

**CALENDAR ITEM  
C33**

A 13  
S 3

01/29/09  
AD 535 / W503.1986  
J. Rader  
P. Peterson

**CONSIDERATION OF A COMPROMISE SETTLEMENT AGREEMENT, IN SETTLEMENT OF PENDING LITIGATION, *MACOR, ET AL. V. CITY AND COUNTY OF SAN FRANCISCO, ET AL.*, COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION 1, NO. A122276, BETWEEN THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE STATE LANDS COMMISSION, THE CITY AND COUNTY OF SAN FRANCISCO, MACOR, INC., CORNERSTONE PROPERTIES II S, LLC, AND WALDEN MISSION BAY I LLC INVOLVING THE QUIETING OF TITLE TO PRIVATE PARTIES AND TERMINATION OF THE STATE'S AND CITY'S PROPERTY INTERESTS, INCLUDING THE PUBLIC TRUST INTEREST, IN A PORTION OF TEXAS STREET, A PROPERTY LOCATED IN, AND GRANTED BY THE LEGISLATURE TO, THE CITY AND COUNTY OF SAN FRANCISCO**

In March 2007, three private parties, Macor, Inc., Cornerstone Properties II S, LLC, and Walden Mission Bay I LLC, filed an action against the State of California (State), acting by and through the State Lands Commission (Commission) and the City and County of San Francisco (CCSF) to quiet title to certain property in the city of San Francisco. *Macor, Inc., et al v. City and County of San Francisco, et al* (San Francisco Superior Court No. 460884 / California Court of Appeal, First Appellate District, Division 1, No. A122276).

The property at issue is portion of Texas Street between 16<sup>th</sup> and 17<sup>th</sup> Streets abutting Board of Tideland Commissioners Blocks 278 and 271 as shown on the "Map of the Salt Marsh and Tide Lands and Lands Lying Under Water South of Second Street and Situated in the City and County of San Francisco" prepared for the Board of Tideland Commissioners in 1869. Ownership of the subject property is disputed only as to the 12,559 square foot portion of Texas Street (hereinafter referred to as Texas Street) that was northerly and waterward of the 1883 Pueblo Line confirmed in *Knight v. U.S. Land Assn.* (1891) 142 U.S. 161. The subject property is a strip of land, 80 feet wide and between 162 and 200 feet in length. The 1883 Pueblo Line divided Texas Street to roughly 1/3 sovereign land and 2/3 pueblo land. See Exhibit A. The parcel was filled to an elevation above the line of the ordinary high tide and improved sometime after 1887, as evidenced from the 1883 von Leicht field notes relied on in *Knight*. Texas Street is filled and reclaimed, located more than 2000 feet from San Francisco Bay, on the landward side of the Freeway 280, and cut off from water access. Texas Street is no longer needed or required for the promotion of the public trust and has recently been rezoned from industrial to mixed use.

Revised 01/28/09

CALENDAR ITEM NO. **C33** (CONT'D)

BACKGROUND

In 1868, the State Legislature created the Board of Tideland Commissioners (BTLC) to further the waterfront development of San Francisco, pursuant to Chapter 543, Statutes of 1868-69 (“the 1868 Act”). The 1868 Act required that the BTLC establish a waterfront line and to map the tidelands into lots and blocks. Further, the 1868 Act authorized the BTLC to sell the lots by auction, but reserved the streets from sale. The lots surrounding Texas Street were sold to private parties and the validity of those sales is not in question. In 1879, the California Constitution was amended to include a total prohibition on the alienation of all tidelands within California (formerly Cal. Const. Art. XV Section 3). A constitutional amendment passed in 1962 (Cal. Const. Art. X, Section 3) that allows the Legislature to make a determination, on a case-by-case basis, that certain streets that had been reserved to the State were no longer needed for navigation purposes and could be sold. In 1863, through Chapter 306, the public trust lands in San Francisco, including Texas Street, were placed under the jurisdiction of the State Board of Harbor Commission until the passage of the Burton Act in 1968, described below.

