

**CALENDAR ITEM
C94**

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**CONSIDER A COMPROMISE TITLE SETTLEMENT AGREEMENT
BETWEEN THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE
COMMISSION, AND THE CITY OF ALAMEDA PURSUANT TO CHAPTER 734,
STATUTES OF 2000, AS AMENDED, INVOLVING CERTAIN PARCELS OF
LAND LOCATED ON THE FORMER NAVAL AIR STATION (NAS) IN THE
CITY OF ALAMEDA, COUNTY OF ALAMEDA**

PARTIES:

City of Alameda

State of California, acting by and through the State Lands Commission

PROPOSED AGREEMENT:

The parties to the proposed Compromise Title Settlement Agreement ("Agreement") are the State of California ("State"), acting by and through the California State Lands Commission ("Commission"), and the City of Alameda ("City"). The Agreement concerns lands located within the former Naval Air Station Alameda ("NAS Property") located in Alameda, California. The Agreement will settle title and boundary issues and effectuate a land exchange by terminating the State's sovereign public trust interests in certain filled parcels located on the NAS Property ("Trust Termination Lands") and will impress the Public Trust on certain lands within the NAS Property ("Trust Addition Lands"). The Agreement also settles and establishes certain boundary lines within the NAS Property, and settles and confirms the character of certain lands within the NAS Property as subject to the Public Trust ("Agreed Trust Lands") or as free of the public trust ("Agreed Non-Trust Lands"). For purposes of this staff report, the Trust Addition Lands and the Agreed Trust Lands are collectively referred to as the "Trust Lands" and the Trust Termination Lands and the Agreed Non-Trust Lands are collectively referred to as the "Trust Termination Lands." The Agreement is entered into pursuant to Chapter 734, Statutes of 2000 as amended by Chapter 429, Statutes of 2011 ("Exchange Act"). The location of these particular categories of lands is depicted, for reference only, on Exhibit A.

Specifically, the terms of the proposed Agreement provide for the following conveyances:

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1. The City will convey to the Commission by quitclaim deed the Trust Addition Lands;
2. The City will convey to the Commission by quitclaim deed the Trust Termination Lands;
3. After accepting the Trust Termination Lands from the City, the Commission will convey by patent to the City the Trust Termination Lands, free of the Trust; and
4. After accepting the Trust Addition Lands from the City, the Commission will convey by patent to the City, as trustee, the Trust Addition Lands, subject to the Trust.
5. The Agreed Trust Lands will be conveyed in the same manner as the Trust Addition Lands, and the Agreed Non-Trust Lands will be conveyed in the same manner as the Trust Termination Lands

The Agreement contemplates that the conveyances called for will occur in a series of phased closings ("Closing Phases") based on the environmental remediation schedule and as the City acquires portions of the NAS Property from the United States.

BACKGROUND:

The NAS Property includes land located in San Francisco Bay adjacent to the City of Alameda, Alameda County. The Trust Termination Lands consist of approximately 304 acres. The Trust Addition Lands consist of approximately 121 acres, the Agreed Trust Lands consist of approximately 1,552 acres, and the Agreed Non-Trust Lands consist of approximately 197 acres.

Upon its admission to the Union on September 9, 1850, the State of California, by virtue of its sovereignty, received in trust for purposes of commerce, navigation, fisheries, water-oriented recreation, and preservation in their natural state (the "public trust"), all right, title, and interest in tide and submerged lands (collectively "tidelands") within its boundaries up to the ordinary high water mark. In 1913, the State granted to the City all of the State's sovereign right, title and interest in tide and submerged lands within the boundaries of the City in trust for purposes of commerce, navigation, and fisheries and subject to the terms and conditions specified in Chapter 348, Statutes of 1913. The 1913 statute, as subsequently amended, is referred to as the "Granting Act." The terms and conditions imposed on the grant of lands under the Granting Act are referred to herein as the "Granting Act trust." The Granting Act trust and the public trust are collectively referred to herein as the "Trust." In 1917, the Granting Act was amended to authorize the transfer of some or all of the granted lands to the United States government.

Beginning in 1930, the City transferred a portion of the granted lands to the United States Navy for purposes of constructing and operating what came to be known as the Naval Air Station Alameda. The Navy acquired certain other portions of the granted lands through condemnation. In furtherance of its plan for development of a naval air station, the Navy filled and reclaimed most of the tide

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and submerged lands acquired from the City. The Navy also acquired lands for NAS Alameda that were historically uplands. In addition, a portion of the NAS Property is comprised of granted lands that have remained under City ownership and were formerly leased to the Navy.

