

MINUTE ITEM
This Calendar Item No. 27
was approved as Minute Item
No. 27 by the State Lands
Commission by a vote of 3
to 0 at its 4-28-76
meeting

CALENDAR ITEM

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TITLE SETTLEMENT AND EXCHANGE AGREEMENT PRC 5443.1
NOVATO CENTER, CITY OF NOVATO, MARIN COUNTY
BLA 150

The State Lands Division recommends Commission approval of a proposed title settlement and exchange agreement in lieu of litigation with Novato Center, a limited partnership, with respect to title and boundary questions to approximately 405 acres of real property located in the City of Novato, County of Marin, which are depicted on the location map which is on file in the office of the State Lands Commission and by reference made a part hereof.

Novato Center claims as successor in interest to various swamp and overflowed land patents and a tideland patent to own the fee simple title to all of the subject parcels free of any State right, title, or interest existing by virtue of the public trust for commerce, navigation, and fisheries.

The State, on the other hand, claims fee title to several former sloughs within the subject lands on the basis that such sloughs were tide and submerged lands in their last natural condition and were not patented into private ownership as such. In the alternative, the State claims that such sloughs are subject to an easement for commerce, navigation, and fisheries. In addition, the State claims that the lands covered by the tideland patent are subject to an easement for commerce, navigation, and fisheries. The State also claims ownership of the tidelands trust easement on, over, and across any other portions of the real property described in the surveys referred to in the Swamp and Overflowed Lands Patents, which may be proven to have been tidelands in their natural state.

Negotiations have been conducted among representatives of Novato Center, the State Lands Division, and the Office of the Attorney General concerning title to the subject lands. These negotiations have resulted in a proposed agreement for the settlement of this title dispute by a land exchange. The major points of this proposed agreement are as follows:

1. The State will convey to Novato Center all of its right, title, and interest in the area of approximately 127 acres located east of U.S. Highway 101 and west of the railroad line as described in Exhibit "B" hereto, as the "Novato Center Parcel".
2. The State will relinquish and terminate the easement for commerce, navigation, and fisheries, to the extent it exists, over the "Novato Center Parcel".

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3. Novato Center will convey to the State all of its right, title, and interest in the parcels of approximately 278 acres located east of the railroad line described in Exhibit "B" as the "State Parcel".

Novato Center reserves for a period of 5 years, the right to extract and remove 500,000 cubic yards of fill material from the upper portion of the "State Parcel", at the rate of payment to the State of 10¢ per cubic yard. The surface of the borrow area shall not exceed 37 acres. The location of the 37-acre borrow area within the upper East Parcel "State Parcel" shall be selected by the State so long as the selection is made in writing from time to time by the State in sufficient time to not interfere with the schedule for removal established by Novato Center. So long as there is no unreasonable financial or time burden placed upon Novato Center, and so long as any extra engineering work shall be by or at the cost of the State, the excavation shall be conducted according to plans and specifications of the State.

The State will receive \$10,000 title insurance at the cost of Novato Center.

The real property to be received shall be held by the State in its sovereign capacity subject to the public trust for commerce, navigation, and fisheries, as defined in the case of Marks v. Whitney, 6 Cal. 3rd. 451.

The settlement will consolidate State titles in the area in a manner which will be beneficial to the environment and ecology.

The State will receive the mineral rights in the real property being conveyed to the State (State Parcel) and pursuant to Section 6307 of the Public Resources Code, is releasing the mineral rights to Novato Center in the "Novato Center Parcel".

Copies of the proposed agreement, necessary to accomplish this transaction, are on file with the State Lands Commission and are incorporated herein by reference thereto.

The agreement is authorized by Division 6 of the Public Resources Code, with particular reference to Sections 6107 and 6307.

The agreement is exempt from the provision of Section 6371 of the Public Resources Code relating to Environmental Impact Reports.

An evaluation has been made by the Division which shows that the State will receive lands and interests in land equal or greater in value than those lands and interests in lands claimed by the State and to be surrendered as of the agreement.

This agreement has been reviewed and approved by the Office of the Attorney General.

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The proposed exchange is for the purpose of settling a title dispute, and Novato Center remains subject to all lawful requirements of public agencies for permits, mitigation, use, or otherwise, in the exercise of any rights granted by the State under the proposed exchange agreement, except that Novato Center shall be liable to the Commission only as is provided in the agreement.

EXHIBITS: A. Vicinity Map. B. Location Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE EXCHANGE OF LANDS, INTERESTS IN LANDS, AND RIGHTS SET FORTH IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2, BELOW, ARE IN THE BEST INTERESTS OF THE STATE FOR AID IN RECLAMATION AND THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING IN THE WATERS INVOLVED; AND THAT THE STATE WILL RECEIVE LANDS AND INTERESTS IN LANDS EQUAL TO OR GREATER IN VALUE THAN ANY LANDS OR INTERESTS IN LANDS RELINQUISHED BY THE STATE PURSUANT TO SAID AGREEMENT.
2. AUTHORIZE THE EXECUTION OF THE LAND EXCHANGE AGREEMENT BETWEEN THE COMMISSION, NOVATO CENTER, AND THOSE OTHER PARTIES WHICH EXECUTE SAID AGREEMENT; A COPY OF SAID AGREEMENT IS ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE THERETO IS MADE A PART HEREOF.
3. AUTHORIZE THE EXECUTION OF A STATE PATENT TO NOVATO CENTER OF THE REAL PROPERTY DESCRIBED IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2, ABOVE, PURSUANT TO THE TERMS OF SAID AGREEMENT.
4. ACCEPT AND AUTHORIZE THE RECORDATION OF CONVEYANCES TO THE STATE AS PROVIDED IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2, ABOVE.
5. FIND AND DECLARE THAT UPON THE DELIVERY OF THE PATENT TO NOVATO CENTER, REFERRED TO IN PARAGRAPH 3 ABOVE, AND THE RECORDATION THEREOF IN THE OFFICE OF THE COUNTY RECORDER OF MARIN COUNTY, THE REAL PROPERTY DESCRIBED IN SAID PATENT:

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- A. HAS BEEN CUT OFF FROM NAVIGABLE WATERS, IMPROVED, FILLED, AND RECLAIMED BY NOVATO CENTER AND ITS PREDECESSORS IN INTEREST;
 - B. HAS THEREBY BEEN SEVERED FROM THE PUBLIC CHANNELS AND WATERWAYS AND IS NO LONGER AVAILABLE OR USEFUL OR SUSPECTIBLE OF BEING USED FOR COMMERCE, NAVIGATION AND FISHING, AND IS NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS AND THEREFORE SHALL BE FREED FROM SUCH PUBLIC TRUST.
6. AUTHORIZE THE STATE LANDS DIVISION AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE TRANSACTION DESCRIBED ABOVE INCLUDING, BUT NOT LIMITED TO, APPEARANCES IN ANY LEGAL PROCEEDINGS BROUGHT CONCERNING THE ABOVE TRANSACTION.
 7. FIND THAT THE AGREEMENT IS NOT SUBJECT TO THE REQUIREMENTS OF CEQA BY REASON OF THE EXEMPTION CONTAINED IN SECTION 6371 OF THE PUBLIC RESOURCES CODE.