In 1923, the San Francisco Board of Supervisors adopted Resolution 20739, closing and abandoning Texas Street between 16<sup>th</sup> and 17<sup>th</sup> Streets. The Resolution recited that “as a consideration for the closing and abandoning” of the street, Real Estate Development Co (REDC), the intended owner, would deed to the CCSF certain lands suitable for public use. In January of 1924, the Board passed Resolution 22007, which recited that Texas Street was closed and abandoned in 1923 and authorized the execution and delivery to REDC of all the right, title and interest that the CCSF had in Texas Street. Subsequently, in April 1924, REDC obtained a Judgment and Decree Quieting Title in Superior Court quieting title to Texas Street in REDC, decreeing that the CCSF had no interest or estate in the street, and enjoining the City from asserting any claim adverse to REDC. The CCSF was the only named defendant; the State was not named nor is there any indication that the State was aware of the resolutions or quiet title action. Further, the CCSF was acting in its municipal capacity, as the CCSF did not obtained fee title, as trustee, to Texas Street from the State until 1968 pursuant to the Burton Act, as described below.

In 1968, the Legislature authorized the transfer of management and control over all sovereign public trust land within the area of the Port of San Francisco to the CCSF, as trustee (“the Burton Act” Chapter 1333, Statutes of 1968). However, the Burton Act did not authorize the CCSF to alienate to private parties any interest in the sovereign lands granted to the CCSF. It was not until 2007 when the Legislature amended the Burton Act, with the passage of Senate Bill 815 (Chapter 660, Statutes of 2007), effective January 1, 2008, that the Legislature authorized the CCSF, through the Port of San Francisco, to sell the State’s public trust interest in Texas Street. Specifically, the Legislature found that Texas Street is no longer used for or necessary for navigation purposes. Pending the enactment of SB 815, the subject action to quiet title was filed.

Revised 01/28/09

CALENDAR ITEM NO. **C33** (CONT'D)

The private parties contend that the 1868 Act changed the nature of the State's ownership of Texas Street from sovereign to proprietary making it subject to adverse possession. As a result of the occupation of the parcel by REDC after the 1924 quiet title action, they claim that the State's interest was adversely possessed and that title is now vested in Walden and Cornerstone. The CCSF and the State contend that the 1868 Act did not change the parcel from sovereign to proprietary and that from 1879 until 2008, the conveyance of this parcel to a private party was prohibited by the California Constitution. Thus, this parcel could not have been adversely possessed. The trial court entered a judgment in favor of the plaintiffs; the CCSF and the State have appealed and the private parties have cross-appealed. The matter is pending before the Court of Appeal, First Appellate District.

PROPOSED COMPROMISE SETTLEMENT AGREEMENT

Since continued litigation of this matter would likely be extremely protracted and costly with uncertain results, all parties agreed to enter into settlement negotiations that have resulted in a proposed Compromise Settlement Agreement (Agreement). The Agreement is on file at the Sacramento Office of the State Lands Commission. The parties to the Agreement consider it expedient, necessary and in the best interests of the parties to resolve this quiet title action by compromise settlement agreement thereby avoiding the anticipated substantial costs, time requirements and uncertainties of litigation.

Pursuant to the provisions of Division 6 of the Public Resources Code, the State Lands Commission has exclusive jurisdiction of the State's right, title and interest in tide and submerged lands owned by the State by virtue of its sovereignty, held in trust for the benefit of the people of California, including the jurisdiction and authority to enter into compromise agreements, in lieu of litigation. This proposed Compromise Settlement Agreement is not entered into pursuant to SB 815 but entered into under the Commission's authority pursuant to Public Resources Code Section 6301, *et seq.* as it is a compromised agreement in settlement of litigation and not a sale.

The Agreement, provides for the following: (1) title to Texas Street vested in Cornerstone Properties II S, LLC and Walden Mission Bay I LLC in fee simple absolute through a series of quitclaims and acceptances, terminating any State's interest in the parcel free of the public trust and the Burton Act trust; (2) the CCSF will retain all rent paid to it by the private parties for the use of Texas Street pursuant to a March 1, 2006 agreement between the CCSF and the private parties; (3) all parties will jointly petition the Court of Appeal for an order vacating the existing trial court judgment and the rationale as contained in the Statement of Decision and two orders, and also for an order directing the trial court to enter judgment in a form that is consistent with the Agreement; and, (4) the private parties will release the CCSF and the State from any

CALENDAR ITEM NO. **C33** (CONT'D)

liability for legal costs awarded by the Superior Court and all parties shall bear their own fees and costs.

