

**CALENDAR ITEM
C50**

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J.Frey

**CONSIDER APPROVAL OF THE BALLOON TRACT TITLE SETTLEMENT AND
TRUST TERMINATION AGREEMENT RESOLVING TITLE TO REAL PROPERTY IN
THE CITY OF EUREKA, HUMBOLDT COUNTY**

PARTIES:

State Lands Commission

City of Eureka, as Trustee of legislative granted tidelands

CUE VI, LLC an Alaskan Limited Liability Company

Sequoia Investments XXIV, LLC an Alaskan Limited Liability Company

BACKGROUND:

CUE VI and Sequoia Investments XXIV are the record owners of 11 Assessor's parcels comprising approximately 42.5 acres of land (the Subject Property as depicted in Exhibit A for reference purposes only) in the northwestern portion of the City of Eureka. Eight of these parcels were used as the freight and maintenance yards for the former Northwestern Pacific Railroad, which was established in 1880 as the Eel River and Eureka Rail Road and which operated through the early 1980s connecting the North Coast to Willits and Schellville. Since its closure, the rail yards have lain vacant and undeveloped and were subsequently purchased by CUE VI from the Union Pacific Railroad. The other three parcels were used for industrial/commercial purposes and are presently owned by Sequoia Investments XXIV. CUE VI and Sequoia Investments XXIV propose to develop the 11 Assessor's parcels into a commercial retail center.

The City of Eureka is trustee of all tide and submerged lands within its boundaries pursuant to various statutory trust grants of the California Legislature. (See Chapter 87 of the Statutes of 1857; Chapter 187 of the Statutes of 1927, Chapter 255 of the Statutes of 1945 and Chapter 1085 of the Statutes of 1970, Chapter 1086 of the Statutes of 1970 and Chapter 1095 of the Statutes of 1978.) The Subject Property is within the scope of the lands described in the City's statutory trust grants.

CALENDAR ITEM NO. C 50 (CONT'D)

In the 1800's, the Subject Property was considered to be salt marsh and tide lands and was sold as part of Tideland Surveys 2 and 8 by the state and patented to Jonathan Clark on July 18, 1860 and Charles Collins on August 29, 1861. Historical evidence indicates that portions of the Subject Property were occupied by Clark Slough and other smaller tributary sloughs. In 1890, the United States Surveyor General reclassified the Subject Property as swamp and overflowed lands and a patent for the same was given to California and signed by President Theodore Roosevelt in 1903. CUE VI and Sequoia Investments XXIV contend that, except for the bed of Clark Slough, whether unfilled or filled and reclaimed, the Subject Property is swamp and overflowed lands and that the State of California relinquished all of its interest in it when it was sold to Clark and Collins. Commission staff and the City of Eureka disagree on this characterization and believe that the Subject Property was sovereign tide and submerged lands sold pursuant to an act of the Legislature and that the Public Trust continues to exist over the tidelands and the state retains the fee interest in the submerged lands.

Originally the railroad ran along the outer edge of the marsh crossing the various sloughs as it made its progress southward. Over time, the interior of the marsh was filled and reclaimed and additional fill was placed on the outboard side of the rail line. The interior of the parcel was developed to serve the railroad and trackage, and maintenance shops were constructed on it. Sequoia Investment XXIV's parcels were developed for industrial-commercial uses. Today all 11 parcels are completely cut off from Humboldt Bay by Waterfront Drive; are filled and reclaimed and, because of these conditions, are above the line of the mean high tide and are no longer suitable for public trust purposes, except for a portion of Clark Slough. Culverts under Waterfront Drive now connect Clark Slough to Humboldt Bay and Clark Slough's primary purpose is to collect surface waters from nearby commercial and residential lands.

TITLE SETTLEMENT AND TRUST TERMINATION AGREEMENT:

The Settlement and Trust Termination Agreement provides for the conveyance of the State's interest in the filled and reclaimed portions of the bed of Clark Slough and for the termination of the public trust over the entire property, including the lands within Tideland Sales 2 and 8 (Trust Termination Parcels No. 1-3, as described and depicted generally in Exhibits B through D), excepting from the conveyance and the termination of the public trust the remnant of Clark Slough, which shall remain sovereign and part of the trust lands held by the City of Eureka pursuant to its statutory trust grant (Sovereign Land Parcel, as described and generally depicted in Exhibit E). The Humboldt Bay Fund, as established by Chapter 1085 of the Statutes of 1970, will receive \$526,330 in compensation from CUE VI, LLC and Sequoia Investments XXIV, LLC for the interests conveyed to them.

