

CALENDAR ITEM

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CONSIDER A COMPROMISE TITLE SETTLEMENT AND LAND EXCHANGE AGREEMENT REGARDING CERTAIN LANDS IN THE VICINITY OF LOWER NEWPORT BAY, CITY OF NEWPORT BEACH, CALIFORNIA

PARTIES:

State of California
State Lands Commission
100 Howe Ave., Suite 100 South
Sacramento, California 95825

City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663

PROPOSED COMPROMISE TITLE SETTLEMENT AND LAND EXCHANGE:

The parties to the proposed Compromise Title Settlement and Land Exchange Agreement ("Agreement") are the State of California ("State"), acting by and through the Commission ("Commission"), the City of Newport Beach, as trustee of state tide and submerged lands held by the City pursuant to Chapter 74, Statutes of 1978, as amended ("Trustee"), and the City of Newport Beach, as a municipality ("City").

The purpose of the Agreement is to settle a title dispute concerning certain lands and to establish the location of lands held by the Trustee and subject to the Public Trust and lands free of the Public Trust and held by the City within Marina Park (collectively "Subject Property") in the City of Newport Beach. Pursuant to the Agreement, the Commission and the City will establish an agreed common boundary line ("Agreed Boundary Line") within the Subject Property. The Commission will terminate any and all property interests, including any public trust interest, and convey landward (south) of the Agreed Boundary Line to the City, referred to as the Trust Termination Parcels, in exchange for the Commission acquiring, in trust, the land bayward (north) of the Agreed Boundary Line, referred to as the Public Trust Parcel. The Commission will then lease

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to the Trustee the Public Trust Parcel until such time as the City's statutory trust grant can be amended to include the Public Trust Parcel.

The Subject Property includes approximately 10.3 acres of land from 15th to 18th Streets, extending north from West Balboa Avenue to the Lower Newport Bay. The Agreed Boundary Line, Trust Termination Parcels and the Public Trust Parcel are shown for reference purposes on Exhibit A.

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

1. The City and the Commission will establish an Agreed Boundary Line, which will be the boundary between the City-owned lands and the State tidelands.
2. The City will quitclaim any interests in the Public Trust Parcel to the Commission.
3. The Trustee will quitclaim any interests in the Trust Termination Parcels to the Commission.
4. The Commission will then quitclaim its interests, free of any public trust interests, in the Trust Termination Parcels to the City thereby quieting title to the Trust Termination Parcels in the City.
5. The Commission will, upon the close of escrow, enter into a 49-year lease with the Trustee, for the Public Trust Parcel to be used for public trust purposes consistent with the provisions of the Trustee's statutory trust grant.
6. Commission staff and the City/Trustee will pursue obtaining necessary State legislation to include the Public Trust Parcel in the Trustee's statutory trust grant.

BACKGROUND:

The Trustee is the State's trustee of public trust lands within the City of Newport Beach granted to it by the Legislature pursuant to Chapter 74 of the Statutes of 1978, as amended by Chapter 728, Statutes of 1994, Chapter 317, Statutes of 1997, Chapter 745, Statutes 2001, and Chapter 361, Statutes of 2004, as amended ("statutory trust grant").

Lower Newport Bay and Marina Park

Lower Newport Bay was formed by natural accretion of sand material carried by the Santa Ana River during flood stages over hundreds of years prior to statehood. The location of the entrance channel to Lower Newport Bay was dredged in 1919. The Santa Ana River continued to discharge into Lower Newport Bay until 1921 when the County of Orange completed the construction of a new river outlet to the Pacific Ocean in the vicinity of 57th Street in the City of Newport Beach.

In 1875, the U.S. Coast & Geodetic surveyed the topography in the vicinity of the Newport Bay (Register No. 1875). In 1889, the Government Land Office (GLO)

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surveyed a meander line of the swamp and overflowed lands in Newport Bay in order to determine which lands were suitable for sale as Swamp and Overflowed Lands.

On May 16, 1892, the upland portion of the Subject Property was sold as 420.85 acres of Swamp and Overflowed land (Swamp and Overflowed Location 3089, Lot 4, Section 33, T6S, R10W), with no minerals reserved, to James McFadden pursuant to Title 8 of the Political Code. The Subject Property was also part of the Swamp Land List 106 dated July 22, 1902 and granted to California from the U.S. Government.

