

**CALENDAR ITEM
C55**

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K. Colson
J. Smith
J. Rader
H. Peterson

**CONSIDER APPROVAL OF TITLE SETTLEMENT AND EXCHANGE AGREEMENT
BETWEEN THE 22ND DISTRICT AGRICULTURAL ASSOCIATION AND THE STATE
LANDS COMMISSION AND ISSUANCE OF A 49-YEAR GENERAL LEASE – PUBLIC
AGENCY USE - INVOLVING CERTAIN PARCELS LOCATED WITHIN AND
ADJACENT TO THE SAN DIEGUITO RIVER/LAGOON, CITIES OF DEL MAR AND
SAN DIEGO, SAN DIEGO COUNTY**

PARTIES:

State of California
State Lands Commission
100 Howe Ave., Suite 100 South
Sacramento, California 95825

22nd District Agricultural Association
2260 Jimmy Durante Boulevard
Del Mar, California 92014-2216

PROPOSED TITLE SETTLEMENT AND LAND EXCHANGE:

The parties to the proposed Title Settlement and Exchange Agreement (Agreement) are the California State Lands Commission (CSLC or Commission) and the 22nd District Agricultural Association (Association). The Association is a state agency created in 1904 to promote and encourage agriculture and home industry. The subject property involves multiple parcels in and around the San Dieguito River and Lagoon and property commonly known as the Del Mar Fairgrounds located within the cities of San Diego and Del Mar. The Association obtained record title to the majority of the property in and adjacent to the San Dieguito River and Lagoon in 1936. Two additional lagoon parcels adjacent to the Pacific Ocean were purchased by the Association in two phases between 1988 and 1991 for mitigation purposes.

The Agreement will effectuate a land exchange terminating the State's sovereign public trust interest claims in certain filled parcels (Trust Termination Parcels) in exchange for

CALENDAR ITEM NO. **C55** (CONT'D)

acquiring four parcels, including filled and unfilled lands, and impressing those parcels with the Public Trust (Public Trust Parcels). The location of the various parcels involved in the proposed Agreement is generally depicted on Exhibit A. The lands the CSLC will receive will take on the legal character of sovereign tide and submerged lands and be impressed with the common law Public Trust for fisheries, navigation, commerce and other recognized Public Trust purposes. As part of the Agreement, a common boundary will be established between the Trust Termination Parcels confirmed in the Association and the Public Trust Parcels confirmed in the CSLC. As a result, the Public Trust Parcels will be preserved, improved or enhanced for Public Trust uses such as open space, public access, wildlife habitat and wetland restoration. The final part of the Agreement includes a rent-free 49-year lease of the Public Trust Parcels to the Association for existing uses and for mitigation and restoration purposes (Exhibit D). The lease allows for the 10 year temporary use of an existing parking lot and recycling facility located on the .79 acre Public Trust Parcel 2 with the Commission reserving the right to construct a public access trail on the parcel after the 10 years. The consideration for this lease is the public use and benefit resulting from such a lease. Any future changes to the use of the Public Trust Parcels will require approval by the CSLC.

Specifically, the terms of the proposed Agreement provide that:

1. The Association will quitclaim its interest in the Public Trust Parcels to the CSLC.
2. The CSLC will then quitclaim its interests, free of any public trust interest, in the Trust Termination Parcels to the Association.
3. The Association and the CSLC will agree on a common boundary line in conjunction with the exchange of parcels.
4. The CSLC will, upon the close of escrow, enter into a 49-year lease with the Association for the management of the Public Trust Parcels consistent with public trust purposes.

BACKGROUND AND TITLE HISTORY:

On September 28, 1850, pursuant to the federal Arkansas Swamp Lands Act, the United States granted to the State of California swamp and overflowed lands within California. On March 28, 1868, the California Legislature enacted Chapter 415 of Statutes 1867-68 that authorized the sale of certain swamp and overflowed lands. The area at issue (subject property) is a portion of the 532.72 acres surveyed as Swamp and Overflowed Survey 15 of San Diego County for sale to C.B. Richards on January 4, 1870 and approved by a certificate of purchase on July 20, 1871. See Exhibit B for a depiction of the lands which historic evidence shows as tide and submerged lands. C.B. Richards assigned his interest to the San Dieguito Reclamation Company, and the state Surveyor-General issued a patent for the property on October 21, 1889.

