

**CALENDAR ITEM
C95**

A	11	10/19/2012
		W26624
S	7	K. Colson
		G. Kato

CONSIDER THE CONDITIONAL APPROVAL OF THE PURCHASE, WITH KAPILOFF LAND BANK FUNDS, OF A 7.37 ACRE PARCEL OWNED BY PACIFIC CUSTOM MATERIALS, INC. (APN: 368-090-004), LOCATED ADJACENT TO THE CARQUINEZ STRAIT, CONTRA COSTA COUNTY AND APPROVAL OF A GENERAL LEASE – PUBLIC AGENCY USE OF THE ACQUIRED PROPERTY TO THE EAST BAY REGIONAL PARK DISTRICT

PARTIES:

East Bay Regional Park District

Pacific Custom Materials, Inc.

California State Lands Commission, as Trustee of the Kapiloff Land Bank Fund

PROPOSED ACQUISITION:

The East Bay Regional Park District (EBRPD) has requested that the California State Lands Commission (Commission), as Trustee of the Kapiloff Land Bank Fund, acquire a 7.37 acre parcel of land located adjacent to the Carquinez Strait, referred to as the Pacific Customs Material Property (Subject Property).

The Subject Property is located adjacent to the Carquinez Strait within Contra Costa County and next to property recently acquired by EBRPD. The property was previously owned by Port Costa Materials, Inc. and has been owned by Pacific Custom Materials, Inc. for several years. A portion of the property is comprised of filled tidelands that were subject to litigation and a settlement agreement in 1990 that terminated the State's interest in the land. Due to the location of the parcel adjacent to the Carquinez Strait, acquisition of this property would be beneficial for trust purposes of open space and water-dependent recreation. The acquisition will connect miles of property under public ownership along the Carquinez Strait and possibly allow for the additional future continuation of the San Francisco Bay Trail, a bicycle and pedestrian trail that will eventually provide continuous access around the shoreline of San Francisco Bay.

More specifically, the Subject Property is a long, narrow parcel, which is located adjacent to a rail line on the eastern side and the Carquinez Strait on the western side.

CALENDAR ITEM NO. **C95** (CONT'D)

There are currently no improvements on the Subject Property, but a dock and dolphins are on adjacent tidelands to the west of the Subject Property. EBRPD already leases a nearby parcel of land from the Commission and is in the process of acquiring approximately 140 acres of Pacific Custom Materials property surrounding the Subject Property. EBRPD is currently planning to extend a portion of the San Francisco Bay Area Water Trail (Water Trail) on EBRPD property located on the other side of the rail line. The State Coastal Conservancy is leading the implementation of the Water Trail, along with the Association of Bay Area Governments (ABAG), the San Francisco Bay Conservation and Development Commission, and the Department of Boating and Waterways. The Water Trail is a growing network of access sites that will help people using non-motorized, small boats or other craft, such as kayaks, canoes, dragon boats, stand up paddle and windsurf boards, to safely enjoy single and multiple-day trips around San Francisco Bay. This regional trail has the potential to enhance Bay Area communities' connections to the Bay and create new linkages to existing shoreline open space and other regional trails, including the San Francisco Bay Trail.

In return for the contribution of \$544,500, the Commission, as Trustee, will take title to the Subject Property, the value of which is equal to or greater than the total funds contributed by the Commission toward the acquisition. Title to the Subject Property will be vested and held by the Commission as sovereign tide and submerged lands subject to the public trust, pursuant to provisions of Division 6 of the Public Resources Code section 6000, ect.

PROPOSED LEASE:

Upon approval of the acquisition, staff recommends that the Commission also authorize a General Lease-Public Agency Use with EBRPD for management of the Lease Area, depicted on Exhibit B, for a term of 20 years for pedestrian access, recreation, passive open space, dock and dolphins, with the consideration being the public's use and benefit associated with such a lease. The lease will include the underwater area previously leased to Pacific Custom Materials (PRC 7390) which includes a dock and dolphins.

Although EBRPD will need to undergo a public planning process as well as, any required environmental review before any improvements could even be proposed, the Lease Area is anticipated as a future site for connecting the Bay Trail, docking and landing as well as other public water-related recreation purposes. Any improvements to the Lease Area would require an amendment of the proposed lease.

