CALENDAR ITEM
135

A 54 06/23/11
W 26386 / G05-03
S 27 J. Rader

CONSIDER THE EXECUTION OF A COMPROMISE TITLE SETTLEMENT AND LAND EXCHANGE AGREEMENT PURSUANT TO PUBLIC RESOURCES CODE SECTION 6307 INVOLVING CERTAIN PARCELS ADJACENT TO QUEENSWAY BAY, ADJACENT TO THE PACIFIC OCEAN, WITHIN THE COLORADO LAGOON AND MARINE STADIUM PARK, WITHIN THE CITY OF LONG BEACH, LOS ANGELES COUNTY.

PARTIES:

State of California

City of Long Beach, as Trustee

City of Long Beach, as Municipality

PROPOSED TITLE SETTLEMENT AND LAND EXCHANGE:
The parties to the proposed Title Settlement and Land Exchange Agreement ("Agreement") are the State of California, acting by and through the Commission ("Commission"), the City of Long Beach, as trustee ("Trustee"), and the City of Long Beach, as a municipality ("City").

The purpose of the Agreement is to settle certain title disputes concerning lands within the City of Long Beach and to establish the location of certain lands subject to the public trust and lands free of the public trust within the City of Long Beach. Pursuant to the Agreement, the Commission will terminate any and all property interests, including any public trust interest, in one 10.24-acre parcel ("Trust Termination Parcel"), and quitclaim the Trust Termination Parcel to the City in exchange for the Commission acquiring, in trust, three parcels of land, consisting of 38.37 acres in all (Final Public Trust Parcels). The Commission will then lease to the Trustee the Final Public Trust Parcels until such time as the City's legislative grant can be amended to include the Final Public Trust Parcels.

The Trust Termination Parcel is located within the Pike Development, adjacent to Queensway Bay. One of the Final Public Trust Parcels is the 3.05-acre "Bixby Park Public Trust Parcel" that is a beachfront property located adjacent to the Pacific Ocean immediately southwest of East Ocean Boulevard. The second Final Public Trust Parcel is the 29.45-acre "Colorado Lagoon Public Trust Parcel" located adjacent to Marine Stadium/Alamitos Bay and Marina Vista Park. The Colorado Lagoon Parcel is currently

undergoing restoration to restore the health of the Colorado Lagoon by reducing bacterial contamination and improving water quality. The third Final Public Trust Parcel is the 5.87-acre "Marine Stadium Channel Public Trust Parcel" located between the Colorado Lagoon Public Trust Parcel and Alamitos Bay, on the westerly edge of Marine Stadium Park. The Trust Termination Parcel and the Final Public Trust Parcels are shown for reference purposes on Exhibit A.

Specifically, the key terms of the proposed Agreement provide that:

1. The City will quitclaim its interests in the three Final Public Trust Parcels to the Commission.
2. The Trustee will quitclaim its interests in the Trust Termination Parcel to the Commission.
3. The Commission will then quitclaim its interests, free of any public trust interests, in the Trust Termination Parcel to the City thereby quieting title to the Trust Termination Parcel in the City.
4. The Commission will, upon the close of escrow, enter into two 49-year leases with the Trustee, for the three Final Public Trust Parcels to be used for public trust purposes consistent with the provisions of the Trustee's trust grant.
5. Commission staff and the City/Trustee will pursue obtaining necessary State legislation to include the three Final Public Trust Parcels in the Trustee's trust grant.

BACKGROUND:

The Trustee is the State's trustee of public trust lands within the City of Long Beach granted to it by the Legislature pursuant to Chapter 676 of the Statutes of 1911, Chapter 102 of the Statutes of 1925, Chapter 158 of the Statutes of 1935, and Chapter 138 of the Statutes of 1964, First Extraordinary Session, as amended ("trust grant").

Trust Termination Parcel

Portions of the Trust Termination Parcel were the subject of a previous land exchange agreement ("Queensway Bay Parcels"). On September 17, 2001, the Commission approved Minute Item #89, the Queensway Bay Land Exchange Agreement ("Queensway Bay Exchange") with the City of Long Beach. The Commission's action terminated the common law and statutory public trust on five parcels within the Queensway Bay Development Plan (since renamed "The Pike at Rainbow Harbor") and exchanged those parcels for certain other parcels along the Los Angeles River on which it imposed the public trust.

