

MINUTE ITEM

This Calendar Item No. 21
was approved as Minute Item
No. 21 by the State Lands Commission by a vote of 3
to 0 at its 12/19/77

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Cook

21 LAND BANK AGREEMENT; EAST BAY REGIONAL PARK DISTRICT;
W 21372.

During consideration of Calendar Item 21 attached, Mr. James F. Trout, Manager, Land Operations, explained the land bank concept to the Commission. The Commission was concerned over the fact that the land bank agreement would provide that any lands bought from the East Bay Regional Park District would be leased back to them for 66 years, with the consideration to the State being the public benefit. They were also concerned as to how they would use the land. Mr. Trout stated that specific land use purposes are provided for in the lease. He stated that the major benefit to the State is that land which was once sold and is now proprietary will be returned to being sovereign, subject to the public trust.

Chairman Cory suggested the State would be better off in going to the Legislature and the appropriate State agency to set up a State land bank. Mr. William F. Northrop, Executive Officer, advised that the staff was presently pursuing this concept with the Resources Agency.

After further discussion, the Commission approved this item.

Upon motion duly made and carried, the resolution as presented in Calendar Item 21 was approved as presented.

Attachment: Calendar Item 21 (5 pages)

CALENDAR ITEM

21.

LAND BANK AGREEMENT

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PRC 5426

The satisfactory clarification of State/private interests by way of the exchange of the State's undefined and disputed sovereign titles in real property for title to off-site parcels in compromise settlement of title disputes in lieu of litigation has proven to be an effective tool in identification of the public trust to substantial parcels of estuary real property.

In addition to constituting an effective program for trust identification, this type settlement avoids the costs, delays, and uncertainties inherent in litigation. It permits the clearing of titles and the private development of real property where such development is consistent with the physical character of the land and the surrounding area. It also results in an increased tax base while perfecting undisputed State sovereign ownership of large areas of estuary lands of significant environmental value to this and future generations.

As one condition of such a settlement, the State must receive equal or greater value in the exchange. This requires the establishment of the value of the State's right, title, and interest in the parcel being given up by the State. As the State's interest is undefined and subject to dispute, the only means of evaluation short of a judgment by the court is to arrive at a compromise agreement with the other parties on the value after negotiations. The State's negotiating position is based on an estimate of State value after taking into account the market value of the parcel; the probable extent of State interest based on an evaluation of the evidence; and if a State trust easement, an apportionment of value between the underlying fee title and the easement. This procedure requires the services of appraisers, counsel, and other staff necessary to assist in the gathering and evaluation of the evidence of title and value and require negotiations.

The same process must be followed in determining the value of the interests the State is receiving in the exchange.

In practice, the settlements completed have first required an agreement on the value of the parcel in dispute, after which the other party must attempt to locate an exchange

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parcel which is satisfactory to the State; which is shown after evaluation to contain non-State interests of a value equal or greater than the agreed upon value of the parcel to be given up by the State, and which can be purchased for such amount.

At the request of the other parties, and in the interest of completing the settlements, the staff has assisted them in locating exchange parcels.

The need to find a parcel that meets the requirements and can be purchased from a willing seller for the specific amount has led to long delays in locating the parcel and completing the settlement.

The East Bay Regional Park District has acquired Brown's Island (except for a portion owned by the Port of Stockton), consisting of low-lying open space located at the foot of the Sacramento-San Joaquin Delta, and at the upper reaches of the Suisun Marsh. It contains about 595 acres and was purchased for the sum of \$135,000 (about \$227 per acre).

Analysis of the title evidence indicates some existing but undefined State sovereign titles within Brown's Island. However, evaluation of the parcel shows private titles therein to be equal to or greater than the said purchase price.

The District from time to time will convey undivided interests in the Island to the State in furtherance of the State's exchanges as they may occur. The percentage of the undivided interest will be established for each such exchange as the amount to be paid to the District bears to the amount of the purchase price.

It is likely that a sufficient number of compromise settlements will occur within the next year to result in the transfer to State of full title to the parcel.

As the State's interests are acquired in this manner, the parcel is to be leased back to the District for its management and protection as open space under a 66-year public agency lease

In the event the State has not acquired full ownership of the parcel on or before December 31, 1978, the agreement will terminate with respect to the remaining undivided interest of the District, subject to extension by agreement of the parties.

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The title was searched and a policy of title insurance was issued to the District at the time of its acquisition. Further title insurance for the State is therefore deemed not to be required.

EXHIBITS: A. Parcel Description. B. Estuary Plat.
 C. Nasa Photo Plat. D. Quad Plat.

