SPECIAL MEETING
STATE LANDS COMMISSION

In the Matter of:
CONSIDERATION OF COMPROMISE TITLE
SETTLEMENT AGREEMENT WITH THE
PORT OF OAKLAND

DEPARTMENT OF CONSUMER AFFAIRS
1020 N STREET
ROOM 102
SACRAMENTO, CALIFORNIA

ORIGINAL
WEDNESDAY, MARCH 18, 1981
3:30 P.M.

Michael Appelman, C.S.R.
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CHAIRMAN ACKERMAN: Call the special meeting of the State Lands Commission to order.

Mr. Northrop.

MR. NORTHROP: Mr. Chairman, before we start, Jack Rump is sitting in for Bob Hight today. I think he has a statement he'd like to make.

MR. RUMP: For the record, Mr. Jervis is here representing the Controller in non-voting capacity.

MR. NORTHROP: And representing the Attorney General is Rick Frank today, which we're pleased to have Rick here.

Mr. Chairman, members, we have on the agenda one item, calendar item No. 1, which is a proposed compromise title settlement. And before we get into the item, for the record I would like, as all of us, the commissioners and the staff both have received some communication on this, I think for that reason I'd like to clear the record.

I'd like to advise the commission that the staff and the Attorney General advised the Port of Oakland of the probable public trust on the tidelands within the Oakland 1911 Trust Grant by correspondence and meetings and telephone conversations going back to July 14th, 1977. There has been one completed title settlement concerning a parcel in the
Business Park, which you approved by minute item No. 15 at your September 24th meeting, this settlement including a quitclaim deed from the Port.

While the Equitec lease was dated December the 16th, 1980, staff did not receive notice until January 1981. And the staff made a response in February 11, 1981. And subsequent to that the executive officer sitting on the B.C.D.C. informed B.C.D.C.'s staff of that problem. It was not until the February the 27th, 1981 that our staff was advised of the March 23 deadline.

That completes the record, Mr. Chairman. I think Mr. Cook will make the presentation for the staff on this issue.

Mr. Cook.

MR. COOK: Now, this involves a portion of about 9.5 acres of the Oakland Airport Business Park subdivisioned by the Port of Oakland. It involves an area which was included within the Rancho San Antonio issued to Mr. Peralta. However, it also included a very substantial slough. And based on our evidence, it indicates that there was a landing upstream, so it was certainly a navigable waterway to pass through this particular parcel.

The Port of Oakland on several grounds believes that there is no public trust interest, there is no state interest in this particular parcel. They have entered into
a bounty line agreement a number of years ago. And in addition, the state's position is based on the result of the Carmen-Ryles case, which is presently on appeal in southern California. The state taking the position that the tidelands within Rancho did not pass free of the public trust, and that there was that trust reserved.

The questions are certainly not cut. The questions are certainly subject to dispute, and they're certainly subject to several different alternate, perhaps, interpretations. We feel, however, that they're sufficient here to justify a disclaimer on the part of the state.

The Port actually loaned the parcel to a party called Equitoc 79. The lease was for a term of 66 years.

Assuming that there is a public trust easement in this parcel, the Port was granted by the legislature in 1911 all tidelands within this portion of the city limits. As a result, if there is a state-reserved easement, it would have been in the Port as a legislative trust grantee. The trust grant had a specific provision that leases could not be issued beyond 25 years with a 25-year renewal.

With this problem, the Port has advised us and we have substantial information to the effect that this particular office building which is to be constructed on this parcel under this lease would employ large numbers of people and will be a major asset to the City of Oakland and a major
asset to the Port, and that it is, in fact, part and parcel of the airport complex. As such, we, attempted to work out what we felt would be a satisfactory solution.

We're recommending, first, that with respect to the question of whether this is in the trust grant, that the Port quitclaim any right they might have in the trust grant back to the State of California.

In turn, the State of California would issue a patent to the 9.4 acre parcel reserving a public trust easement over approximately 50,000 square feet in the upper corner of this parcel at the proximity of this historic slough. That, in turn, the state make the determination that this particular construction work is a part and parcel of the Port, and that it is not unduly interfering with the public trust easement; and that the State Lands then would approve the terms of this particular lease for the use of this parcel for this lease for the term of 66 years, a very long lease. In any event, that would be the solution.

Now, in addition to that, perhaps it would be in the future in the best interest of both the state and the Port and perhaps the leasee that whatever rights there be in this parcel, that they be resolved by exchange; that is that the state's interest in this particular parcel be given up in exchange for other land if we find suitable land. At the present time we have no land available; the
city had no land. We had no time to really locate another
parcel of land.