On October 31, 2001, the California Earth Corps ("CEC") filed a petition for writ of mandate (*California Earth Corps. v. City of Long Beach, California State Lands Commission and the Developers Diversified Realty Corporation, as a Real Party in Interest*, Sacramento Superior Court No. 01SC01556) challenging the Commission's

approval of the Queensway Bay exchange. The CEC contested, among other things, the validity of the exchange under Public Resources Code ("PRC") section 6307.

The Sacramento Superior Court ruled in favor of the Commission, holding, in part, that the land exchange was valid under PRC section 6307. CEC appealed the Superior Court's decision, and on April 21, 2005, the Court of Appeal for the Third Appellate District held that the exchange violated PRC section 6307 and granted the petition for writ of mandate. The California Supreme Court granted review on August 24, 2005.

Following the Supreme Court's decision to grant review, the California Legislature, on October 6, 2005, clarified the intent of PRC section 6307 by repealing PRC section 6307 and replacing it with Chapter 585, Statutes of 2005 (SB 365), also designated PRC section 6307. The Supreme Court dismissed review on January 4, 2006, because of the passage of SB 365. The Court of Appeal then issued its remittitur on January 17, 2006, sending the case back to the Sacramento Superior Court. On June 9, 2006, the Superior Court, as directed by the Court of Appeal, issued a peremptory writ of mandate ordering the Commission to "vacate and set aside the exchange approved by the Commission on September 17, 2001 and its termination of the Public Trust of the parcels that were part of the Exchange Agreement." The Commission complied with the order on March 4, 2008 (Minute Item #1).

The consequence of setting aside the exchange and restoring the public trust status to the Queensway Bay Parcels was that uses inconsistent with the public trust, such as the Cinemark Theatres, Gameworks and recently-closed Borders Bookstore, were located on public trust lands. Staffs of the City/Trustee and the Commission believe that the proposed Agreement resolves the conflict over the uses of the Queensway Bay Parcels.

Final Public Trust Parcels
The Final Public Trust Parcels include the Bixby Public Trust Parcel, the Colorado Lagoon Public Trust Parcel, and the Marine Stadium Channel Public Trust Parcel. The Bixby Public Trust Parcel includes lands located landward of the compromise tideland boundary established pursuant to Chapter 138, Statutes of 1964, First Extraordinary Session and are within the 28,027-acre Mexican land grant *Rancho Los Alamitos*.

A portion of the Colorado Lagoon Public Trust Parcel and Marine Stadium Channel Public Trust Parcel are located within the approximately 377 acres surveyed by E. T. Wright, County Surveyor, (Tidelands Survey # 105, January 25, 1886) and patented as Tidelands Location 136 to Alamitos Land Company on April 16, 1901, through an assignment from Jotham Bixby, the original applicant, in accordance with "*An Act to provide for the Sale of certain Lands belonging to the State*" Chapter 396, Statutes of 1863.

Commission staff asserts that a portion of the Colorado Lagoon Public Trust Parcel lies outside the calls of the *Rancho Los Alamitos* as it was below high tide, and the Tidelands Location 136 as the specific calls did not meet the boundary of Rancho Los Alamitos at this location. Commission staff further asserts that the portion of the Colorado Lagoon Public Trust Parcel that was within Tidelands Location 136 was submerged lands not authorized for sale by the State Legislature. Commission records indicate that at least since 1927, the Commission has asserted a sovereign ownership interest in a portion of Colorado Lagoon Public Trust Parcel. The City asserts that it has record title to the entire Colorado Lagoon Public Trust Parcel and that no portion of the Colorado Lagoon is subject to any state sovereign interest.

In 2007, the City entered into a Memorandum of Understanding with the Port of Long Beach ("Port"), whereby the Port agreed to contribute $235,000 for the completion of the environmental documents necessary for the Colorado Lagoon Project, in exchange for first rights to future mitigation credits. In 2009, the City entered into a subsequent Memorandum of Agreement with the Port whereby the Port agreed to advance to the City $1,300,000 for Phase 1 of the Colorado Lagoon Project, again, in exchange for first rights to any mitigation credits. Commission staff asserts that the expenditure of Port trust funds on the Colorado Lagoon is a violation of the common law Public Trust Doctrine as articulated in *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199 because it is an expenditure of trust funds on lands outside of the Trustee's trust grant. Commission staff asserts that such expenditure is a co-mingling of trust assets that has further clouded the title of the Colorado Lagoon Public Trust Parcel. The City strongly denies such a claim, asserting that such an expenditure is authorized and consistent with its trust grant and the common law Public Trust Doctrine.