IT IS RECOMMENDED THAT THE COMMISSION:

1. APPROVE THE LAND BANK AGREEMENT WITH THE EAST BAY REGIONAL PARK DISTRICT, A COPY OF WHICH IS ON FILE WITH THE STATE LANDS DIVISION, AND AUTHORIZE ITS EXECUTION ON BEHALF OF THE COMMISSION PURSUANT TO DELEGATIONS HERETOFORE GRANTED BY THE COMMISSION.
2. AUTHORIZE A PUBLIC AGENCY LEASE TO EAST BAY REGIONAL PARK DISTRICT IN SUBSTANTIALLY THE FORM OF THE COPY OF LEASE ON FILE WITH THE STATE LANDS DIVISION OF THE UNDIVIDED INTERESTS OF THE STATE RECEIVED PURSUANT TO THE AGREEMENT WITH THE LEASE TO BE AMENDED FROM TIME TO TIME TO ADD THE FURTHER UNDIVIDED INTERESTS AS THEY MAY BE ACQUIRED FORM TIME TO TIME.
3. FIND THAT IT IS IN THE BEST INTERESTS OF THE STATE THAT THE TERM OF SAID LEASE BE FOR A PERIOD OF 66 YEARS.
4. FIND THAT THE AGREEMENT IS NECESSARY TO SETTLEMENT OF TITLE AND BOUNDARY DISPUTES IN LIEU OF LITIGATION AND THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ARE INAPPLICABLE.
5. AUTHORIZE THE STATE LANDS DIVISION AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE SUCH FURTHER ACTION AS MAY BE REASONABLY NECESSARY, PROPER, OR CONVENIENT TO COMPLETE AND FULLY CARRY OUT THE TRANSACTION APPROVED HEREBY.

Attachment: Exhibit "A"

EXHIBIT A

W 21372

Description

The land referred to herein is situated in the State of California, County of Contra Costa, City of Pittsburg, described as follows:

Surveys Nos. 176, 177, 178, 179 and 180, Swamp and Overflowed Lands, Contra Costa County, Township 2 North, Range 1 East, Mount Diablo Base and Meridian, as particularly described in the patents from the State of California, recorded in Book 1 of Patents, pages 144, 151, 142, 146 and 161, respectively, in the office of the County Recorder of Contra Costa County, reference being hereby made to the record thereof for a complete description.

Excepting therefrom: The following described parcel, being the parcel conveyed by C. A. Hooper & Co. to City of Stockton by deed dated July 15, 1929, recorded August 6, 1929, in Book 191 of Official Records, page 271, in the office of the County Recorder of Contra Costa County, and containing, according to said deed, 100 acres, more or less, and particularly described as follows:

"All that certain real property in the County of Contra Costa, State of California, described as follows:

Sections 3, 4, 9 and 10, Township 2 North, Range 1 East, Mount Diablo Base and Meridian, as delineated in Book 23 of Deeds, page 550, Contra Costa County Records, being portions of Lots "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", & "N", of New York Island, lying on the northerly side of New York Slough and more particular described as follows:

Beginning at a point on the boundary line between Lots "C" and "D", 1150 feet northerly, measured along said boundary line from the low water line of New York Slough; thence from said point of beginning, continuing in a northerly direction along said boundary line and along said boundary line extended, a distance of 1355 feet; thence east 1325 feet, more or less, to the boundary line between Lots "M" and "L"; thence in a northerly direction along said boundary line between Lots "M" and "L", 1925 feet, more or less, to the low water line of Suisun Bay; thence in an easterly direction, along the low water line of Suisun Bay to a point on a line parallel to and 50 feet distant from said boundary line between Lots "M" and "L";

thence leaving the low water line of Suisun Bay in a southerly direction, along said line parallel to and 50 feet distant from said boundary line between Lots "M" and "L", 1925 feet, more or less to a point of intersection with the above mentioned courses. East 1355 feet, extended; thence east 1230 feet, more or less, to a point on the northerly portion of the boundary line between Lots "F" and "G", extended; thence in a southerly direction along said extension of boundary line and along the boundary line between Lots "F" and "G", 1675 feet, thence West 1775 feet; thence North 69° 22' West, 908.2 feet, more or less, to the point of beginning.

Also excepting therefrom the following described real property situated in the County of Contra Costa, State of California, being more particularly described as follows:

Commencing at the most southerly corner of Survey No. 180 Swamp and Overflowed Lands, Contra Costa County; thence northwesterly along the southwesterly line of said survey, North 54° 06' West, 1023.00 feet; thence North 53° 04' West, 563.64 feet; thence North 65° 51' West, 366.12 feet; thence leaving said southwesterly line North 15° 36' 05" East, 69.54 feet to the point of beginning for this description. basis of bearing for this description is the Lambert Grid, Zone 3, State of California; thence from said point of beginning South 15° 36' 05" West, 69.54 feet to a point on the aforesaid S. & O. Survey 180; thence westerly and northeasterly along said survey line North 65° 51' West, 113.70 feet; thence North 48° 16' West, 539.22 feet; thence North 35° 29' East, 107.58 feet; thence North 81° 54' East, 217.80 feet; thence South 36° 11' East, 374.22 feet; thence North 65° 29' East, 86.96 feet to a point; thence leaving said survey line South 15° 36' 05" West, 198.11 feet to the point of beginning.

Being the westerly portion of aforesaid S. & O. Survey No. 180 and situated in Section 8, Township 2 North, Range 1 East, Mount Diablo Base and Meridian, Contra Costa County, California.

Together with any and all other right, title, or interest of East Bay Regional Water District acquired by reason of that certain deed recorded August 11, 1977 in Book 8459, page 25, Official Records of Contra Costa County.