

**STAFF REPORT
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**CONSIDER OF A TITLE SETTLEMENT AND LAND EXCHANGE AGREEMENT
BETWEEN THE CITY OF REDWOOD CITY AND THE COMMISSION,
INVOLVING PARCELS LOCATED WITHIN THE CITY OF REDWOOD CITY,
SAN MATEO COUNTY, AND ISSUANCE OF A 10-YEAR LEASE OF PUBLIC TRUST
LANDS ACQUIRED BY THE COMMISSION TO THE CITY OF REDWOOD CITY**

PARTIES:

The City of Redwood City

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

BACKGROUND AND PROPOSED LAND EXCHANGE AGREEMENT:

In 2015, the City of Redwood City dedicated an acre of downtown City-owned land for an affordable housing project at what is now known as the Bradford Street Affordable Housing Development (Bradford Street Site). The Bradford Street Site comprises lands within and adjacent to Redwood Creek. The natural banks and course of the creek have been artificially modified by fill and other activities over the years, and the last natural location of its bed and banks cannot be known with certainty. A portion of the Bradford Street Site consists of filled sovereign lands that are subject to the Public Trust. Other portions may be lands that were historically landward of the creek and are not subject to the Public Trust. The State granted its sovereign interest in the Bradford Street Site to the City (City's granted lands), subject to the Public Trust, pursuant to Chapter 1359, Statutes of 1945, as amended, with the mineral interest reserved to the State (statutory trust grant).

In April 2016, the City selected a proposal for the Bradford Street Site for an affordable senior housing development, child care facility, and a publicly accessible trail along Redwood Creek. The housing development and child care facility, uses that would not be permitted under the City's statutory trust grant, are partially located on the City's granted lands.

In addition, there is a parcel, referred to as the Maple Street Site, owned by the City and located adjacent to and within the tidal slough sometimes referred to as Steinberger Creek. In 1861, the State patented approximately 200 acres of State land surveyed along the east bank of Redwood Creek as Swamp and Overflowed Lands Survey No. 15. The entire Maple Street Site, including

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present-day Steinberger Creek, is within the boundaries of Survey No. 15. However, there is a dispute as to whether the patent validly conveyed tidelands, and thus whether the City holds these lands as successor-in-interest to the Swamp and Overflowed Lands patent or as grantee from the State subject to the statutory trust grant. There is also uncertainty as to the location of the Public Trust or Public Trust easement along the shoreline of Steinberger Creek and adjacent upland areas of the Maple Street Site. Due to artificial activities occurring over the last century, the last natural location of tidelands within the creek cannot be determined with precision. The resolution of these disputes would require extensive land title and boundary litigation at great public expense.

A portion of the Maple Street Parcel that runs along the water is fenced off, thus providing limited public access to the waterfront. Although the Maple Street Site is currently owned by the City, it could be sold in the future and used solely for private purposes, which would permanently limit the public's access to and enjoyment of the waterfront.

The City requests that the Commission consider and approve a Title Settlement and Land Exchange Agreement (Agreement) between the City and the Commission involving the Maple Street Site and the Bradford Street Site. The Agreement will terminate the Public Trust in an approximately 0.27 acre of land within the Bradford Street Site (Trust Termination Lands Parcel 1) and an approximately 0.21 acre of land within the Maple Street Site (Trust Termination Lands Parcel 2), for a total of an approximately 0.48 acre area where the Public Trust will be terminated (Trust Termination Lands). In exchange, the City will convey and the State will acquire or confirm in trust approximately 2.41 acres of land within the Maple Street Site (Trust Addition Lands).

Through an exchange, the State will receive, or confirm within the Public Trust, valuable waterfront lands within the City in exchange for land that is no longer useful for Public Trust purposes. Such an exchange would resolve title issues and permanently preserve the Maple Street Site for the use of the people of the State, while also terminating the Public Trust on the City's granted lands located within the footprint of the housing development.