The boundary and title to the Marine Stadium Channel Public Trust Parcel and the remaining portions of the Colorado Lagoon Public Trust Parcel were addressed by a prior boundary line agreement BLA 179 ("BLA 179", also referred to as "Settlement Agreement 8"), between the Commission, the City, and others, effective on June 2, 1980. BLA 179 was entered into pursuant to Chapter 1688, Statutes of 1965. The validity of the 1965 statute and the two agreements entered into pursuant to that statute were the subject of *City of Long Beach v. Mansell* (1970) 3 Cal. 3d 462. The California Supreme Court upheld the validity of the Chapter 1688 and the two agreements and also held that the Commission was estopped from claiming a sovereign interest in certain filled and improved portions of Alamitos Bay. Subsequent to that litigation, the Commission entered into a series of boundary line agreements and exchanges, including BLA 179.

The remediation and restoration project known as the Colorado Lagoon Restoration Project ("Colorado Lagoon Project") includes the Colorado Lagoon Public Trust Parcel and Marine Stadium Channel Public Trust Parcel. The Colorado Lagoon Project will improve the Colorado Lagoon water body and adjacent habitat and recreation areas. It

will implement: (1) water quality and sediment quality improvements; (2) habitat improvements; and (3) water-related recreational improvements. In addition, Phase Two of the Colorado Lagoon Project proposes to improve the water-flow between Colorado Lagoon and Alamitos Bay. Specifically, the preferred alternative, Alternative 4A, includes the construction of a large channel open on both ends, the creation of wetlands, the relocation of some recreational facilities and the construction of two bridges.

LEGAL REQUIREMENTS:
Pursuant to Public Resources Code section 6307, the Commission is authorized, under certain circumstances, to terminate the state's public trust interests and enter into land exchange agreements. Because the City/Trustee does not have the legal authority to terminate the state's public trust interest in trust property, the Commission must take title to the Trust Termination Parcel to be exchanged for the interests in the Final Public Trust Parcels and as part of that exchange terminate the public trust interest on the Trust Termination Parcel. The Commission, in order to comply with Article X, Section 3 of the California Constitution and 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; and/or
    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 will 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;
(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) Mineral interests are not being exchanged as part of this Agreement; and,
(7) The exchange is in the best interest of the State.

ANALYSIS AND STAFF RECOMMENDATION:
Commission staff has reviewed in-house documents and other information submitted for the proposed Agreement, including appraisals, surveys, title reports, historic use reports, and other studies conducted for the title settlement and land exchange.

Staff recommends that the Commission approve the proposed Agreement for several reasons. The Trust Termination Parcel is relatively small, at approximately 10.24 acres, compared to the thousands of acres of filled and unfilled public trust lands held in trust by the Trustee. The Trust Termination Parcel has been filled and reclaimed and is physically separated from the water by 550 feet of fill and bulkheads and lanes of Shoreline Boulevard. The Trust Termination Parcel is currently occupied by general retail uses and is relatively useless for public trust purposes compared to the Final Public Trust Parcels.

In contrast, the Final Public Trust Parcels have significant public trust value based on their locations, history and current and proposed uses. This Agreement proposes to transfer into sovereign ownership: 1) a bluff-top park, adjacent to existing sovereign land, fronting the Pacific Ocean; 2) a tidal lagoon and surrounding beach that was sold into private ownership over one hundred years ago; and, 3) an open space area that is proposed to become an open channel that will not only provide wetland habitat but also return tidal flow to the lagoon. These three Final Public Trust Parcels provide public access to the Pacific Ocean, the Colorado Lagoon, and Alamitos Bay, as well as provide public water-related beachfront recreational opportunities for the statewide citizenry. In addition, as a result of this Agreement, if approved, trust funds will be available for use in the Colorado Lagoon Project because the Colorado Lagoon Public Trust Parcel and the Marine Stadium Channel Public Trust Parcel will be impressed with and become assets of the public trust.

Further, because the public is physically unable to navigate or fish at the Trust Termination Parcel, there will be no substantial interference with public trust uses and purposes, including public rights of navigation and fishing, by virtue of the exchange. The approval of this Agreement will also settle a title dispute of the uses at the Trust Termination Parcel and a long-running boundary and title dispute involving portions of the Colorado Lagoon Public Trust Parcel. Finally, there are substantial mineral interests throughout the Long Beach area and this Agreement explicitly does not affect those interests.