In 1993, the Defense Base Closure and Realignment Commission recommended closure of the Naval Air Station Alameda under the Defense Base Closure and Realignment Act of 1990. NAS Alameda closed operationally in 1997 and a portion of the property that comprised the former NAS Alameda was declared surplus and made available for disposal. The Alameda Reuse and Redevelopment Authority ("ARRA"), a joint powers agency, was recognized under federal base closure law as the local reuse authority ("LRA") for NAS Alameda. In 1996, ARRA prepared and adopted the NAS Alameda Community Reuse Plan (as amended, "Reuse Plan") and thereafter applied for a No-Cost Economic Development Conveyance ("EDC") to acquire portions of NAS Property for development in accordance with the Reuse Plan, which was approved. ARRA and the Navy entered into a Memorandum of Agreement regarding the terms of a no-cost EDC in 2000, and in 2011 agreed to a term sheet for amendment of that agreement. In 2012, ARRA assigned its rights and obligations under the Memorandum of Agreement and term sheet to the City, and the City became the federally recognized LRA for NAS Alameda.

The United States separately authorized a Public Benefit Conveyance to the City of an approximately 44-acre portion of the NAS Property ("PBC Parcel"). The PBC Parcel was transferred from the Navy to the Department of the Interior in 2009 and is expected to be conveyed to the City in the near future. The PBC Parcel comprises a portion of the Agreed Trust Lands. The deed from the United States to the City for the PBC Parcel contains restrictive covenants ("Federal Covenants") which require, inter alia, that the PBC Parcel and the revenue derived therefrom be used in perpetuity for certain park and recreational purposes in accordance with a program approved by the Department of the Interior. The Federal Covenants also prohibit the City from disposing the property except to another eligible governmental agency approved by the Secretary of the Interior, and provide for a right of reverter in the federal government in the event of an uncured breach.

In recognition of the closure and proposed disposal of NAS Alameda, the California Legislature enacted the Exchange Act in 2000 to facilitate the productive reuse of the NAS Property and to promote economic development and enhance water-related recreational opportunities in a manner that will further the purposes of the Trust. The Exchange Act approved and authorized the Commission to carry out a public trust exchange resulting in a configuration of Trust lands substantially similar to that shown on the diagram of Section 11 of the Exchange Act, subject to the terms of the Exchange Act. The Exchange Act also amended the Granting Act to authorize transfers of granted lands within the NAS Property to ARRA and between ARRA and the City, and to allow ARRA to act as

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the public trust administrator for any granted lands held by ARRA. The Exchange Act was subsequently amended in 2011. Pursuant to the 2011 amendments, lands retained by the United States are excepted from the "substantially similar" requirement. A portion of the NAS Property that was to be transferred to the City has, rather, been transferred to the United States Fish and Wildlife Service for purposes of protecting Least Terns, a federally listed endangered species.

LEGAL REQUIREMENTS:

Through the Exchange Act, the Legislature authorized the settlement of trust land title and boundary disputes within the NAS Property to the benefit of the Trust. To implement this settlement, the Legislature approved an exchange of lands within the NAS Property that would result in a configuration of Trust lands substantially similar to that shown on the diagram ("Exchange Diagram") in Section 11 of the Exchange Act. The Exchange Act authorizes the Commission to carry out the exchange and to establish appropriate procedures for doing so. Further, the Exchange Act requires the Commission to make certain findings and establish certain conditions before approving the Agreement. In order to comply with Article X, Section 3 of the California Constitution and the Exchange Act, the Commission must make the following requisite findings in order to approve the proposed Agreement:

1. The configuration of Trust lands on the NAS Property upon completion of the exchange will not differ significantly from the configuration shown on the diagram in Section 11 of the Exchange Act, and includes all lands within the NAS Property that are presently below mean high tide, excepting those portions of the NAS Property that are to be retained by the federal government.
2. With respect to the trust exchange as finally configured and phased, the value of the lands to be exchanged into the trust is equal to or greater than the value of the lands to be exchanged out of the Trust.
3. With respect to the trust exchange as finally configured and phased, the lands to be taken out of the Trust have been filled and reclaimed, are cut off from access to navigable waters, are no longer needed or required for the promotion of the public trust, and constitute a relatively small portion of the lands originally granted to the city, and that the exchange will not result in substantial interference with trust uses and purposes.
4. The exchange is approved by the entity or entities that, under the provisions of the granting act and this act, would be responsible for administering the public trust with respect to the lands to be exchanged into the trust, and those lands are accepted by such entity or entities subject to the public trust and the requirements of the granting act.