The terms of the proposed Agreement are:

1. The City will quitclaim its interests in the Trust Addition Lands to the Commission.
2. The City, as Trustee of the granted lands, will quitclaim its interests in the Trust Termination Lands to the Commission.
3. The Commission will quitclaim its interests in the Trust Termination Lands, free of the Public Trust and statutory trust, to the City.

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4. The Commission will, upon the close of escrow, enter into a 10-year lease with the City for the Trust Addition Lands to be used for Public Trust purposes consistent with the provisions of the Trustee's existing statutory trust grant.
5. The Commission and the City will pursue State legislation to include the Trust Addition Parcel in the City's statutory trust grant.

LEGAL REQUIREMENTS:

Existing law authorizes the Commission, to enter into a land exchange with any person or any private or public entity, of filled or reclaimed tide and submerged lands or beds of navigable waterways, or interests in these lands, that are subject to the Public Trust for commerce, navigation, and fisheries, or other lands or interest in lands (Public Resources Code section 6307). The Commission, in order to approve the proposed Agreement, must make the following findings:

- 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.
 - 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 interest in land given in exchange have been cut off from water access and no longer are in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, and are relatively useless for Public Trust purposes.
- 6) The exchange is in the best interests of the State.

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STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6107, 6216, 6301, 6307, and 6341.

Trust Termination Lands Parcel 1: The proposed Agreement will terminate the State's interest on the Trust Termination Lands Parcel 1. The lands have been filled and reclaimed since the 1960's, are cut off from Redwood Creek, and are relatively useless for Public Trust purposes. The parcel is used for surface parking but there are no public access improvements to the portion of Redwood Creek within the Bradford Street Site, and the entire site is enclosed with a chain link fence. Terminating the Public Trust on this parcel would not substantially interfere with Public Trust uses, including public rights of navigation and fishing, since the public is unable to navigate or fish on Trust Termination Lands Parcel 1.

Although not part of the Agreement, the adjacent lands waterward of Trust Termination Lands Parcel 1 will remain subject to the Public Trust and in the City's statutory trust grant. This land will be used for a publicly accessible creekside trail along Redwood Creek. The trail, which will run through the site from Bradford Street (near the project entrance) to Main Street, will be accessible to pedestrians and bicyclists and include benches for sitting. The trail will also be incorporated into a more extensive trail system in downtown Redwood City along Redwood Creek. Implementation of the development at the Bradford Street Site, including the open space improvements, would not be possible without the exchange.

Trust Termination Lands Parcel 2: The Maple Street Site is on Steinberger Slough, about 0.6-mile toward the San Francisco Bay from the Bradford Street Site. The Maple Street Site encompasses trust termination lands and trust addition lands. The Agreement will terminate all of the State's interest within a 3.82-acre parcel, of which an approximately 0.21 acre is subject to the Public Trust (Trust Termination Lands Parcel 2). Historic maps suggest that Trust Termination Lands Parcel 2 encompassed smaller sloughs that wove through the adjacent uplands at various times but have since been filled and cut off from the water. Because of the title uncertainties, clearing title to these lands and forestalling possible future litigation is in the best interests of the State.

Trust Addition Lands: The proposed Agreement will place or confirm the Public Trust on approximately 2.41 acres of land adjacent to and waterward of Trust Termination Lands Parcel 2 (Trust Addition Lands).

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The Trust Addition lands will provide significant benefits to the Public Trust, including public access and recreation to and along Steinberger Creek. The City plans to develop the Trust Addition Lands into a waterfront park and has designated the lands as a future segment of the Bay Trail, which, according to the City, would fulfill a major local gap in the planned 500-mile walking and cycling path around San Francisco Bay. A portion of the Trust Addition Lands are used by Bair Island Aquatic Center for non-motorized vessel storage and public access for watercraft and recreational activities. These lands will be leased to the City until the City's statutory trust grant is amended to include the Trust Addition Lands. The lease will terminate upon the enactment date of the legislation.