In addition to patenting swamp and overflowed lands, the California Legislature also enacted statutes that allowed for the sale of tidelands and salt marshes. The existence

CALENDAR ITEM NO. **C55** (CONT'D)

of multiple sale statutes and difficulty in identifying the true factual character of the land caused confusion and inconsistencies in the record in that the lands patented were frequently incorrectly described in the application and patent, and the wrong sale statutes were often referenced. A portion of this problem was remedied by the California Legislature enacting a series of Curative Acts, the last of which was enacted on March 27, 1872, whereby any patents that:

“ . . . have been or may hereafter be issued upon any such application . . . shall be deemed and held to convey the legal title to the land in such patent or patents described to the purchaser therein mentioned, by whatever style such land may be designated in such patents . . . ”.

Owing to the fact that the application for the patent was received and certificate of purchase issued prior to the enactment of the last Curative Act, the Curative Act serves to correct any errors in referencing an incorrect sale statute or in describing the land surveyed. However, what none of the sale statutes authorized and none of the Curative Acts could cure was the sale of submerged lands or the lifting of the public trust easement from the tidelands. As such, any portion of a patent that included submerged land within its boundary or was thought to remove the public trust easement from the tidelands was ineffective as to that portion of the patent. *City of Long Beach v. Mansell* (1970) 3 Cal. 3d 462 and *People v. Cal. Fish Co.* (1913) 166 Cal. 576.

The dispute between the CSLC and the Association stems from the 1889 patent and the application of the relevant facts, legislation and court cases to that patent. The CSLC staff conducted a comprehensive boundary study of the San Dieguito Lagoon in 1975 that included an analysis of the historic surveys, maps, and photos. From that study, it appeared that the 1870 application likely included what was then tide and submerged lands, some of which in the intervening 140 years have been filled. CSLC has historic evidence that shows that up to 32 acres of land in the Trust Termination Parcels may have been sovereign state lands based on Topographic surveys conducted in 1889 and 1933 (depicted in Exhibit B). The location of the San Dieguito River and Lagoon changed tremendously between 1889 and 1933, but it is not known the extent of which was caused by natural versus artificial influence. Since the 1970s, the CSLC staff has consistently asserted sovereign ownership interests within the land that today is known as the Del Mar Fairgrounds. There have been prior attempts to settle the title dispute, but no final settlement was ever reached.

Portions of the San Dieguito Lagoon and River, which pursuant to the Agreement would become Public Trust Parcels and include filled and unfilled land, are currently the site of extensive habitat restoration and public access trails (currently under construction). These parcels are also within the original survey and patent and are claimed by the Association. The San Dieguito Wetlands Restoration Project, also referred to as the San Dieguito Lagoon Restoration Project, involves restoring 150 acres of coastal

CALENDAR ITEM NO. **C55** (CONT'D)

wetland with \$86,000,000 of mitigation monies from Southern California Edison as mitigation for the cooling water systems for San Onofre Generating Station Units 2 and 3. The San Dieguito Riverpark Authority, a Joint Powers Association comprised of five cities located in San Diego County, has been working to restore tidal flows, natural habitat and vegetation to the San Dieguito Lagoon and River. The San Dieguito Riverpark Authority has a lease (PRC 8553) from the CSLC for these activities, and this agreement will have no effect on that lease. The San Dieguito Wetlands Restoration Project is proposed to include the coastal portion of the Coast to Crest Trail which is intended to eventually include 55 miles of trail that would connect the beach at Del Mar to Anza Borrego Desert State Park.

The Association is currently in the process of preparing a Master Plan Update for the Fairgrounds and is circulating a draft Environmental Impact Report for public comment.