CUE VI and/or Sequoia Investment XXIV intends in the near future to acquire a small parcel (0.11 acre more or less) on the eastern boundary of the Subject Property. This parcel, identified as Trust Termination Parcel No. 3, shares the title and boundary

CALENDAR ITEM NO. C 50 (CONT'D)

characteristics of Trust Termination Parcels No. 1 and No. 2. The settlement provides for the conveyance of any State interest in Trust Termination Parcel No. 3 and the termination of the public trust once CUE VI or Sequoia Investments acquires the parcel. In consideration of this conveyance and the termination of the public trust, CUE VI or Sequoia will pay the City of Eureka, as Trustee, the sum of \$4,003 (adjusted annually by the change in the CPI until sold) for deposit in the Humboldt Bay Fund. This is not an open-ended term and the transaction must be completed by January 1, 2014 or it will fail and become null and void.

LEGAL REQUIREMENTS:

Chapter 1085 of the Statutes of 1970 authorizes the City of Eureka, as Trustee, and the State Lands Commission to enter into settlement agreements and to convey, release, or quitclaim portion(s) of the Trustee's granted public trust lands and terminate the public trust from them under the following conditions:

1. The Commission must identify the lands that have been filled and reclaimed and are no longer submerged or below the line of mean high tide and are no longer necessary or useful for commerce, fisheries, or navigation. The Commission's findings in this regard are conclusive as to the character of the lands.
2. The Commission must execute and record in the office of the County Recorder for Humboldt County an appropriate instrument describing those lands. A certificate shall accompany the recording and it shall recite that the lands are above the line of mean high tide and have been found to be no longer necessary or useful for commerce, fisheries, or navigation.
3. The quitclaim or conveyance shall be executed in favor of any person claiming present ownership of the property based on a record chain of title that extends back 30 years or more.
4. The Trustee, with the approval of the Commission, may settle by agreement, exchange, or quitclaim any dispute concerning whether or not particular land within the Humboldt Bay area constitutes land in private or proprietary ownership by reason of title traceable to a State or federal patent or grant or other valid source, or rather constitutes Eureka tidelands, title to which is vested in the City under the provisions of the statutes. In so doing, the Trustee may establish boundary or compromise boundary lines between the Eureka tidelands and bordering private or proprietary lands.
5. The Trustee shall determine the amount of consideration paid in exchange for any conveyance, release, quitclaim, or settlement under Chapter 1085, Statutes of 1970 and the consideration shall be approved by the Commission.

CALENDAR ITEM NO. C 50 (CONT'D)

6. No lands which lie below the line of mean high tide shall be conveyed, released, or quitclaimed and the public trust may not be terminated from such lands. All moneys which are received by the city of Eureka, as Trustee, as a result of exchanges pursuant to Chapter 1085, Statutes of 1970, must be deposited into the Humboldt Bay Fund to be used only for trust purposes.

STAFF ANALYSIS AND RECOMMENDATION:

The staff of the State Lands Commission has conducted a study and investigation of the Subject Property, thoroughly examining historical maps, aerial photos, hydrological data, and other evidence concerning the area, in an effort to determine the location and extent of the State's sovereign property interests. Because the property was filled and reclaimed and because of the dearth of historical surveys indicating the location of the historic ordinary high and low water lines of Clark Slough and in the Subject Property, it is impossible to determine an exact and definite location of the ordinary high and low water lines and the extent of the marsh and therefore, the extent of the State's sovereign interests. Consequently, in order to avoid the cost and uncertainties of litigation, the Parties believe it is in the best interests of all of them to enter into a compromise title settlement agreement and trust termination agreement.

The City and Commission staff have determined that \$530,333 and the monetary value of the Sovereign Land Parcel is equal to or greater than the sovereign interests in the Trust Termination Parcels No. 1-3. Staff has reviewed appraisals (on file at the Commission's Sacramento Office), title and boundary evidence, applicable case law and other information prepared to analyze the public trust claims and monetary values of the Trust Termination Parcels No. 1-3. Staff has reached an independent conclusion regarding the monetary values of these properties based on its analysis, including the above described information.