LEGAL REQUIREMENTS:

Pursuant to Public Resources Code section 8600 et. al, the Commission, acting as Land Bank Trustee, may expend monies to purchase outstanding interests in tide and submerged lands whether or not they have been filled, diked, or cut off from tidal

CALENDAR ITEM NO. **C95** (CONT'D)

waters, lands which have been or may be converted to wetlands, or adjoining or nearby lands where the public use and ownership of the land is necessary or extremely beneficial for furtherance of public trust purposes. The purchase price shall not exceed the fair market value of the outstanding interests to be acquired. Prior to any such acquisition the trustee shall review the evidence and applicable law and shall determine whether the state may have any right, title, or interest therein and deduct from the economic value of the acquisition. The trustee shall make all reasonable attempts to acquire the mineral and other subsurface rights.

STAFF ANALYSIS:

Staff has conducted an independent analysis of the Subject Property, including reviewing maps, surveys, litigation documents and other relevant information. Due to the prior litigation and settlement agreement, the State currently has no interest in the Subject Property. Staff has concluded that the Subject Property is useful for public trust purposes of water-related recreation, public access, open space, and wildlife habitat due the location of the Subject Property being immediately adjacent to the Carquinez Strait. The Commission's interest in the Subject Property will be leased to EBRPD, and EBRPD will assume all liability for the Subject Property.

The proposed acquisition by the Commission of the Subject Property will include fee simple interest, including all mineral and subsurface rights. Staff has also reviewed the appraisal for the Subject Property and finds the Subject Property has a value equal to or greater than than \$544,500. Staff therefore recommends that the Commission, as Trustee for the Kapiloff Land Bank Fund, authorize the expenditure of funds set forth above.

OTHER PERTINENT INFORMATION:

1. A Notice of Potential Land Bank Acquisition containing a short description of the Subject Property, Assessor's Parcel Number, and a depiction of the property was issued on September 24, 2012 pursuant to the requirements of Public Resources Code section 8622.
2. Commission staff has reviewed the Phase I Environmental Assessment for the Subject Property but due to extenuating circumstances, the Phase II Environmental Assessment has not been finalized. Escrow must close between Pacific Custom Materials and EBRPD by December 1, 2012, which is why the Commission must consider the acquisition at this time. The acquisition is structured so that Pacific Custom Materials will transfer the property to EBRPD which will immediately be transferred to the Commission as part of the same closing. As a condition of authorizing the acquisition, staff recommends that the Commission delegate to staff the authority to approve

CALENDAR ITEM NO. C95 (CONT'D)

the Phase II Environmental Assessment prior to expending funds to purchase the Subject Property.

3. The Subject Property was the subject of litigation in the 1970s and 1980s to determine the ownership of the property, which was at that time being used for industrial purposes associated with brick production. The Subject Property was included in Contra Costa Tide Lands Survey No. 32, and Port Costa believed that it owned the property free and clear of any State interest in the land as successors in interest to L.B. Mizner who received a patent from the State on June 14, 1877. The State contended that the State's sovereign interest in the subject property was not and could not have been transferred due to restrictions on the sale of tide and submerged lands. The State also believed that the parcel was substantially subject to artificial changes due to the railroad construction and brick production on the parcel making it difficult to distinguish between natural changes and artificial changes. In 1990, in settlement of the boundary and title disputes and litigation, Port Costa and the Commission entered into an agreement to resolve the title and boundary dispute. The State quitclaimed any of its interest in the Subject Property to Port Costa in exchange for a grant of an 8.2 acre parcel nearby which is referred to as White's Resort Parcel and a quitclaim of any interest in the water-covered parcel adjacent to the Subject Property. The White's Resort Parcel is under lease to EBRPD for recreational purposes.
4. **Acquisition:** The staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The project is exempt because it involves an action taken pursuant to the Kapiloff Land Bank Act, Public Resources Code section 8600 et seq.

Authority: Public Resources Code section 8631.

5. **Lease:** The staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

CALENDAR ITEM NO. **C95** (CONT'D)

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 California Code of Regulations, Title 2, section 2954 is not applicable.

EXHIBITS:

- A. Site and Location Map of the Subject Property
- B. Site and Location Map of the Proposed Lease Area

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDINGS:

ACQUISITION: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, , section 15061 as a statutorily exempt project pursuant to Public Resources Code section 8631, an action taken pursuant to the Kapiloff Land Bank Act, Public Resources Code section 8600 et seq.

