certain real property situate in the City of Sausalito, County of Marin, State of California, being a portion of Lot 19 as shown on Record of Survey filed in Book 2001 of Maps at Page 138, Marin County Records, and described as follows:

COMMENCING at the point where the northerly line of Bridgeway intersects the easterly line of Litho Street;
Thence, from said **POINT OF COMMENCEMENT**, North 35°03'54" East along said easterly line of Litho Street, 92.30 feet to the **TRUE POINT OF BEGINNING**;
Thence, continuing North 35°03'54" East along said easterly line of Litho Street, 115.50 feet to a point on the southerly line of Humboldt Avenue;
Thence, South 54°56'06" East along said southerly line of Humboldt Avenue, 126.25 feet;
Thence, leaving said southerly line of Humboldt Avenue, South 35°03'54" West, 115.50 feet;
Thence, North 54°56'06" West, 126.25 feet to the **POINT OF BEGINNING**, containing 14, 582 square feet, more or less.

Prepared by:
ILS Associates Inc.


Irving L. Schwartz, C.E.