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, .

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs, title 14, §15061), the 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

CALENDAR ITEM NO. C 50 (CONT'D)

2. The City Council for the City of Eureka, acting as Trustee of sovereign lands granted it pursuant to various statutes, considered and approved this agreement on October 4, 2011.

EXHIBITS:

- A. Map of Subject Property.
- B. Land Description and Plat of Trust Termination Parcel No. 1.
- C. Land Description and Plat of Trust Termination Parcel No. 2.
- D. Land Description and Plat of Trust Termination Parcel No. 3.
- E. Land Description and Plat of Sovereign Land Parcel.

IT IS RECOMMENDED THAT THE COMMISSION:

1. Find that the activity is exempt from the requirements of CEQA pursuant to Title 14 Cal. Code of Regulations section 15061 as a statutorily-exempt project pursuant to Public Resources Code section 21080.11, Settlement of Title and Boundary Problems.
2. Find that the proposed Balloon Tract Title Settlement and Trust Termination Agreement is in the best interests of the Parties and the public to resolve this dispute between the Commission, Trustee, and Private Parties over title to the Subject Property, as described in Exhibits B-E by way of a compromise title settlement agreement and to avoid the anticipated costs, time delays, and uncertainties of litigation.
3. Find that the Trust Termination Parcels No. 1-3, as described in Exhibits B-D, were improved in connection with the development of the Humboldt Bay waterfront and in the process, filled and reclaimed and are no longer submerged or below the line of mean high tide and are no longer useful for commerce, navigation, or fisheries.
4. Find that the amount of \$526,300 to be deposited into the Humboldt Bay Fund, as established by Chapter 1095 of the Statutes of 1978 amending Chapter 1086 of the Statutes of 1970, is of equal or greater value than the value of the sovereign interests in the Trust Termination Parcels No. 1-3, as described in Exhibits B-D.
5. Authorize the conveyance to CUE VI, LLC and Sequoia Investments XXIV, LLC of all of the State's sovereign interest in the Trust Termination Parcels No. 1-3, as described in Exhibits B-D, and terminate the public trust interest for commerce, navigation, and fisheries from those lands.
6. Authorize the acceptance by the State Lands Commission of a quitclaim from CUE VI of any interest it has in the remnant of Clark Slough (Sovereign Land Parcel) as described in Exhibit E.

CALENDAR ITEM NO. C 50 (CONT'D)

7. Approve and authorize the execution, acknowledgement, and recording of the Balloon Tract Title Settlement and Trust Termination Agreement in substantially the form on file at the Commission's Sacramento Office and the Commission's Acceptance and Consent to Recording.
8. Authorize Commission staff and/or the Attorney General to take all necessary or appropriate actions on behalf of the California State Lands Commission as may be necessary or convenient to carry out the Balloon Tract Title Settlement and Trust Termination Agreement; and to appear on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement.