LEGAL REQUIREMENTS:

Pursuant to the provisions of Division 6 of the Public Resources Code (PRC), the CSLC 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 to resolve title and boundary disputes. Pursuant to PRC section 6307, the Commission is authorized, under certain circumstances, to terminate the State's public trust interests and enter into land exchange agreements. The Commission, in order to approve the proposed Agreement, must make the following requisite findings pursuant to PRC section 6307:

- (1) The exchange is for one or more of the following purposes:
 - a. To improve navigation or waterways;
 - b. To aid in reclamation or flood control;
 - c. To enhance the physical configuration of the shoreline or trust land ownership;
 - d. To enhance public access to or along the water;
 - e. To enhance waterfront and nearshore development or redevelopment for public trust purposes;
 - f. To preserve, enhance, or create wetlands, riparian or littoral habitat, or open space;
 - g. To resolve boundary or title disputes.
- (2) The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the public trust;
- (3) The exchange does not substantially interfere with public rights of navigation and fishing;
- (4) The monetary value of the lands or interests in lands received by the trust in exchange is equal to or greater than that of the lands or interests in land given by the trust in exchange;

CALENDAR ITEM NO. **C55** (CONT'D)

- (5) The lands or interests in land given in exchange have been cut off from water access and no longer are in fact tidelands or submerged lands or navigable waterways and are relatively useless for public trust purposes.
- (6) The exchange is in the best interest of the State.

LEGAL ANALYSIS AND STAFF RECOMMENDATION:

CSLC staff has reviewed the information supporting the proposed Agreement including appraisals, surveys, title reports, and other studies conducted for the title settlement and exchange agreement. Approval of this Agreement would end a long running dispute over title to the subject property, provide the trust with land beneficial to the trust, and remove concerns about inconsistent public trust uses on the portions of the Trust Termination Parcels.

The proposed Agreement will resolve a boundary and title dispute involving the subject property. Commission staff has asserted for decades that the historic evidence shows that portions of the subject property are tide and submerged lands. Staff of the Association has disagreed with those claims, maintaining that the Association has record title to all the involved parcels, many of which were filled and developed in the 1930s. Litigation to settle these conflicting claims could be extremely protracted and costly with uncertain results. In order to settle the claims and avoid the cost and uncertainty of litigation, staff at both agencies agreed to enter into settlement negotiations. The result of those negotiations is the proposed Agreement on file at the Sacramento office of the CSLC. The parties to the Agreement consider it expedient, necessary, and in the best interests of the parties to resolve these title disputes through a title settlement and exchange agreement thereby avoiding the anticipated substantial costs, time requirements and uncertainties of litigation.

The proposed Agreement is also for the improvement of navigation and waterways; to enhance public access to and along the water; and for the protection, preservation, enhancement and creation of wetlands, riparian or littoral habitat and open space. As stated above, the Public Trust Parcels will provide a significant benefit to the public trust by increasing public access to the San Dieguito Lagoon and River, as well as, provide wildlife habitat and restore coastal wetlands. The Trust Termination Parcels have been filled, are no longer in fact tidelands, submerged land or navigable waterways, are cut off from water access and are relatively useless for public trust purposes.

Further, the monetary value of the Public Trust Parcels is equal to or greater than the public trust interests in the Trust Termination Parcels. Staff has reviewed appraisals (on file at the Commission's Sacramento Office), title and boundary evidence, case law and other information prepared to analyze the public trust claims and monetary values of the Trust Termination Parcels and the Public Trust Parcels. Staff has reached an independent conclusion regarding the monetary values of these properties based on its analysis, including the above described information. Staff concluded that the monetary

CALENDAR ITEM NO. **C55** (CONT'D)

value of land or interests in the Public Trust Parcels is equal to or greater than the monetary value of the sovereign interests in the Trust Termination Parcels.

As described throughout the staff report, the facts support each of the necessary findings the Commission must make. Commission staff and the Attorney General's Office have reviewed the proposed Agreement and believe all necessary legal elements have been met for the Title Settlement and Exchange Agreement. Staff therefore recommends that the Commission approve the Agreement and authorize its execution and the execution and recordation of all documents necessary to implement it.