Staff reviewed appraisals of the interests in the Trust Termination Lands and the Trust Addition Lands. Appraisals and property interest evaluation studies reviewed or completed by staff show that the monetary value of the lands and interests to be exchanged into the Public Trust under the proposed Agreement are equal to or greater than the monetary value of the lands and interests to be exchanged out of the Public Trust.

The Parties have conducted independent studies and valuations of their respective factual and legal positions relating to the disputed title and boundary claims. As a result of the construction of levees for salt production to the east of the creek, the placement of fill and construction of docks along both Redwood Creek and Steinberger Creek, and other artificial activities occurring over the last century, the last natural location of tidelands within the creek cannot be determined with precision. Portions of the Trust Addition Lands are presently subject to (or potentially subject to) the Public Trust; other portions are historic uplands not subject to the Public Trust. Litigation to settle claims would be protracted and costly with uncertain results.

As described in the preceding paragraphs and in the proposed Agreement, the facts support each of the necessary findings the Commission must make. 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 proposed 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 10-year lease to the City.

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Rancho and Upland Parcels: To further assure the City of clear title, the proposed Agreement addresses two other areas at the Bradford Street Site: the Rancho Parcel and the Upland Parcel. Staff does not believe the State has an interest in either of these parcels. However, pursuant to the proposed Agreement, the Commission will disclaim any interest in the Rancho Parcel. Also, if the City achieves separate settlement agreements with owners of the Upland Parcel, the Commission will quitclaim any interest in that parcel.

OTHER PERTINENT INFORMATION:

1. **CEQA Consideration:**

- a. **Approval of the Land Exchange Agreement and Lease:** 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 and an exchange and lease in connection with the settlement.

Authority: Public Resources Code section 21080.11.

- b. **Trust Termination Lands Parcel 1:** On December 5, 2017, the City of Redwood City, acting as the lead agency under the provisions of CEQA, determined that the project, as described above, was categorically exempt from CEQA pursuant to California Code of Regulations, title 14, section 15332, under Class 32, In-Fill Development Projects. Staff concurs with the City of Redwood City determination.

Staff recommends that the Commission also find that this activity is exempt under Class 32, In-Fill Development Projects; California Code of Regulations, title 14, section 15332.

- c. **Lease:** Staff recommends that the Commission also find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

2. This action is consistent with Strategy 1.2 of the Commission's Strategic Plan to provide that the current and future management of granted lands is consistent with evolving Public Trust principles and values, particularly

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amid challenges relating to climate change, sea-level rise, public access, and complex land use planning; and with Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's waterways.

3. The City hired MidPen Housing to develop the Bradford Housing Site.
4. After the proposed Agreement is recorded in the public records of San Mateo County, it will be posted and made publicly available on the State Lands Commission website.

EXHIBIT:

- A. Location and Site Map of the Trust Addition Lands and Trust Termination Lands.

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDINGS:

Approval of the Land Exchange Agreement and Lease: 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, settlement of title and boundary problems.

Trust Termination Lands Parcel 1: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 32, In-Fill Development Projects; California Code of Regulations, title 14, section 15332.

Lease: Find that the activity is also exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

AUTHORIZATION:

1. Based on the foregoing analysis and the information contained in the Commission's files on the proposed Agreement, find that:
 - A. The Trust Addition Lands provide significant benefits to the Public Trust including public access and fostering uses consistent with the common law Public Trust Doctrine.