In the interest of settlement, the Parties have conducted independent studies and evaluations of their respective factual and legal positions relating to the disputed title and boundary claims. Appraisals and property interest evaluation studies reviewed or completed by Commission staff have shown that the monetary value of the lands and interests to be exchanged into the public trust under this Agreement is equal to or

greater than the monetary value of the lands and interests to be exchanged out of the public trust.

Since litigation of this matter would likely be extremely protracted and costly with uncertain results, the parties to the Agreement consider it expedient, necessary, and in the best interests of the parties to resolve this dispute through a title settlement by way of a land exchange agreement thereby avoiding the anticipated substantial costs, time requirements, and uncertainties of litigation.

As described in the preceding paragraphs, the facts support each of the necessary findings the Commission must make, including that this Agreement is in the best interests of the state. Commission staff and the Attorney General's Office have reviewed the proposed Agreement and believe all necessary legal elements have been met. Staff therefore recommends that the Commission approve the Agreement, in substantially the form on file at the Commission's Sacramento Office and authorize its execution and the execution and recordation of all documents necessary to implement it, including the issuance of two 49-year leases to the Trustee.

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 title settlement and 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. The City of Long Beach is the State's trustee of the legislatively granted sovereign tide and submerged lands pursuant to, *inter alia*, Chapter 676 of the Statutes of 1911, Chapter 102 of the Statutes of 1925, Chapter 158 of the Statutes of 1935, and Chapter 138 of the Statutes of 1964, First Extraordinary Session, as amended.

4. An EIR, SCH # 2007111034, was prepared for the Colorado Lagoon Restoration Project by the City of Long Beach and certified by the Long Beach City Council on October 14, 2008.

5. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), staff has determined that this activity is exempt from the requirements of 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.

6. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370, et seq., but such activity will not affect those significant lands. 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. Trust Termination Parcel Location and Site Map
B. Bixby Park Public Trust Parcel Location and Site Map
C. Colorado Lagoon and Marine Stadium Channel Parcels Location and Site Map

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDINGS:

Title Settlement and Land Exchange Agreement and 49-Year Lease for Bixby Park and 49-Year Lease Colorado Lagoon and Marine Stadium Channel:

Find that the activity is exempt from the requirements of CEQA pursuant to Title 14, California Code of Regulations,Section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080.11, settlement of title and boundary problems and to exchanges or leases in connection with those settlements

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code sections 6370, et seq.

AUTHORIZATION:

1. 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, find that:

   A. The parties have a good faith and bona fide dispute as to their respective interests and claims within the agreement area, and the title settlement through a land exchange agreement is in lieu

of the costs, delays, and uncertainties of title litigation, and is consistent with and is authorized by law;

B. The lands and interests in lands to be acquired by the State of California, acting by and through the Commission, pursuant to this Agreement are of such a configuration that they can be used more effectively by the City of Long Beach, as trustee, in furtherance of Public Trust purposes than the filled tidelands to be conveyed and will in fact provide a significant benefit to the Public Trust;

C. The exchange does not substantially interfere with public rights of navigation and fishing;

D. The monetary value of the lands and interests in land received by the State of California, acting by and through the Commission, in trust pursuant to the Agreement is equal to or greater than that of the lands and interests in lands to be relinquished by the State of California, acting by and through the Commission;

E. The lands to be relinquished by the State of California, acting by and through the Commission, 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 relatively useless for Public Trust purposes;

F. The exchange agreement is in the best interests of the State of California;

G. The exchange is to enhance the physical configuration of trust land ownership; to enhance public access to and along the water, to preserve, enhance, or create wetlands, riparian or littoral habitat, or open space, and to resolve a title and boundary dispute between the Commission and the City; and,

H. No mineral interests are being exchanged pursuant to the Agreement.

2. Find that the lands to be conveyed to the State of California, acting by and through the Commission, 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, acknowledgment, and recordation of the Title Settlement and Land Exchange Agreement and associated deeds and acceptances and leases on behalf of the Commission, in substantially the form of the copy of such agreement on file with the Commission.