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5. Further, the Exchange Act also directs that the Commission establish conditions in the Agreement to ensure that:
 - A. Streets and other transportation facilities located on the Trust lands are designed to be compatible with the public trust.
 - B. The north-south corridor described in subdivision (g) of Section 4 of the Exchange Act functions as a public access corridor.
 - C. Lands are not exchanged into the Trust until all necessary hazardous materials remediation for those lands has been completed.

ANALYSIS AND STAFF RECOMMENDATION:

Commission staff has reviewed the information supporting the proposed Agreement including appraisals, surveys, title reports, and other documents developed and other studies conducted for the proposed Agreement. In the interest of settlement, the parties have conducted independent studies and evaluations of the title and boundary evidence, applicable principles of law, and the merits of their legal positions.

The compromise title settlement described in the Agreement is needed to confirm the State's sovereign interest in certain lands within the NAS Property; to resolve the trust status of certain disputed lands within the NAS Property; to confirm or impose the trust on the lands of greatest value to the Trust; to render development of the NAS Property economically feasible by removing the Trust Termination Lands from the Trust; and to allow the lands subject to the Trust to be used for the greatest benefit of the people of the State.

Absent a title settlement and land exchange, the uncertainties regarding the sovereign trust title of lands on the NAS Property would remain. In addition, the interior lands on the NAS Property not useful for Trust purposes could not be used for residential or other non-Trust uses except under limited circumstances set forth in the Exchange Act.

The configuration of the Trust Lands does not differ significantly from that shown in Section 11 of the Exchange Act, however, it is important to note that the discovery of Least Terns, a federally listed endangered species, on the runway portion of the NAS Property will cause those lands to be retained by the United States Fish and Wildlife Service. Additionally, the Trust Lands include all of the lands within the NAS Property presently below mean high tide and subject to tidal action except for lands remaining in Federal ownership.

The exchange will terminate any Trust interests in the Trust Termination Lands. As described, all former tidelands within the Trust Termination Lands have been filled and reclaimed, are cut off from access to the waterfront, and are no longer needed for Trust purposes. The exchange will substantially benefit the Trust and will not result in any interference with the uses and purposes of the Trust. The

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exchange will place or confirm the Trust Lands in the Trust. The Trust Lands reflect a configuration of lands that is most advantageous to the Trust in light of all relevant considerations discussed in this calendar item and in the Agreement.

Commission staff has reviewed an appraisal and other information prepared to analyze monetary values of the Trust Termination Lands and the Trust Lands and has reached an independent conclusion regarding the economic values of these properties. Based on staff's consideration of the appraisals, legal analyses, and configuration of Trust lands, Commission staff concludes that the cumulative monetary value of all of the lands or interests in lands that have been exchanged into the Trust will be equal to or greater than the cumulative monetary value of all of the lands or interests in lands that have been exchanged out of the Trust, regardless of the manner in which the exchange is phased.

Public Trust Benefits

The Trust Lands on NAS Property are useful for Trust purposes. These lands include the entire shoreline of the island, except for the area of limited public access due to endangered species habitat and adjacent lands, as well as lands that have been cut off from the water but, due to their location and attributes, remain useful to the Trust for future open space and other Trust uses.

Trust lands along the northern waterfront are planned for open space, water related recreational uses and public access. The Trust lands along the southern waterfront are planned for maritime-visitor serving uses. This includes the former aircraft carrier piers which are now home to the USS Hornet Museum. Additionally, the Trust Lands include a major north-south corridor which will provide access between the northern and southern waterfronts. This will insure the usability for trust purposes of these lands.