So we have an option. It's actually for a ten-
year period for this exchange. It's at the option of either
the state or the Port to enter into this exchange when a
parcel is found. If the exchange comes about, this trans-
action would be very similar to all the other transactions
we have been entering into, and it would be similar to the
transaction we've already entered into with the American Protective
Service in this very same industrial park last fall.

And so basically this is the solution that we have
come to, and we feel confident that we can recommend this
to the commission. There certainly are problems. There
are problems that the people have to start work apparently
on the 23rd. We have to close escrow by the 23rd. There
are lots of those things.

In any event, we feel that this is proper. We feel
that this is in the best interests of the state, consistent
with law. And we certainly recommend that the commission
favorably consider our proposal.

By the way, I should point out, and this is for the
benefit of the title company, basically this first phase of
this agreement is in the nature of a boundary agreement.
The historic slough passes through this upper corner of the
parcel. The only difference being we have somewhat squared
it off. In trying to match up 1858 maps and present-day maps, it's always anybody's guess, and it's always a possibility of some slight movement. But the line we think is consistant with the Muchen Berger case which relatively closely approximates the location of the slough.

CHAIRMAN ACKERMAN: I've heard of that case before.

MR. COOK: In any event, although title doesn't say it specifically, that basically this is in the nature of a bounty line agreement in the first phase.

CHAIRMAN ACKERMAN: At this point I think maybe it would be appropriate -- I imagine there are members of the audience both representing the City of Oakland and Equitoc. I think it would be appropriate for them to come forward to indicate their response or any problems they have with the staff recommendations.

You can just come forward and identify yourself for the record.

MR. CLARK: My name is Tom Clark. I'm Deputy Port Attorney for the Port of Oakland, the City of Oakland.

We naturally concur with Mr. Cook's recommendation that you approve this agreement. We appreciate very much the expedition that the staff for the commission has shown in working this agreement out with us.

I would like to emphasize one thing a little further that Mr. Cook just spoke about, and that is that this
agreement does constitute an agreement on the boundaries of what is claimed to be this old slough, and it is the result of a bona fide attempt by all the parties to locate the actual, true, natural location of that boundary. And I noticed that in the agenda of the calendared item itself there is not an express finding that this is a fixing of the boundary. And I would request that you make it a part of your finding, that this is a fixing of the boundary, and that it has resulted from a bona fide, good faith effort by the parties to find the actual, true, natural boundary.

CHAIRMAN ACKERMAN: On advise of counsel, is there any problem in including that language? Can we approve that in spirit and have you draft up the appropriate language, or would you recommend that we pick specific wording right now?

MR. CLARK: I would refer, if I could, to the agreement itself. The agreement itself contains the language. It's just that it wasn't in the calendared item itself. And I wanted to make sure there was no misunderstanding of what was contained in the agreement.

MR. NORTHROP: It would appear, Mr. Clark, that in view of the fact that it's on the record of this hearing, do you feel it's essential that it be a part of the minute item? If it is, we certainly see no reason why the commission couldn't make that finding if they so desired. But if
you want to, we can add that -- or recommend --

MR. CLARK: I would make that request just so there  
is no ambiguity or uncertainty in the record.

COMMISSIONER MORGAN: Now that we're all in agree-
ment, would you please restate what it is you want?

MR. CLARK: Yes. I would like to have the commis-
sion find that the location of the state's public trust
 easement as reflected in the proposed agreement is the
result of a bona fide effort by the Port of Oakland, City
of Oakland, and also by the State Lands Commission to
locate the true, natural boundaries of the claimed state
tideland in this parcel.

CHAIRMAN ACKERMAN: Any other questions? John?

COMMISSIONER JERVIS: No. Fine.

CHAIRMAN ACKERMAN: Is there a staff problem
with including that language as part of the recommendation?

MR. NORTHROP: No, sir.

CHAIRMAN ACKERMAN: I just have one question. It
gets back to another case we were on several months ago.
We had a special meeting involving that case too, and it
involved a rather large settlement down in the Long Beach
area to where we got involved with a private company
appearing to negotiate and pursue things in good faith and
then getting caught between two public agencies. In this
case it was the City of Long Beach and the State Lands
Commission. And it was really kind of holding up what a private firm's good faith effort was on a contractual arrangement.