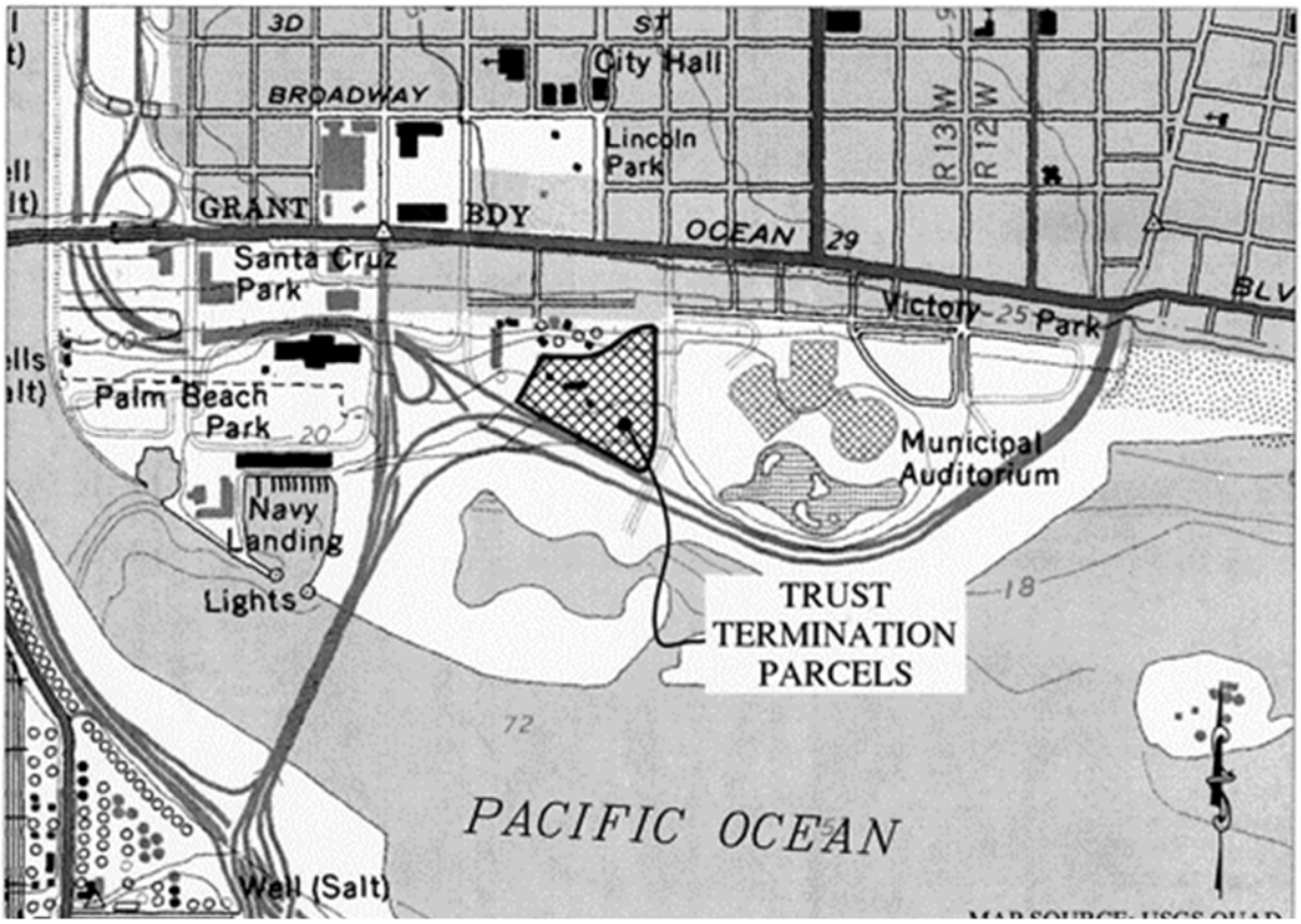
4. Approve and authorize the issuance of a 49-year general lease - public agency use – of the Bixby Park Public Trust Parcel to the City of Long Beach, as trustee, as provided for in the Agreement.

5. Approve and authorize the issuance of a 49-year general lease - public agency use – of the Colorado Lagoon and Marine Stadium Channel Public Trust Parcel to the City of Long Beach, as trustee, as provided for in the Agreement.

6. Authorize and direct the staff of the 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, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the Title Settlement and Land Exchange Agreement; and to appear on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement.

NO SCALE

SITE



TRUST TERMINATION PARCELS
QUEENSWAY BAY EXCHANGE AGREEMENT

NO SCALE

LOCATION

MAP SOURCE: USGS QUAD

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.

