

**CALENDAR ITEM
C62**

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E. Milstein

**CONSIDER AUTHORIZATION OF THE PHASE 1 TRANSACTIONS OF THE
PREVIOUSLY APPROVED NAVAL AIR STATION COMPROMISE TITLE
SETTLEMENT AGREEMENT AND APPROVAL OF THE RECORD OF SURVEY
REQUIRED BY THE AGREEMENT, CITY OF ALAMEDA, COUNTY OF ALAMEDA**

PARTIES:

City of Alameda

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

PROPOSED Phase 1 Transactions:

The parties to the proposed Phase 1 transactions, described below, of the 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 within the former Naval Air Station Alameda ("NAS Property") located in Alameda, California. The Commission approved the Agreement on October 19, 2012. As authorized by Chapter 734, Statutes of 2000 as amended by Chapter 429, Statutes of 2011 ("Exchange Act"), the Agreement settles title and boundary issues and effectuates a land exchange by terminating the State's sovereign Public Trust interests in certain filled parcels located on the former NAS Property and will impress the Public Trust on certain lands within the NAS Property. 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 or as free of the Public Trust. The Navy will transfer the NAS Property to the City in a series of conveyances over time as environmental remediation work and other actions required by federal law are completed. Therefore, the actions under the Agreement will take place in a series of phased exchanges as the Navy conveys land to the City. The phases are described in the Agreement, on file at the Commission's Sacramento Office.

In June 2014, the Navy conveyed the first phase parcels to the City, which now seeks to undertake the first phased exchange ("Phase 1") pursuant to the Agreement. This exchange would add 90 acres to the trust, along the NAS

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Property's northern shoreline, currently planned for open space, shoreline access, and maritime commercial/industrial uses. This phase of the exchange would also terminate the trust on 222 acres of interior lands no longer useful for trust purposes, as the Commission found in its approval of the Agreement. To implement the exchange, the City will convey all the lands to the Commission, which will immediately convey them back to the City with the trust impressed or terminated, as appropriate.

Pursuant to the Agreement, Phase 1 may proceed if the Commission takes three actions. First, the Commission must find that all remedial action necessary to protect human health and the environment with respect to the hazardous substances on the land has been completed" pursuant to an agreement between federal agencies and the State and the United States has provided a warranty in accordance with Section 9620(h)(3)(A) of Title 42 of the United States Code; or the United States has obtained a warranty deferral, approved by the Governor in accordance with Section 9620(h)(3)(C) of Title 42 of the United States Code, involving land for which the Commission has determined to execute a certificate of acceptance of title, and sufficient liability measures and implementation measures will be in place upon the completion of the exchange. Staff has reviewed documents submitted by the City demonstrating that all remedial action regarding hazardous materials has been taken and the deeds conveying the land from the Navy to the City contain the required warranty.

Second, pursuant to Section 8(b) of the Agreement, the Commission must find, based upon the Commission's consideration of the appraisals, legal analysis, and configuration of Trust Addition Lands as defined in the Agreement, that, after each closing phase, the cumulative monetary value of all of the lands or interests in that have been exchanged into the Trust will be equal to or greater than the cumulative monetary value of all the interests in lands that have been exchanged out of the trust.

Third, the Commission must approve a Record of Survey showing the boundaries of the parcels involved in the exchange.

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 1,478 acres, and the Agreed Non-Trust Lands consist of approximately 197 acres.

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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 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

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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 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 California least tern, a federal and State listed endangered species, and to the Department of Veterans Affairs for the purposes of providing medical services facilities.

At its meeting of October 19, 2012, the Commission approved the Agreement and the phased transactions, the first of which is the subject of this calendar item.