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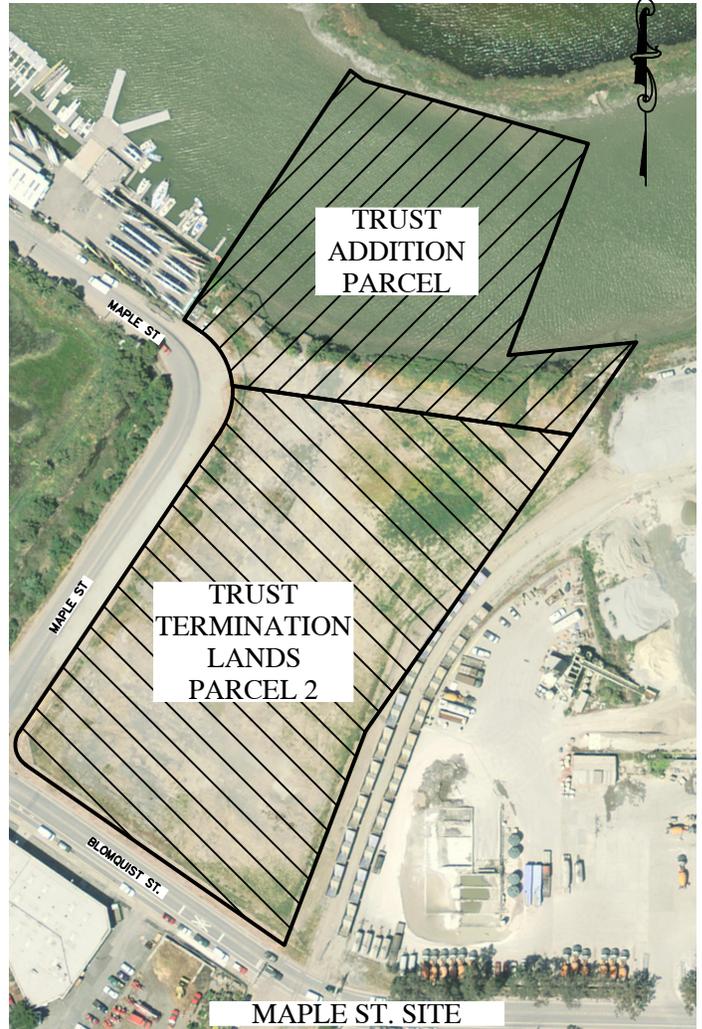
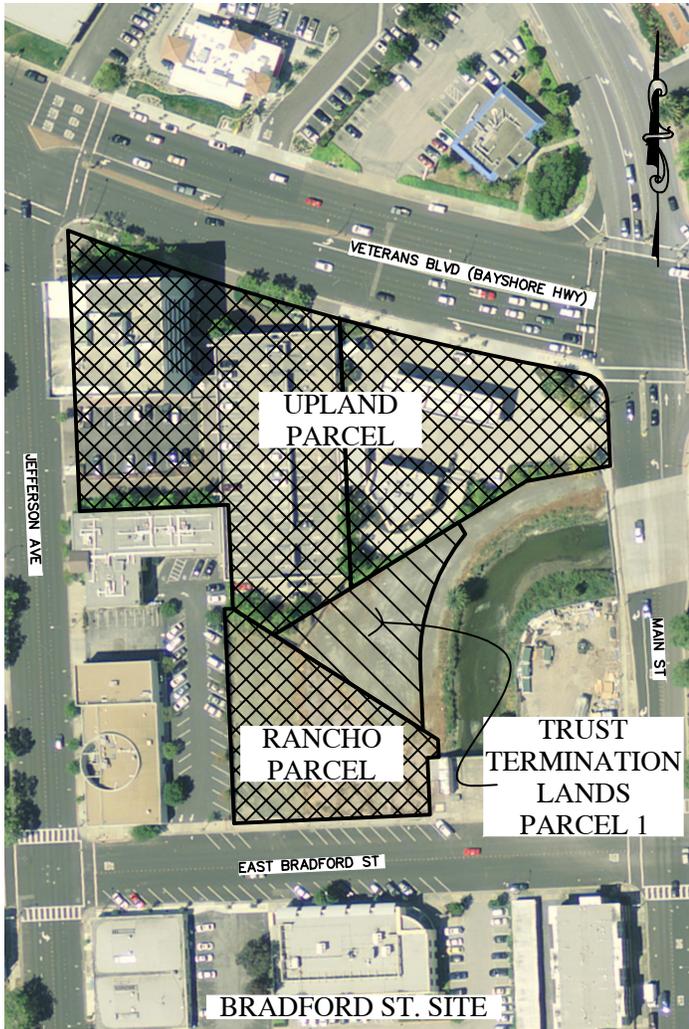
- B. The exchange provided for in this Agreement does not substantially interfere with public rights of navigation and fishing.
- C. The monetary value of the Trust Addition Lands is equal to or greater than the value of the Trust Termination Lands given in exchange.
- D. The Trust Termination Lands, consisting of 0.48 acre of land (Trust Termination Lands Parcel 1 [0.27 acre] and Trust Termination Lands Parcel 2 [0.21 acre]) being relinquished by the State, are cut off from water access and are no longer tidal or submerged lands or navigable waterways, by virtue of being filled or reclaimed, and are relatively useless for Public Trust purposes.
- E. The proposed Agreement is in the best interests of the State by expanding the total acreage of lands protected under the Public Trust and enhancing protections of the Trust Addition Lands for preserving open space and other Public Trust-consistent uses.
- F. The Agreement shall release any and all Public Trust claims from the Trust Termination Lands that are being conveyed by the State to the City and shall impress the Public Trust onto the Trust Addition Lands that the Commission receives from the City.
- G. The purposes of the exchange provided for in this Agreement are to enhance the physical configuration of trust land ownership; to improve public access to and along the water; to enhance waterfront and nearshore development for Public Trust purposes; to preserve open space; and to resolve boundary and title disputes.
- H. It is the intent of the proposed Agreement, that to the extent that there are mineral rights present in the Subject Properties, those rights shall be transferred with the corresponding surface estate by the deeds or patents described therein.