The Agreement shall not be effective unless it is fully and finally approved by the State Lands Commission and the CCSF by April 30, 2009, or at the conclusion of the Commission's April meeting, whichever occurs earlier and the appropriate court. Under Public Resources Code Section 6107, the Agreement is not binding until it has been approved by the Governor.

The Port of San Francisco Port Commission approved the Compromise Settlement Agreement on January 13, 2009.

STAFF RECOMMENDATION

Staff recommends that the Commission approve the Compromise Settlement Agreement, including a quitclaim and termination of any public trust interest in Texas Street, and authorize the execution of the Compromise Settlement Agreement, delegating the authority to sign and make any necessary alterations consistent with findings adopted by the Commission as described in this calendar item to the Executive Officer. The Office of the Attorney General concurs in these recommendations and both Commission staff and the Attorney General's Office believe that the Compromise Settlement Agreement is in the best interest of the State and the statewide public as the settlement will avoid long and costly litigation with uncertain results.

**EXHIBITS:**

- A. Vicinity Map/ Site Specific Map
- B. Legal Description

**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 15260 AS A STATUTORY EXEMPT PROJECT PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15282(F), SETTLEMENTS OF TITLE AND BOUNDARY PROBLEMS.
2. FIND AND DECLARE THAT:
  - a. THE OWNERSHIP OF THE DISPUTED PORTION OF TEXAS STREET IS DISPUTED AND IS PENDING BEFORE THE COURT OF APPEAL, FIRST APPELLATE DISTRICT;

CALENDAR ITEM NO. **C33** (CONT'D)

b. IN ORDER TO SAVE THE TAXPAYERS THE TIME, EXPENSE AND UNCERTAINTY OF CONTINUED LITIGATION, THE CCSF AND STATE HAVE NEGOTIATED A COMPROMISE SETTLEMENT AGREEMENT WITH THE PRIVATE PARTIES WHEREBY IN EXCHANGE FOR CCSF RETAINING ALL MONIES PAID TO THE CCSF PURSUANT TO THE MARCH 2006 AGREEMENT AND ALL PARTIES DROPPING THEIR LITIGATION CLAIMS AND OBTAINING FROM THE APPROPRIATE COURTS A VACATION OF THE EXISTING JUDGMENT AND ENTRY OF AN AMENDED JUDGMENT, THE STATE HAS AGREED THAT TITLE TO TEXAS STREET VESTS IN CORNERSTONE PROPERTIES II S, LLC AND WALDEN MISSION BAY I LLC IN FEE SIMPLE ABSOLUTE, EFFECTUATED THROUGH A SERIES OF QUITCLAIMS AND ACCEPTANCES, TERMINATING ANY THE STATE'S INTEREST IN THE PARCEL FREE OF THE PUBLIC TRUST AND THE BURTON ACT TRUST;

**c. THAT TEXAS STREET: HAS BEEN FILLED, IMPROVED AND RECLAIMED, THEREBY EXCLUDING IT FROM THE PUBLIC CHANNELS AND IS NOT AVAILABLE OR USEFUL OR SUSCEPTIBLE OF USE FOR NAVIGATION AND FISHERIES; IS NO LONGER IN FACT TIDE AND SUBMERGED LANDS; PURSUANT TO THE TERMS OF THE COMPROMISE SETTLEMENT AGREEMENT IS FREE FROM THE PUBLIC TRUST FOR COMMERCE, NAVIGATION AND FISHERIES;**