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LEGAL REQUIREMENTS:

By the terms of the Agreement, the requirements of implementing the phased transactions are:

1. The Commission shall have made a finding that one of the following has occurred with respect to the real property to be conveyed as part of the Phase 1 transaction:
 - a. All remedial action necessary to protect human health and the environment with respect to the hazardous substances on the land has been completed as determined in accordance with the Federal Facility Agreement for Alameda Naval Air Station between United States Environmental Protection Agency, the United States Department of the Navy, and the State, as that agreement may be amended from time to time, and the United States has provided a warranty in accordance with Section 9620(h)(3)(A) of Title 42 of the United States Code; or
 - b. The United States has obtained a warranty deferral, approved by the Governor in accordance with Section 9620(h) (3) (C) of Title 42 of the United States Code, involving land for which the commission has determined to execute a certificate of acceptance of title, and sufficient liability measures and implementation measures will be in place upon the completion of the exchange. Prior to the approval of a warranty deferral, the Commission conferred and consulted with the Governor and the Department of Toxic Substances Control, the regional water quality control board, or other appropriate state oversight agency with expertise in hazardous materials remediation, and is satisfied 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.
2. Commission must find, based upon the Commission's consideration of the appraisals, legal analysis, and configuration of Trust Addition Lands as defined in the Agreement, that, after each closing phase, 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 the interests in lands that have been exchanged out of the trust.

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3. The Commission shall have approved the Record of Survey for each phase.

ANALYSIS AND STAFF RECOMMENDATION:

Commission staff has reviewed the information supporting the proposed transaction including surveys, title reports, deeds, environmental remediation reports, the appraisal, the configuration of lands being confirmed into the trust and other documents developed and other studies conducted for the proposed transaction. Staff concludes that the above requirements have been met in that (1) all remedial action necessary to protect human health and the environment with respect to the hazardous substances on the land has been completed; the United States has provided warranties in accordance with Section 9620(h)(3)(A)(ii) and(B); and (2) 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 the interests in lands that have been exchanged out of the trust. In addition, the staff has reviewed and approved the Record of Survey.

Staff recommends that the Commission (1) find that all remedial action regarding hazardous materials has been taken, (2) 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 the interests in lands that have been exchanged out of the trust, (3) accept the Record of Survey, and (4) authorize staff to take any and all actions required to carry out the Phase 1 transaction.

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, and authorized by the Commission to enter into this Phase 1 transaction.
2. The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (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).

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3. 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.

EXHIBIT:

- A. Location and Site Map of the Phase 1 transaction.

RECOMMENDED ACTION:

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:

1. Find that either all remedial action necessary to protect human health and the environment with respect to the hazardous substances on the land has been completed as determined in accordance with the Federal Facility Agreement for Alameda Naval Air Station between United States Environmental Protection Agency, the United States Department of the Navy, and the State, as that agreement may be amended from time to time, and the United States has provided a warranty in accordance with Section 9620(h)(3)(A)(ii) and (B) of Title 42 of the United States Code.

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2. Find 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 the interests in lands that have been exchanged out of the trust.
3. Approve the Record of Survey which depicts the Phase 1 boundaries of the Trust Addition Lands, Trust Termination Lands, Agreed Trust Lands, and Agreed Non-Trust Lands. Approve and authorize the execution, acknowledgment, and recordation of the associated deeds and acceptances for the Phase 1 transaction on behalf of the Commission, in substantially the form of the copy of such agreement on file with the Commission.
4. 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 Phase 1 transactions; 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

SAN FRANCISCO BAY

PHASE 1
TRUST
ADDITION
LANDS

OAKLAND INNER HARBOR

PHASE 1
TRUST
TERMINATION
LANDS

MAIN
STREET

PHASE 1
AGREED
TRUST
LANDS

PHASE 1
AGREED
NON-TRUST
LANDS

ALAMEDA CO.
SAN FRANCISCO CITY AND CO.

LEGEND

- [Solid gray square] - PHASE 1 TRUST ADDITION LANDS
- [Diagonal hatching] - PHASE 1 TRUST TERMINATION LANDS
- [Cross-hatching] - PHASE 1 AGREED TRUST LANDS
- [Solid black square] - PHASE 1 AGREED NON-TRUST LANDS

FORMER NAVAL AIR STATION ALAMEDA TITLE SETTLEMENT AND EXCHANGE AGREEMENT PHASE 1

NO SCALE

LOCATION



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.

Exhibit A

W 25109/ AD 617
TITLE SETTLEMENT AND
EXCHANGE AGREEMENT
PHASE 1
CITY OF ALAMEDA
ALAMEDA COUNTY



JWP 02/04/14