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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 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. Authorize issuance of a General Lease – Public Agency Use to the City of Redwood City beginning June 21, 2018, for a term of 10 years, for use of the Trust Addition Lands acquired by the Commission pursuant to the Title Settlement and Land Exchange Agreement.
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 Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the Land Exchange Agreement; and to appear on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement.

NO SCALE

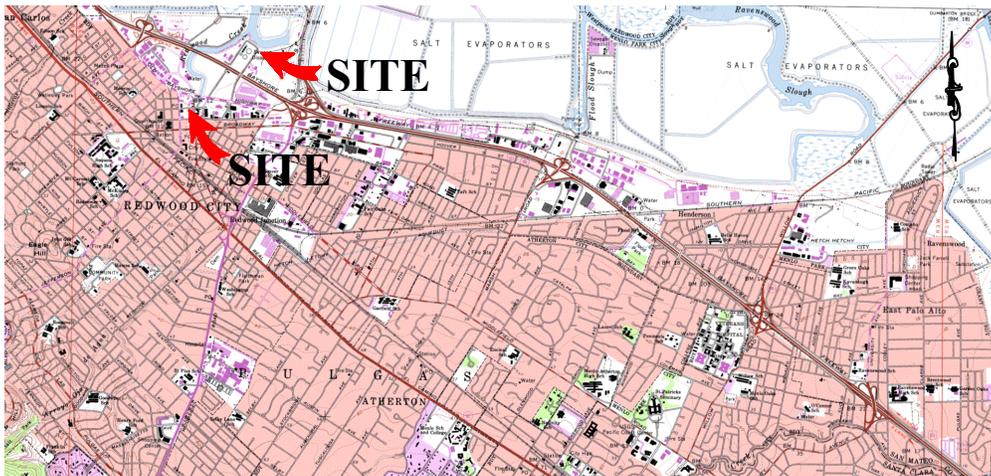
SITE



SUBJECT PROPERTY - REDWOOD CITY EXCHANGE AGREEMENT

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 27180
LAND EXCHANGE
CITY OF REDWOOD CITY
SAN MATEO COUNTY



MJF 5/30/18