Hazardous Materials Remediation

The parties anticipate that some or all of the lands within the NAS Property will be remediated by the United States prior to transfer to the City, and that the United States will provide a warranty for the lands. However, it is possible that a portion of the lands within the NAS Property will be conveyed to the City by early transfer, prior to complete remediation by the United States. The Agreement provides that lands within the NAS Property for which no warranty has been obtained may not be exchanged unless and until the United States has obtained a warranty deferral for the lands, approved by the Governor, and the Commission has determined that the terms of the warranty deferral and underlying documents and agreements provide sufficient standards and financial assurances to ensure that the remediation of any affected Trust Lands will be completed in a manner consistent with the intended public trust use of these lands and in a reasonable period of time. The City has also agreed to indemnify, defend and hold harmless the Commission from any claims or liability relating to any hazardous materials located on the lands subject to the Trust.

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Additional Conditions

The Agreement contains conditions ensuring that the transportation facilities located on trust lands are compatible with the Trust and that the north-south corridor functions as a public access corridor. The Agreement requires that the transportation facilities and the north-south corridor located on Trust lands will be consistent with the transportation element of the Reuse Plan and consistent with the Trust. While the PBC Parcel will not, at this time, be confirmed as trust lands, the City has agreed that the PBC Parcel is land subject to the Trust and will manage that land as if the PBC Parcel was land confirmed as Trust land to the extent permitted by the federal covenants.

Conclusion

As described in the preceding paragraphs, the facts support each of the necessary findings the Commission must make, including that the 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 requirements 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. The State, acting by and through the Commission, is authorized under Chapter 734, Statutes of 2000 as amended by Chapter 429, Statutes of 2011, to enter into this Compromise Title Settlement Agreement.
2. The City of Alameda approved the Agreement through Resolution No.14672, adopted by the City Council on May 8, 2012.
3. 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 settlement of title and boundary problems.

Authority: Public Resources Code section 21080.11 and California Code of Regulations, Title 14, section 15282, subdivision (f).

- 4 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 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.

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EXHIBIT:

- A. Location and Site Map of the Final Trust Configuration

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDINGS:

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 21080.11 and California Code of Regulations, Title 14, section 15282, subdivision (f), settlement of title and boundary problems.

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:

Based upon the terms and conditions in the Agreement, this calendar item, and all of the information contained in the Commission's files and presented at the public meeting related to the Agreement, the Commission hereby:

1. Finds that there is a good faith and bona fide dispute as to the State's interests within the NAS Property. This Agreement is a compromise of the contested issues of law and evidence upon which the dispute is based, and is in lieu of the costs, delay, and uncertainties of title and boundary litigation, and is consistent with and authorized by the requirements of law.
2. Finds that, with respect to the proposed Agreement, which findings shall be effective upon recordation as provided in the Agreement:
 - A. The configuration of the Trust Lands:
 - i. Does not differ significantly from the configuration shown in section 11 of the Exchange Act;
 - ii. Includes all lands within the NAS Property subject to the Agreement that are presently below mean high tide and subject to tidal action, excepting those portions of the NAS Property that are to be retained by the federal government; and
 - iii. Consists of lands suitable to be impressed with the Trust.
 - B. The value of the lands to be exchanged into the Trust is equal to or greater than the value of the lands to be