SUBJECT PARCELS

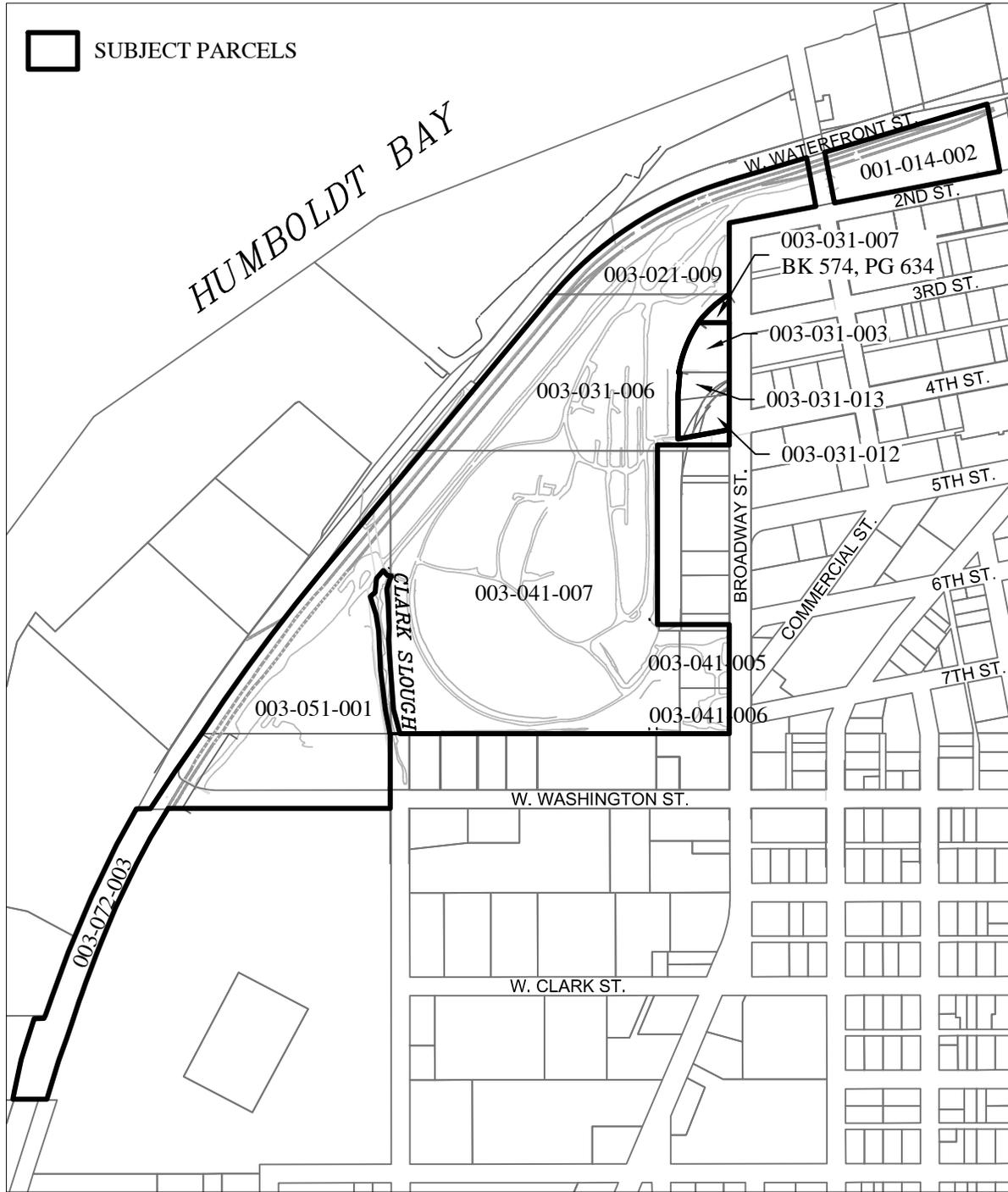


EXHIBIT A

PLAT OF SUBJECT PROPERTY

Date 09/12/11

SUBJECT PROPERTY
BALLOON TRACT, CITY OF EUREKA
HUMBOLDT COUNTY

CALIFORNIA STATE
LANDS COMMISSION



EXHIBIT B

LAND DESCRIPTION TRUST TERMINATION PARCEL #1

Four (4) parcels of land situate in the City of Eureka, County of Humboldt, State of California, more particularly described as follows:

All those parcels as described in Exhibit A of that Grant Deed with Covenants and Environmental Restriction from Union. Pacific Railroad Company to Cue VI LLC., recorded September 29, 2006 in Document Number 2006-28317-29, Official Records of said County.

EXCEPTING THEREFROM that portion of Clark Slough described as follows:

COMMENCING at the southeast corner of Parcel One of Tract A as described in Exhibit A of that Grant Deed with Covenants and Environmental Restriction from Union Pacific Railroad Company to Cue VI LLC., recorded September 29, 2006 in Document Number 2006-28317-29, Official Records of said County; thence South 89° 59' 40" West 1055.76 feet along the north line of Clark's Addition, said Clark's Addition referenced in said Deed and shown on that Official Map of the Third Enlargement of Clark's Addition to the City of Eureka, filed in Book 9 of Maps at Page 1, Records of said County, said point also being the POINT OF BEGINNING; thence continuing along said North Line South 89° 59' 40" West 31.26 feet; thence leaving said North Line and along the following nineteen (19) courses:

1. South 00° 00' 34" East 6.19 feet;
2. North 11° 07' 10" West, 83.54 feet;
3. North 06° 52' 11" West 128.88 feet;
4. North 02° 35' 46" West 125.40 feet;
5. North 09° 10' 06" West 54.24 feet;
6. North 17° 56' 49" West 60.19 feet;
7. North 51° 15' 17" East 20.39 feet;
8. North 05° 03' 37" East 44.97 feet;
9. North 40° 25' 11" East 33.36 feet;
10. South 41° 34' 54" East 21.38 feet;
11. South 84° 34' 17" East 13.27 feet;
12. South 25° 28' 31" West 14.74 feet;
13. South 19° 34' 38" West 29.97 feet;
14. South 05° 36' 31" East 45.32 feet;
15. South 02° 54' 10" East 78.83 feet;

16. South 03° 29' 19" West 38.87 feet;
17. South 03° 59' 58" East 92.01 feet;
18. South 04° 20' 19" East 131.15 feet;
19. South 14° 45' 11" East 81.49 feet to the POINT OF BEGINNING.

BASIS OF BEARINGS for this description is that Record of Survey for Courthouse Union Inc., filed March 1, 2005 in Book 63 of Surveys at Page 44 and 45, Records of said County.

END OF DESCRIPTION

Prepared June 15, 2011 by the California State Lands Commission. Boundary Unit.



EXHIBIT C

**LAND DESCRIPTION
TRUST TERMINATION PARCEL #2**

Five (5) parcels of land situate in the City of Eureka, County of Humboldt, State of California, more particularly described as follows:

All those parcels as described in Exhibit A of that Grant Deed from Cue VI LLC. to Sequoia Investments XXIV, recorded January 8, 2010 in. Document Number 2010-421-3, Official Records of said County.

END OF DESCRIPTION

Prepared June 15, 2011 by the California State Lands Commission Boundary Unit.