LEASE: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

AUTHORIZATION:

1. Find that the value of that portion of land depicted in Exhibit A to be acquired by the California State Lands Commission, as Trustee of the Kapiloff Land Bank Fund, is greater than \$544,500.
2. Authorize the expenditure of \$544,500 from the Kapiloff Land Bank Funds held in trust for the purchase of the 7.37-acre parcel of land depicted on Exhibit A attached hereto, and acceptance of title to the Subject Property.

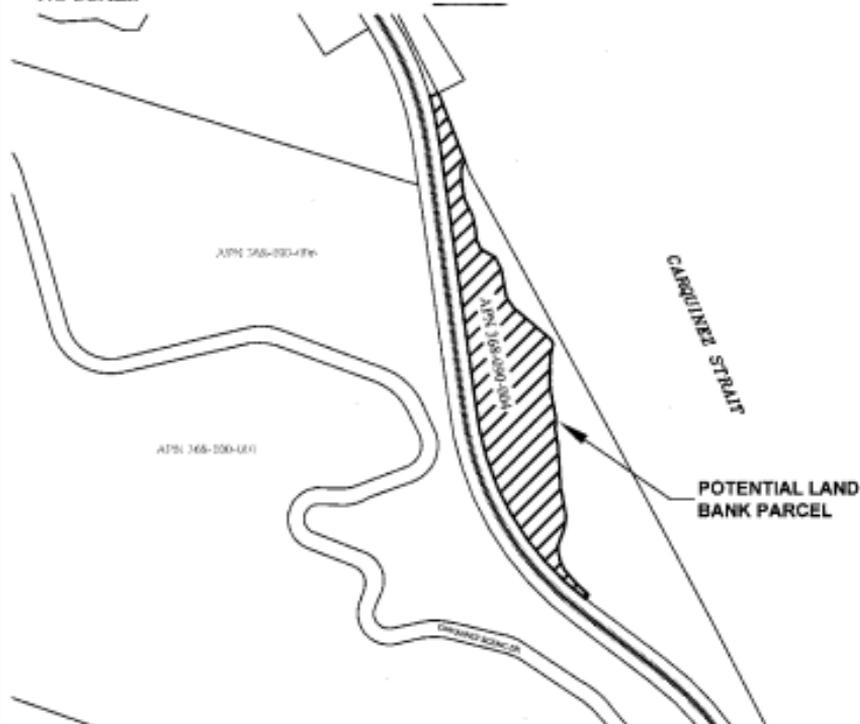
CALENDAR ITEM NO. **C95** (CONT'D)

3. Authorize the Executive Officer of the California State Lands Commission to execute any documents required to effectuate the acquisition of the 7.37-acre Subject Property depicted on Exhibit A, provided that the Executive Officer has determined that the acquisition is still in the best interest of the State based on his review and approval of the Phase II Environmental Assessment.

4. Authorize a General Lease-Public Agency use for a term of 20 years to the East Bay Regional Park District, to begin upon the close of escrow, for the management of the Lease Area, depicted on Exhibit B, for the purposes of pedestrian access, recreation, passive open space, dock and dolphins, with the consideration being the public's use and benefit associated with such a lease.