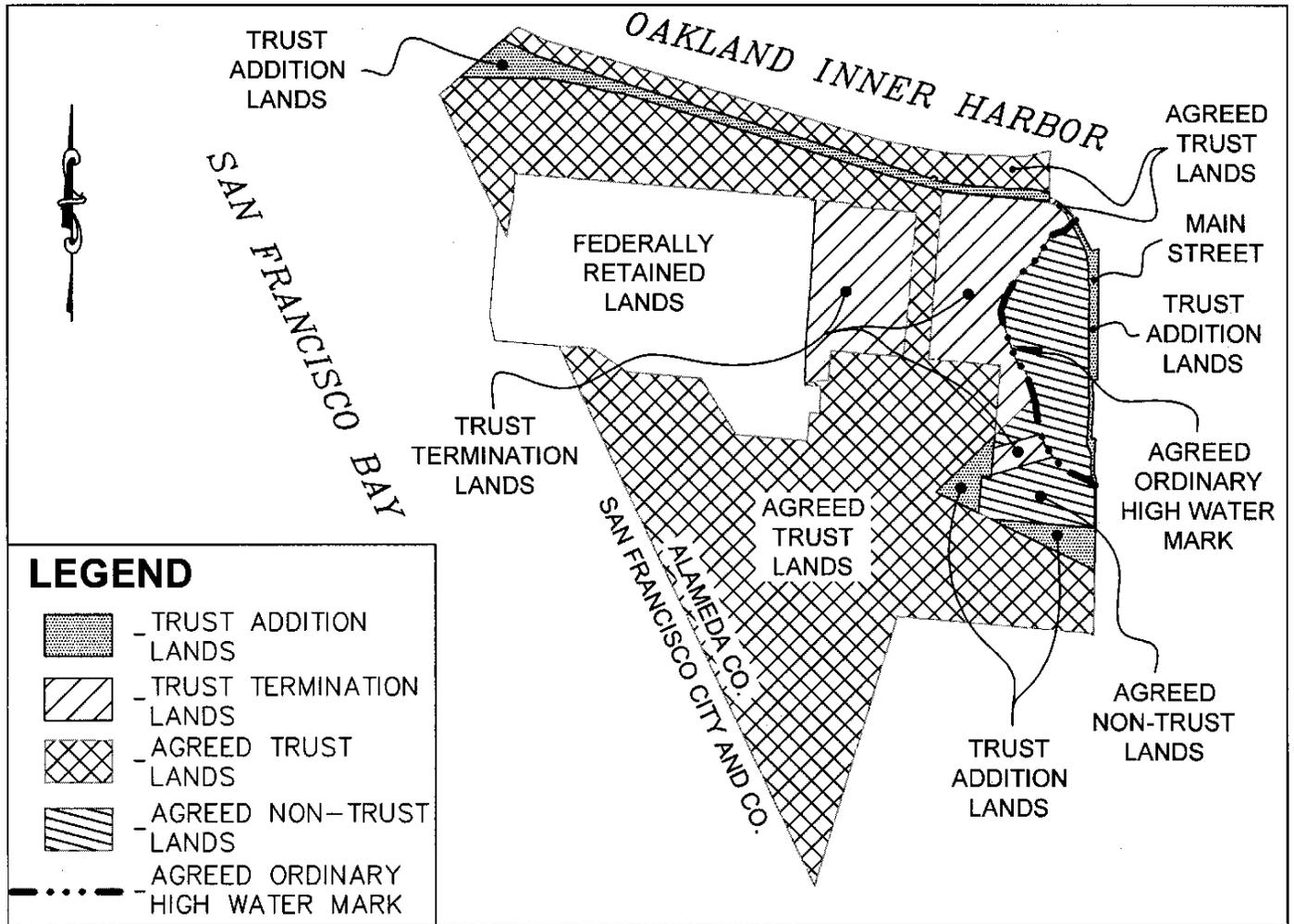
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exchanged out of the Trust, as the exchange is finally configured and phased in this Agreement.

- C. As finally configured and phased, the lands to be taken out of the Trust have been filled and reclaimed, are cut off from access to navigable waters, are no longer needed or required for the promotion of the Trust, and constitute a relatively small portion of the lands originally granted by the State to the City, and that the exchange will not result in substantial interference with Trust use and purposes.
 - D. The City has approved the exchange and will hold fee title, in trust on behalf of all the citizens of the State, to all lands subject to the Trust upon completion of the exchange.
 - E. That the Agreement contains conditions establishing that:
 - i. Streets and other transportation facilities located on the trust lands are designed to be compatible with the public trust.
 - ii. The north-south corridor described in subdivision (g) of Section 4 of the Exchange Act functions as a public access corridor.
 - iii. Lands are not exchanged into the Trust until all necessary hazardous materials remediation for those lands has been completed, as describe in the Exchange Act.
3. Finds that the Agreement is in the best interests of the State of California.
4. Approves and authorizes the execution, acknowledgment, and recordation of the Agreement and associated deeds and acceptances on behalf of the Commission, in substantially the form of the copy of such agreement on file with the Commission.
5. Authorizes and directs 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 Agreement; and to participate on behalf of the Commission in any legal proceedings relating to the subject matter the Agreement or Exchange Act.

NO SCALE

SITE



LEGEND

-  - TRUST ADDITION LANDS
-  - TRUST TERMINATION LANDS
-  - AGREED TRUST LANDS
-  - AGREED NON-TRUST LANDS
-  - AGREED ORDINARY HIGH WATER MARK

FORMER NAVAL AIR STATION ALAMEDA FINAL CONFIGURATION

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

W 25109
 TITLE SETTLEMENT
 CITY OF ALAMEDA
 ALAMEDA COUNTY



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.