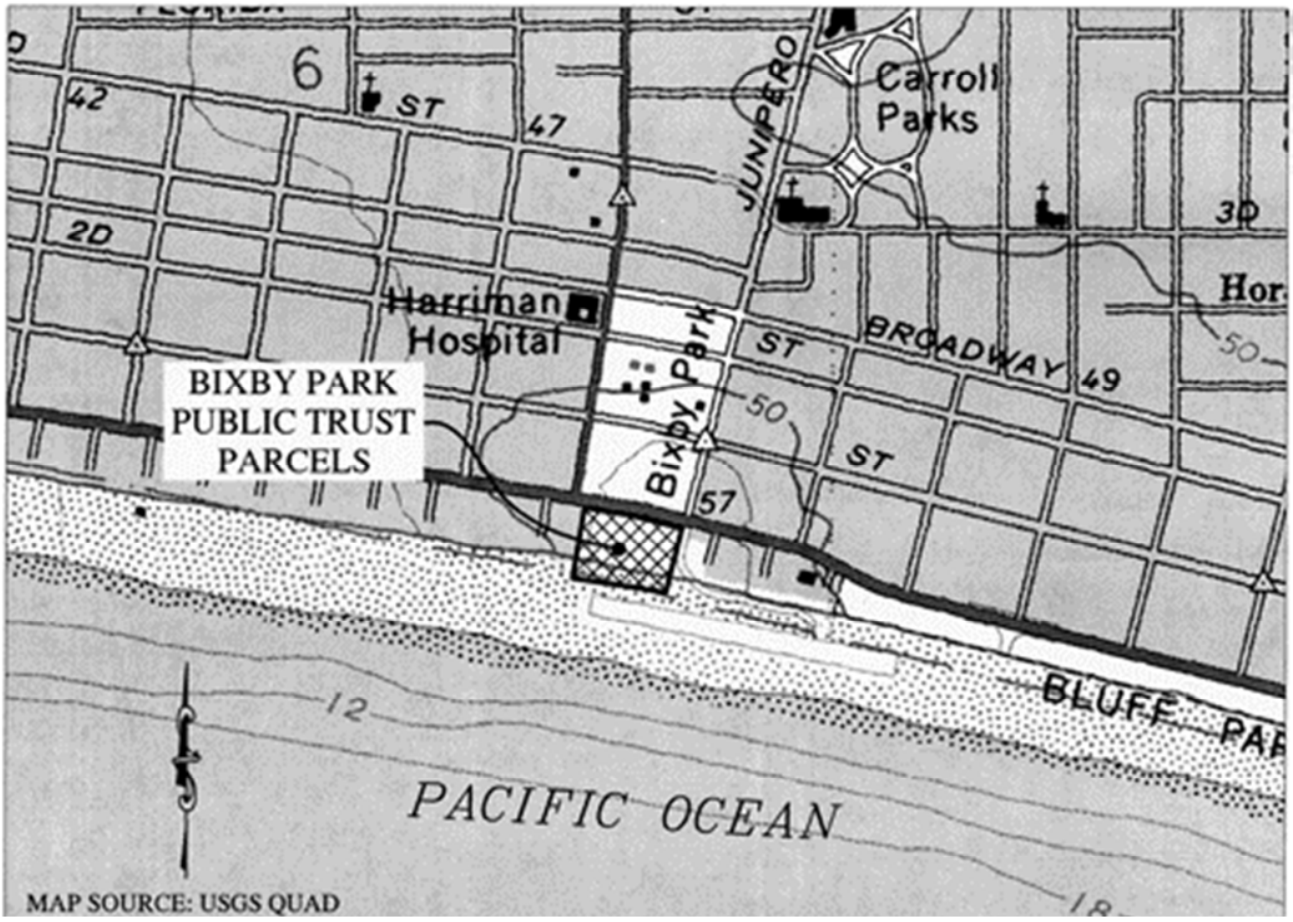
Exhibit A

W 26386
TITLE SETTLEMENT
CITY OF
LONG BEACH
LOS ANGELES COUNTY

JWP 06/11

NO SCALE

SITE



BIXBY PARK PUBLIC TRUST PARCELS
QUEENSWAY BAY EXCHANGE AGREEMENT

NO SCALE

LOCATION

MAP SOURCE: USGS QUAD

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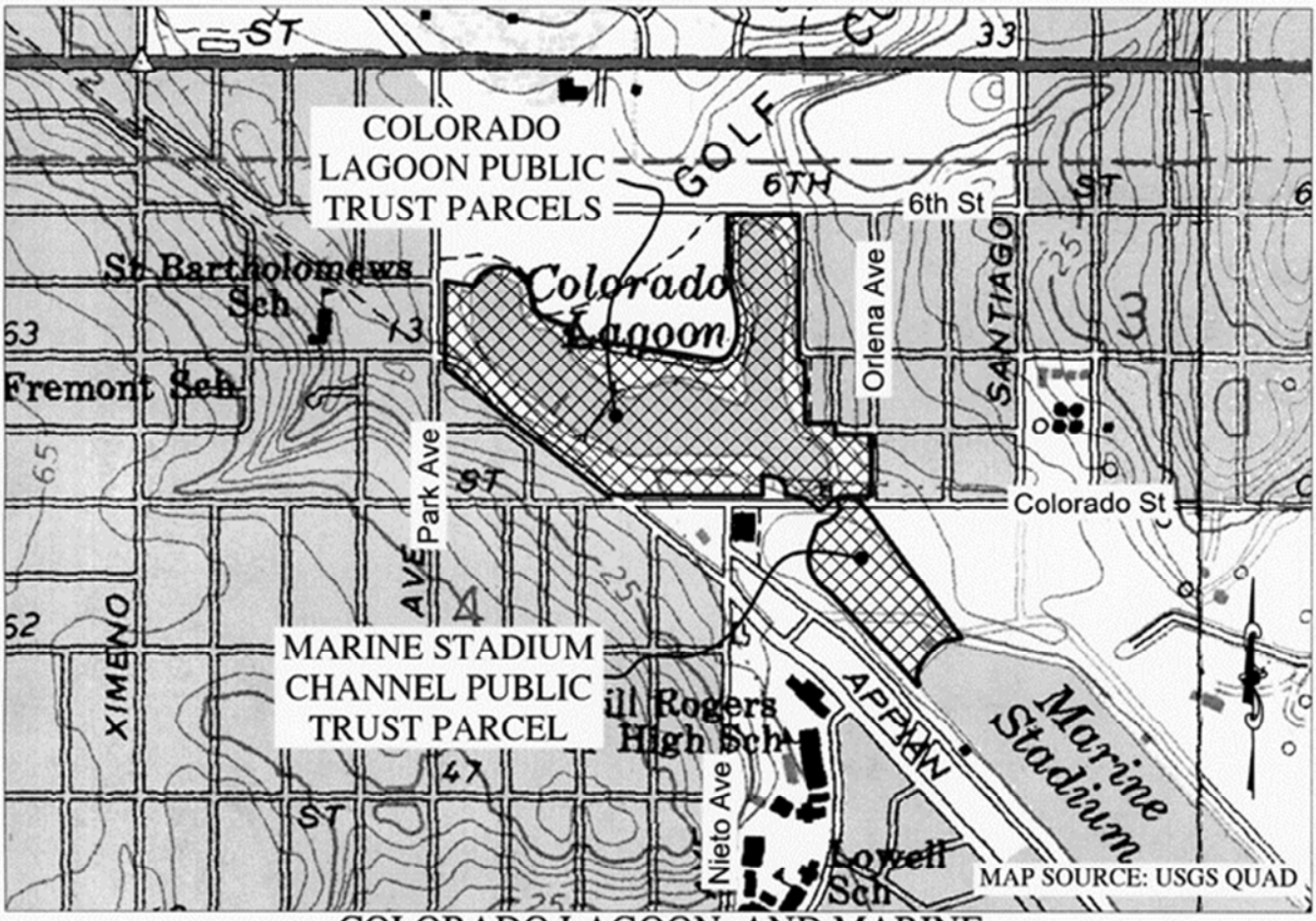
Exhibit B

W 26386
TITLE SETTLEMENT
CITY OF
LONG BEACH
LOS ANGELES COUNTY

JWP 03/11

NO SCALE

SITE



COLORADO LAGOON AND MARINE
STADIUM CHANNEL PUBLIC TRUST PARCELS
QUEENSWAY BAY EXCHANGE AGREEMENT

NO SCALE

LOCATION

MAP SOURCE: USGS QUAD

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Exhibit C

W 26386
TITLE SETTLEMENT
CITY OF
LONG BEACH
LOS ANGELES COUNTY

JWP 06/11