TRUST TERMINATION PARCEL NO. 2

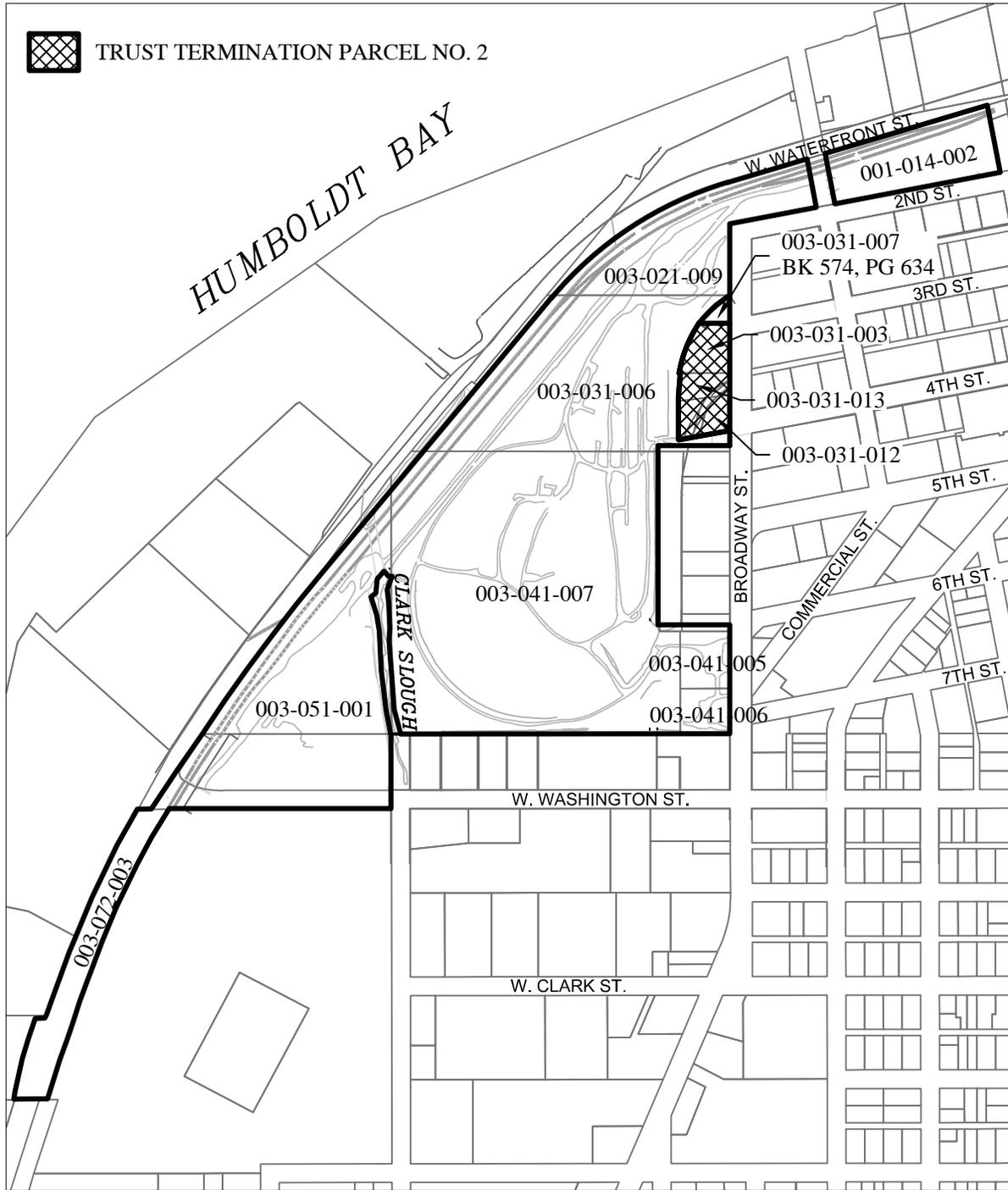


EXHIBIT C-1

PLAT OF TRUST TERMINATION PARCEL NO. 2

Date 09/12/11

TRUST TERMINATION PARCEL NO. 2
BALLOON TRACT, CITY OF EUREKA
HUMBOLDT COUNTY

CALIFORNIA STATE
LANDS COMMISSION



EXHIBIT D

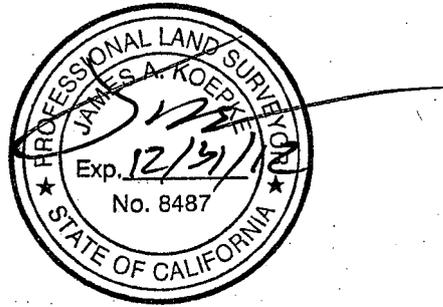
**LAND DESCRIPTION
TRUST TERMINATION PARCEL #3**

A parcel of land situate in the City of Eureka, County of Humboldt, State of California, more particularly described as follows:

All that land as described in that Grant Deed from Northwestern Pacific Railroad Company to Andrew Rosaia. Inc., recorded February 4, 1960 in Volume 574 at Page 634, Official Records of said County.

END OF DESCRIPTION

Prepared June 15, 2011 by the California State Lands Commission Boundary Unit.