NO SCALE

SITE



PORT COSTA, CARQUINEZ STRAITS

NO SCALE

LOCATION

Exhibit A

W26624
POTENTIAL LAND
BANK PARCEL
APN 368-090-004
CONTRA COSTA COUNTY

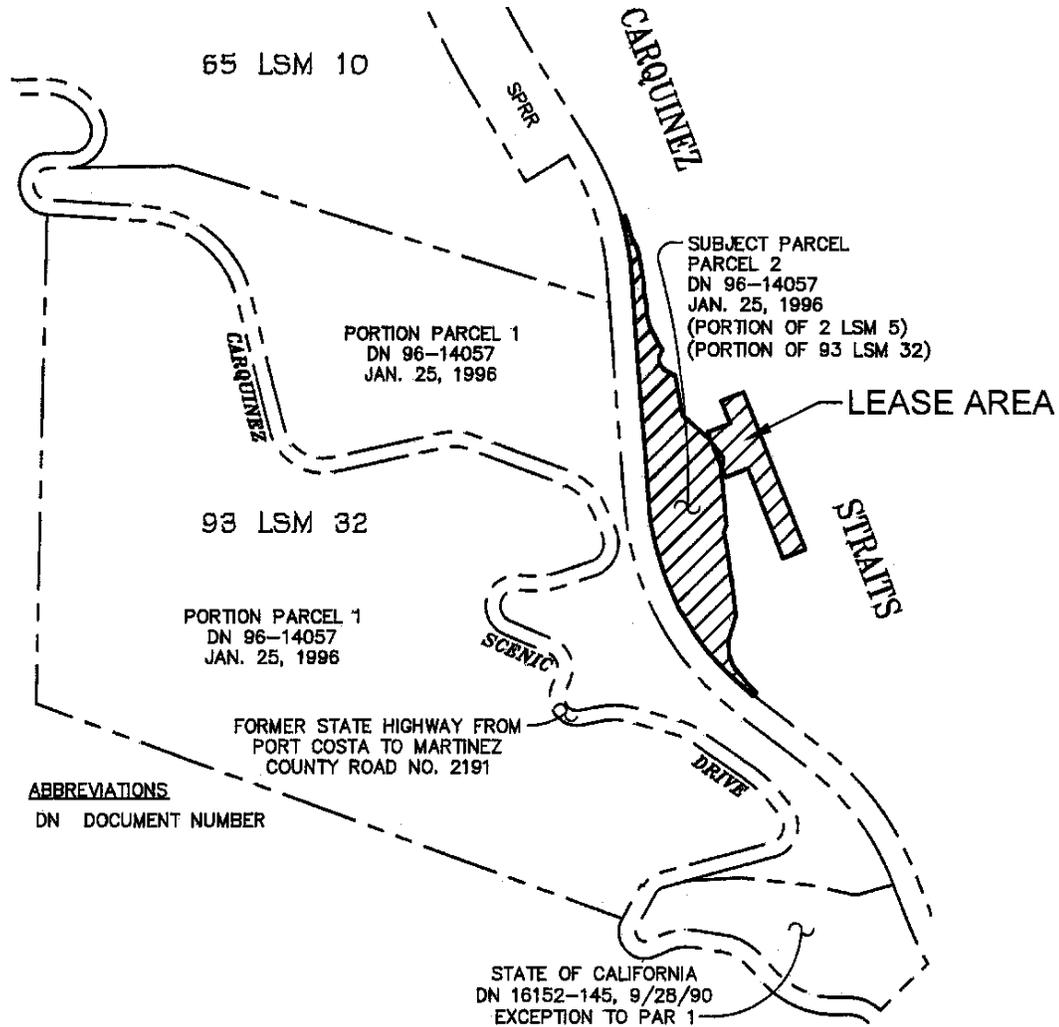
MAP SOURCE: USGS QUAD

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.



NO SCALE

SITE

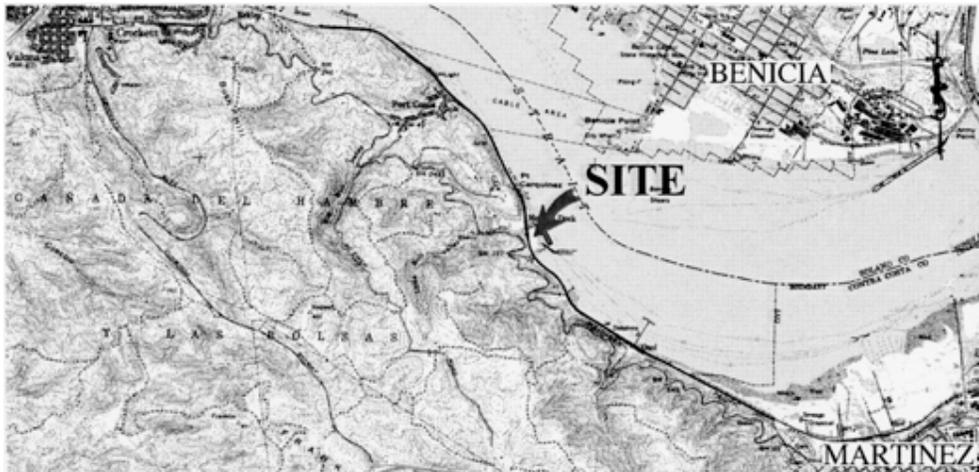


ABBREVIATIONS
DN DOCUMENT NUMBER

PORT COSTA, CARQUINEZ STRAITS

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

W26624

EBRPD

GENERAL LEASE -
PUBLIC AGENCY USE

APN 368-090-004

CONTRA COSTA COUNTY



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