OTHER PERTINENT INFORMATION:

1. The State, acting by and through the Commission, is authorized under Division 6 of the Public Resources Code, and specifically pursuant to section 6307 of such code, to enter into land exchange agreements.
2. Pursuant to Section 6501.1 of the Public Resources Code, the Commission has the authority to lease Sovereign Lands for specified purposes.
3. Pursuant to the Commission's delegation of authority and the State CEQA guidelines (Title 14, California Code of Regulations section 15061), staff has determined this activity is exempt from the requirements of the CEQA as a statutorily exempt project. The project is exempt because it involves settlement of title and boundary problems. (Authority: Public Resources Code section 21080.11).
4. Pursuant to Government Code section 66412(e), provisions of the Subdivision Map Act do not apply to title settlement agreements to which the CSLC is a party.
5. Pursuant to Public Resources Code section 30416(c), boundary settlements between the CSLC and other parties and any exchanges of land in connection therewith shall not be a development under the California Coastal Act.
6. This activity involves lands which have not been identified as possessing significant environmental values pursuant to Public Resources Code section 6370, et seq. However, the Commission has declared that all lands are "significant" by nature of their public ownership (as opposed to environmentally significant"). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code section 6370, et seq., use classifications for such lands have not been designated. Therefore, the finding of the project's consistency with the use classification as required by Title 2, California Code of Regulations section 2954 is not applicable.
7. The Board of the 22nd District Agricultural Association approved the proposed Agreement at their October 12, 2010 meeting.

EXHIBIT:

- A. Location and Site Map of Title Settlement and Exchange
- B. Historic Tide and Submerged Lands
- C. Location and Site Map of Lease

CALENDAR ITEM NO. **C55** (CONT'D)

D. Lease of Public Trust Parcels

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

Title Settlement, Land Exchange and Related 49-year Lease: Find that the activities are exempt from the requirements of the California Environmental Quality Act pursuant to Public Resources Code section 21080.11 and is a statutorily exempt activity pursuant to Title 14, California Code of Regulations, section 15282(f) as this is a State Lands Commission Settlement of Title and Boundary Problems and the exchange and lease is in connection with the settlement.

AUTHORIZATION:

1. Find that, with respect to the proposed title settlement and land exchange agreement, which findings shall be effective on close of escrow as provided in the agreement:
 - A. The title settlement and land exchange are consistent with public trust needs for improvement of navigation and waterways; to enhance public access to and along the water; the protection, preservation, enhancement and creation of wetlands, riparian or littoral habitat and open space; and to resolve boundary and title disputes;
 - B. The Public Trust Parcels to be acquired in the exchange by the Commission on behalf of the state in trust pursuant to this agreement will provide a significant benefit to the public trust;
 - C. The exchange does not substantially interfere with the public rights of navigation and fishing;
 - D. The monetary value of the Public Trust Parcels received by the Commission on behalf of the state in trust pursuant to the agreement is equal to or greater than that of the lands and interests in lands in the Trust Termination Parcels to be relinquished by the Commission on behalf of the state;
 - E. The Trust Termination Parcels to be relinquished by the Commission on behalf of the state, over which the public trust will be terminated, have been cut off from water access and are no longer in fact tidelands or submerged lands or navigable waterways by virtue of having been filled, are relatively small in area, and are no longer useful for public trust purposes;
 - F. The title settlement and land exchange agreement is in the best interests of the state;
 - G. The parties have a good faith and bona fide dispute as to their respective interests and claims within the agreement area;

CALENDAR ITEM NO. **C55** (CONT'D)

- H. The title settlement and land exchange agreement is in lieu of the costs, delays, and uncertainties of title litigation, and is consistent with and is authorized by the requirements of the law;
2. Find that the Public Trust Parcels to be conveyed to the Commission on behalf of the state are to be accepted as public trust lands for the benefit of the people of the state of California, to be held by the state of California for public trust purposes.
 3. Approve and authorize the execution, acknowledgement, and recordation of the title settlement and land exchange agreement and associated deeds and acceptance on behalf of the California State Lands Commission, in substantially the form of the copy of such agreements on file with the Commission.
 4. Approve and authorize the issuance of a rent free 49-Year General Lease – Public Agency Use – of the Public Trust Parcels to the Association as provided for in the agreement with consideration being the public use and benefit.
 5. 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, acknowledgement, acceptance, and recordation of all documents as may be necessary or convenient to carry out the title settlement and exchange agreement; and to appear on behalf of the Commission in any legal proceeding relating to the subject matter of the agreement.