TRUST TERMINATION PARCEL NO. 3

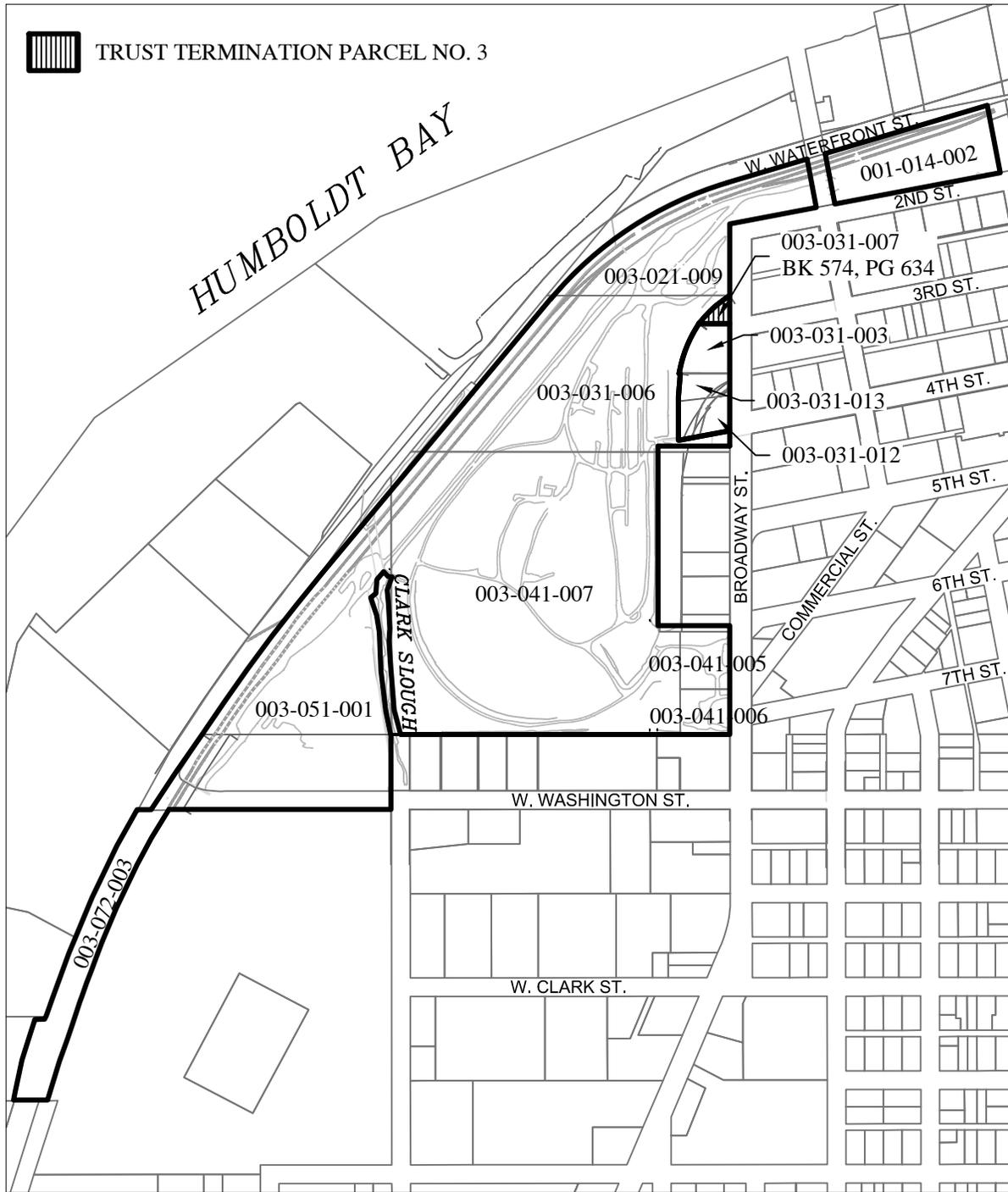


EXHIBIT D-1

PLAT OF TRUST TERMINATION PARCEL NO. 3

Date 09/12/11

TRUST TERMINATION PARCEL NO. 3
BALLOON TRACT, CITY OF EUREKA
HUMBOLDT COUNTY

CALIFORNIA STATE
LANDS COMMISSION



EXHIBIT E

LAND DESCRIPTION SOVEREIGN LAND PARCEL .

A pdrtion of Clark Slough situate in the City of Eureka, County of Humboldt, State of California, more particularly described as follows:

COMMENCING at the southeast corner of Parcel One of Tract A as described in Exhibit A of that Grant Deed with Covenants and Environmental Restriction from Union Pacific Railroad Company to Cue VI LLC., recorded September 29, 2006 in Document Number 2006-28317-29, Official Records of said County; thence South 89° 59' 40" West 1055.76 feet along the north line of Clark's Addition, said Clark's Addition referenced in said Deed and shown on that Official Map of the Third Enlargement of Clark's Addition to the City of Eureka, filed in Book 9 of Maps at Page 1, Records of said County, said point also being the POINT OF BEGINNING; thence continuing along said North Line South 89° 59' 40" West 31.26 feet; thence leaving said North Line and along the following nineteen (19) courses:

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BASIS OF BEARINGS for this description is that Record of Survey for Courthouse Union

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END OF DESCRIPTION

Prepared June 15, 2011 by the California State Lands Commission Boundary Unit.