**d. THAT THE QUITCLAIM OF ANY AND ALL STATE INTEREST MADE PURSUANT TO THE COMPROMISE SETTLEMENT AGREEMENT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF FISHING AND NAVIGATION IN SAN FRANCISCO BAY OR ITS TRIBUTARY CHANNELS;**

e. IN 2007, THE LEGISLATURE, PURSUANT TO SB 815, MADE FINDINGS AND DECLARED THAT TEXAS STREET WAS NOT USED FOR OR NECESSARY FOR NAVIGATION PURPOSES AND DECLARED THAT IT COULD BE SOLD PURSUANT TO THE TERMS AND CONDITIONS OF SB 815; HOWEVER, THE PARTIES ARE NOT SELLING TEXAS STREET PURSUANT TO SB 815, BUT RATHER ARE SETTling LITIGATION THROUGH A COMPROMISE SETTLEMENT AGREEMENT;

f. AS A RESULT OF THE HIGH COST AND UNCERTAINTY OF LITIGATION TO THE CCSF AND STATE, THIS COMPROMISE SETTLEMENT AGREEMENT IS IN THE BEST INTEREST OF THE STATE;

3. APPROVE THE COMPROMISE SETTLEMENT AGREEMENT, INCLUDING THE QUITCLAIM AND TERMINATION OF ANY PUBLIC TRUST INTEREST IN TEXAS STREET TO THE PRIVATE PARTIES, AND AUTHORIZE STAFF AND THE OFFICE

Revised 01/28/09

CALENDAR ITEM NO. **C33** (CONT'D)

OF THE ATTORNEY GENERAL TO EXECUTE THE COMPROMISE SETTLEMENT AGREEMENT IN A FORM SUBSTANTIALLY IN THE FORM OF THAT NOW ON FILE IN THE SACRAMENTO OFFICE OF THE STATE LANDS COMMISSION, IN SETTLEMENT OF *MACOR, INC., ET AL. V. CITY AND COUNTY OF SAN FRANCISCO, ET AL.*, SAN FRANCISCO SUPERIOR COURT NO. 460994 / CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION 1, NO. A122276;

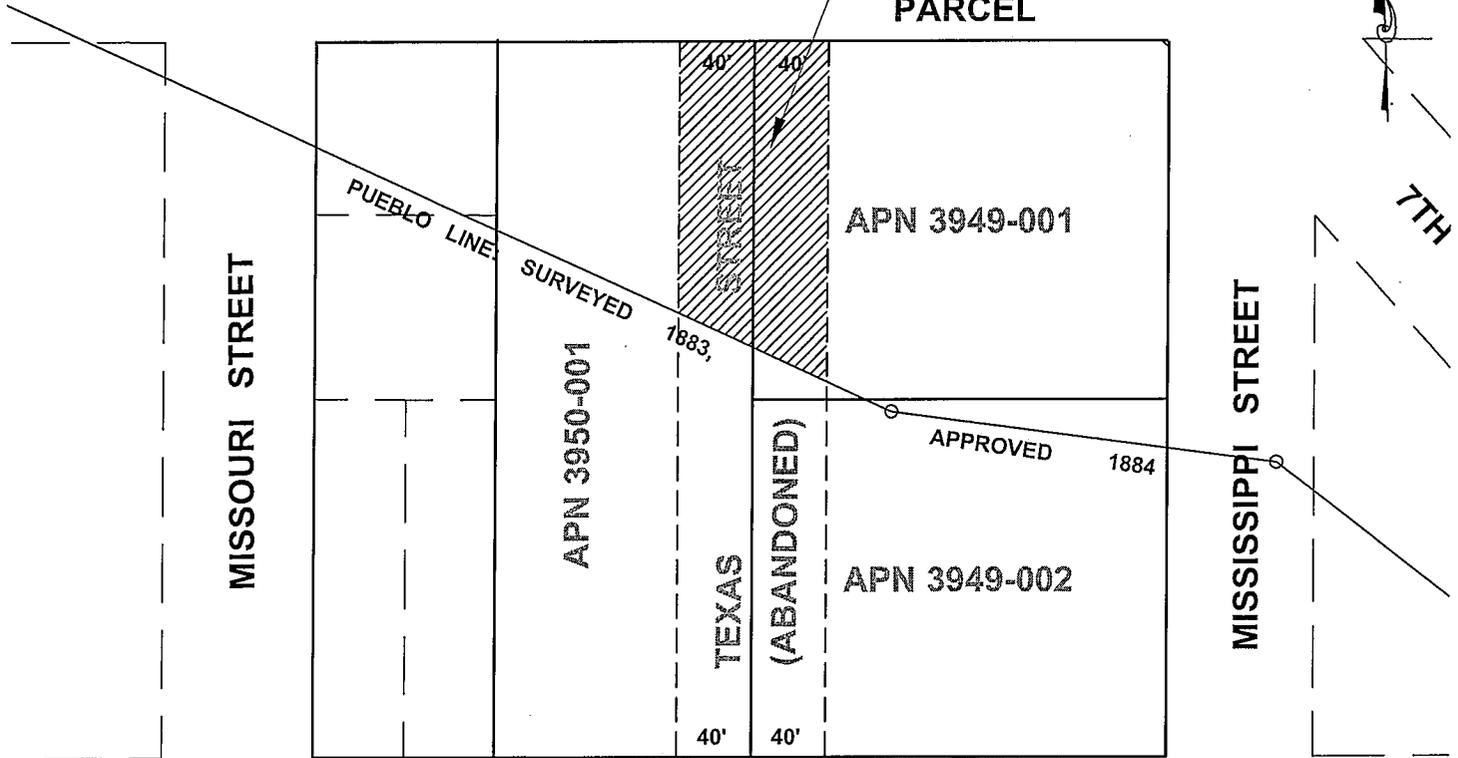
4. AUTHORIZE STAFF AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE ABOVE TRANSACTION, INCLUDING, BUT NOT LIMITED TO, THE EXECUTION OF ALL DOCUMENTS AND ANY APPEARANCES OR FILINGS IN ANY LEGAL PROCEEDINGS NECESSARY OR REQUIRED TO ACCOMPLISH THE TERMS AND PROVISIONS OF THE SUBJECT TRANSACTION.