In 1902, McFadden sold his land to the founders of the Newport Company. The Newport Company conveyed a right-of-way to Pacific Electric Railway for the operation of its Balboa Peninsula route, which continued until 1940 when the Newport Pier became the terminus for Pacific Electric Railway's southernmost route.

In 1912, the U.S. Army Corps of Engineers surveyed Newport Bay for harbor and navigation purposes. On July 27, 1916, an Act of the U.S. Congress secured the establishment of the harbor lines in Lower Newport Bay. The harbor lines were subsequently revised on May 2, 1936 following the completion of improvements to Lower Newport Bay by the U.S. Government. In 1918 and 1919, the south side of the Lower Newport Bay between 8th Street and 19th Street was dredged and filled.

In July 1919, the California Legislature granted the tide and submerged lands within the City of Newport Beach to the City pursuant to the Statutes of 1919, Chapter 494. This grant was subsequently repealed by the Statutes of 1978, Chapter 74, as amended. In August 1919 the Pacific Electric Land Company conveyed portions of the Subject Property to the City.

The City brought several quiet title actions in the Orange County Superior Court against upland parcels of land in Lower Newport Bay in the 1920s. The cases were decided after the dredging and filling of Newport Bay was completed and set the boundary line between the uplands and tidelands at the bulkhead line. The State was not a party to these quiet title actions. However, pursuant to the Statutes of 1929, Chapter 142, the California Legislature confirmed the court decrees establishing the ordinary high tide line for the various upland properties that the City brought actions against.

In 1941, the Trustee and the upland private property owners entered into a boundary line agreement involving the land between 18th and 19th Streets which set the boundary along what is the present location of West Bay Avenue (Orange County Recorder's Book 1117, Page 317). In 1942, a quiet title judgment set the ordinary high water mark line which is the boundary between tidelands and uplands (SCC #40434, filed April 17, 1942, Orange County Recorder's Book 1145, Page 172).

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Since the 1950s, a mobile home park has been located on this property. In 1997, Commission staff notified the City that the Commission had sovereign claims to a portion of the Subject Property and that a mobile home park was not a use consistent with the common law public trust doctrine or the City's statutory trust grant. The City has had various development plans for this area and for the past few years has been working on the proposed Marina Park development which includes an expanded marina, community center, sailing center, Girl Scout house, aquatic beachfront public park, open space and parking lot. Both the Commission and the City realized that this was a good opportunity to finally settle the boundary between tidelands and City-owned uplands and ensure that all of the features of the proposed Marina Park development that will be located on trust lands are consistent with the public trust and the City's statutory trust grant. Commission staff believes that the uses proposed for the Public Trust Parcel including the sailing center, public marina, parking lot, public access paths, American Legion facilities, aquatic beachfront park, and open space for water-related recreation are consistent with the public trust doctrine and the City's statutory trust grant.

LEGAL REQUIREMENTS:

Pursuant to Public Resources Code ("PRC") section 6307, the Commission is authorized, under certain limited circumstances, to terminate the State's public trust interests and enter into a compromise title settlement and land exchange agreement. Because neither the City nor the Trustee have the legal authority to terminate the State's public trust interest in trust property, the Commission must take any State's title interests in the Trust Termination Parcels, which are to be subsequently exchanged for any interests in the Public Trust Parcel and, as part of the exchange, terminate the public trust interest on the Trust Termination Parcels. 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

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- 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 with 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 are in fact no longer 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 analyzed all the evidence available concerning the site in question, including the title history, title reports, historic use reports, surveys, survey instructions, maps, historic photographs, applicable case law and other useful information in order to determine the best evidence of the location of the boundary between State sovereign lands and City-owned uplands. Staff then relied on the best evidence of the mean high tide line prior to and closest in time to any artificial changes, including artificial accretions or filling. This evidence serves as the basis for the proposed compromise title settlement and land exchange.