SOVEREIGN LAND PARCEL

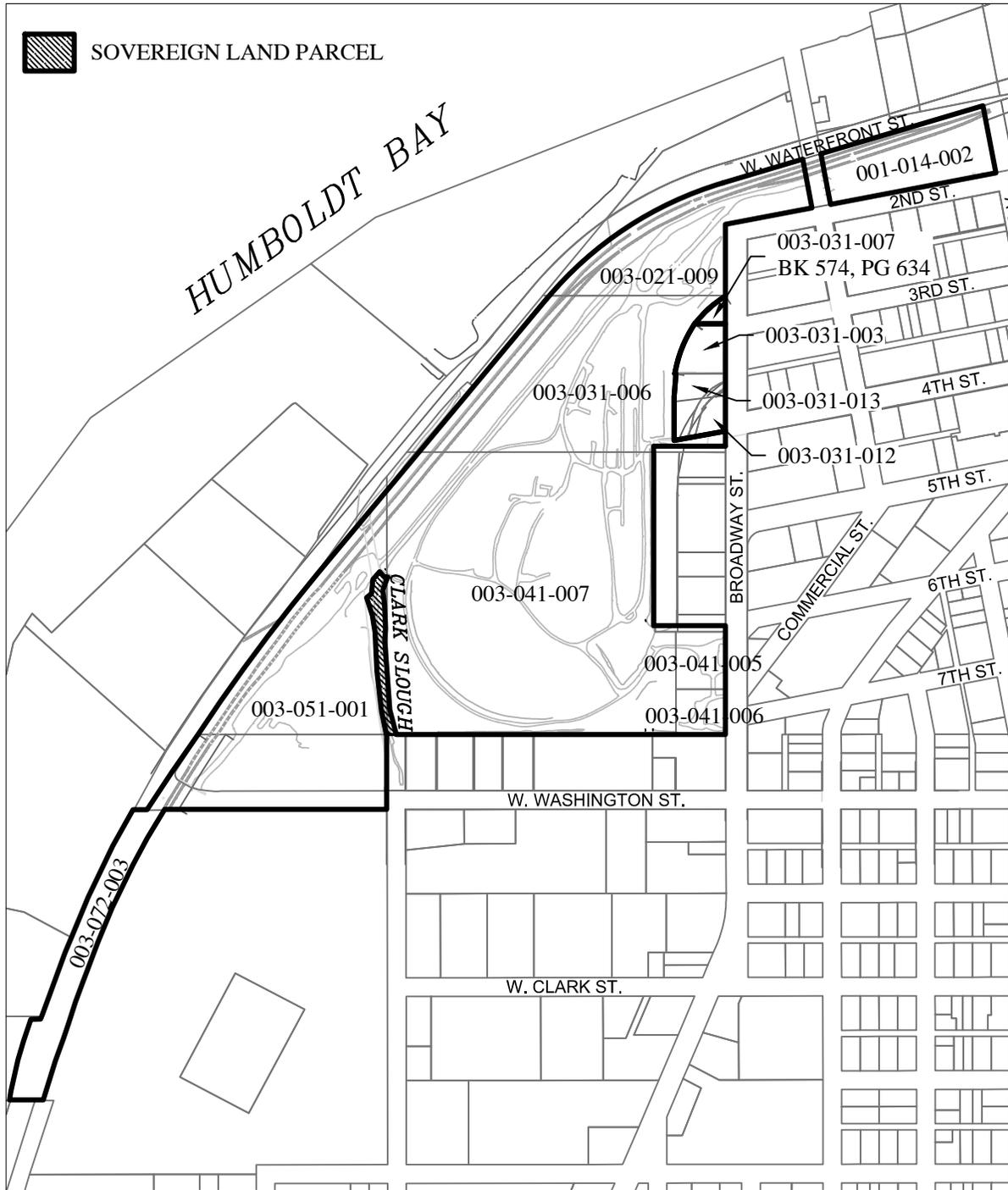


EXHIBIT E-1

PLAT OF SOVEREIGN LAND PARCEL

Date 09/12/11

*SOVEREIGN LAND PARCEL
BALLOON TRACT, CITY OF EUREKA
HUMBOLDT COUNTY*

**CALIFORNIA STATE
LANDS COMMISSION**