**SITE**

NO SCALE

16TH STREET

SETTLEMENT  
PARCEL



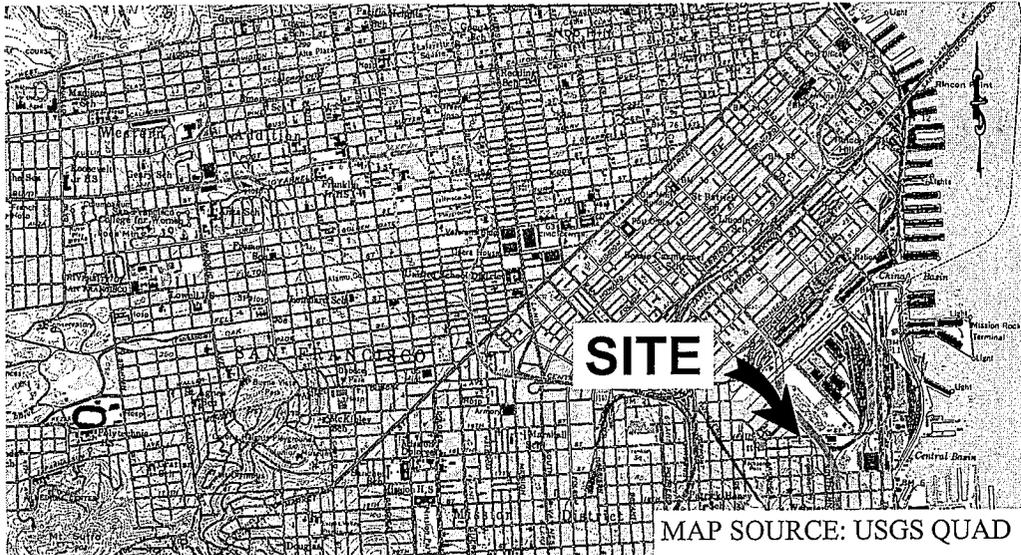
17TH STREET

TEXAS  
STREET

SETTLEMENT PARCEL: PORTION OF TEXAS ST., SAN FRANCISCO

NO SCALE

**LOCATION**



MAP SOURCE: USGS QUAD

**Exhibit A**

W 503.1986/AD 535  
 SETTLEMENT OF  
 MACOR INC., ET AL.  
 V.  
 CITY & COUNTY OF  
 SAN FRANCISCO, ET AL.



This Exhibit is solely for purposes of generally defining the settlement parcel 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.