Staff recommends the Commission approve the proposed Agreement for several reasons. The approval of this Agreement will settle a long-standing title dispute of where the boundary between tidelands and City-owned uplands is located. The Agreement will also allow the City to move forward with its proposed development while ensuring that the uses planned for the trust lands are consistent with the public trust and the City's statutory trust grant.

Currently, the Subject Property has been used as a mobile home park for many years which is inconsistent with the public trust. Pursuant to the Agreement, the City can proceed with the removal of the mobile home park and development of the Subject Property for the Marina Park project, in which the City prepared an EIR (SCH #2008051096) that was certified by the City Council on May 11, 2010. Pursuant to the proposed Marina Park project, the Public Trust Parcel will have an expanded marina, sailing center, parking lot, public access paths, American Legion facilities, aquatic beachfront park, and open space for water-related recreation. Comparatively, the Trust Termination Parcels have been filled and reclaimed since the early 1920's and because the public is physically unable to navigate or fish on the Trust Termination Parcels there

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will be no substantial interference with Public Trust uses and purposes, including public rights of navigation and fishing, by virtue of the exchange. The proposed development of the Trust Termination Parcels includes a community center and programmed sports facilities. Such uses are inconsistent with the public trust and the City's statutory trust grant because they serve primarily a local municipal/community benefit and are not water-dependent or related facilities.

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 City and State to resolve this dispute through a title settlement and land exchange agreement thereby avoiding the substantial costs 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 a 49-year lease 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 Newport Beach is the State's trustee of the legislatively granted sovereign tide and submerged lands pursuant to, *inter alia*, Chapter 74 of the

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Statutes of 1978, as amended by Chapter 728, Statutes of 1994, Chapter 317, Statutes of 1997, Chapter 745, Statutes 2001, and Chapter 361, Statutes of 2004 as amended.

4. An EIR SCH #2008051096 was prepared for the Marina Park Development Project and certified by the Newport Beach City Council on May 11, 2010.
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. Marina Park Location and Site Map

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDINGS:

Title Settlement and Land Exchange Agreement and 49-Year Lease for the Marina Park Public Trust Parcel:

Find that the activity is exempt from the requirements of CEQA pursuant to Title 14, California Code of Regulations 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.

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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 section 6370, et seq.

AUTHORIZATION:

1. Find that, with respect to the proposed Compromise Title Settlement and Land Exchange Agreement , which findings shall be effective on close of escrow as provided in the Agreement:
 - A. The Public Trust Parcel provides significant benefits to the public trust by enhancing public access to the water through the creation of an aquatic beachfront public park, open space, an expanded marina and boating facilities and public parking.
 - B. The exchange provided for in this Agreement does not substantially interfere with public rights of navigation and fishing, but rather will enhance the public's rights of access and navigation on the Public Trust Parcel and adjacent trust lands.
 - C. The monetary value of the City's interest in the Public Trust Parcel to be conveyed to the State by the City is equal to or greater than the value of the State/Trustee's interest in the Trust Termination Parcels to be quitclaimed by the State to the City.
 - D. The State's interest in the Trust Termination Parcels being relinquished by the State, is a relatively small parcel, cut off from water access and no longer in fact tidelands or submerged lands or the bed of a navigable waterway, by virtue of being filled or reclaimed, and is relatively useless for public trust purposes.

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- E. This Agreement is in the best interests of the state by removing a contested use of sovereign public trust land at no expense to the State; enhancing public access to and along the water and creating an expanded marina and boating facilities, an aquatic beachfront public park, open space and other public trust consistent development.
 - F. This Agreement shall release any and all public trust claims from the Trust Termination Parcels that are being released by the State to the City and shall impose the public trust onto the Public Trust Parcel that is being received by the State from the City.
 - G. The exchange provided for in this Agreement is to enhance public access to and along the water; to enhance waterfront and nearshore development for trust purposes; to preserve, enhance, or create open space; and to resolve boundary or title disputes.
 - H. It is the intent of this Agreement that, to the extent that there are mineral rights present in either parcel, those rights shall be transferred with the corresponding surface estate.
- 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 Compromise 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 for the Marina Park Public Trust Parcel to the City of Newport Beach, as Trustee, as provided for in the Agreement.

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5. 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 Compromise 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.