I got a phone call a week ago expressing the same concern here that Equitec was not made aware that there seemed to be some actual interest in the State Lands Commission staff of a vested interest here.

I don't know if this is the appropriate forum to do this, but I sure hope we don't get a third case like this coming back because it seems to cause all sorts of problems where a private investor who is exercising everything on their part in good faith, and then suddenly a problem comes to their attention that they weren't even aware of, where the state, we're acting in good faith. But maybe the staff in these points can maybe make a little extra effort, even though it's not our responsibility I don't think, but make an extra effort to make sure that all parties involved in cases such as this are aware that the state, in fact, does have interest.

Is that appropriate, Bill?

MR. NORTHROP: Yes, I think it probably is. We attempt to raise it. I was accused of clouding title, but I don't know how else I could have done it in this issue.

CHAIRMAN ACKERMAN: After that B.C.D.C. meeting is when the phone starting ringing.
MR. NORTHROP: It was a meeting that I knew the subject two days before the meeting that there was a problem, and I was disappointed that we had to do it that way. We will take steps. We don't know what they are, but we'll try to figure out some way to notify the grantee of this problem.

COMMISSIONER MORGAN: Since you raised the question, the appropriate person it seems to me is the Port since our staff tells us that the Port was notified two years ago, maybe a little longer ago, about the fact that there was some question of violating the public trust.

MR. CLARK: That can obviously become a long question. I don't know whether it's appropriate to get into all the details today. The other cases that arose arose in a different part of the park, involved a different slough. We were provided maps of that slough area, not of the slough area that's involved today.

I suppose in hindsight a lot of the parties might have done a lot of different things. Title companies might have written different preliminary title reports.

The best I can say is we're made obviously very much aware of the problem now, and we're going to be very, very much more careful before we enter into business arrangements with private parties in the future.

MR. NORTHROP: Because we're prepared, the staff
commission is prepared to move at all deliberate speed to get these things done. I think today's exercise and the previous exercises are examples of where we stop everything, that section came to a grinding halt until we finished this problem because we felt that we had entrepreneur who had done what he thought was right and now was running into a problem, and we were doing everything we could to clear it.

CHAIRMAN ACKERMAN: Another one of my concerns is it seems to be this is the second instance where we've gotten into a confrontation between two levels of government and a private entrepreneur who is acting in good faith and has got caught in the middle of it through no fault of their own.

MR. NORTHROP: Mr. Chairman, off the record.

(Thereupon a short discussion was held off the record.)

CHAIRMAN ACKERMAN: Are there other individuals in the audience from Equitec who would care to address the commission?

Yes, sir. If you'd identify yourself.

MR. SPIELBERG: David Spielberg of Orrick, Herrington & Sutcliffe, attorney for Equitec 79.

I would like to first thank the commission for its efforts thus far to resolve any problem. The one point I would like to bring to your attention is that we are only
part way through it at this point. The resolution that we have allows construction to proceed, but the trust interest still remains as to a portion of the property. And there is an intent to consummate an exchange of this for other property that may at the current time be more useful for trust purposes. I hope we will proceed with as much speed as possible getting that exchange resolved so that by the time construction is completed and problems with primary financing and leasing of office space arise, that we will have clear title to the entire parcel and won't have any other problems left to resolve.

CHAIRMAN ACKERMAN: The way I understand it it's a ten-year time limit to consummate the exchange.

MR. SPIELBERG: There is, that's correct. But we just hope that the exchange will proceed a great deal quicker than ten years. Hopefully as soon as the state can locate appropriate exchange property, maybe within a matter of months if at all possible.

MR. RUMP: If I may, from the staff's point of view, make a request that all parties concerned, if they can locate a satisfactory parcel, we would certainly appreciate their assistance. It's rather difficult finding a satisfactory exchange parcel. Hopefully we will have another land bank soon, and hopefully this can be resolved in a very short period of time if everything works correctly. The ten-year
limit is merely an outside shot.

CHAIRMAN ACKERMAN: It's a little long.

MR. RUMP: It is long, and perhaps it could have been shorter.

CHAIRMAN ACKERMAN: What's the assessed value of the state's interest?

MR. RUMP: Thirty-one thousand, five hundred dollars.

CHAIRMAN ACKERMAN: Exchange what, two or three square feet?

MR. RUMP: Actually that represents approximately it does represent 30 percent of the market value of the particular parcel, discounting and taking into consideration the fact that the state's case would have some uncertainties involved, and, in addition, that the state would have a public trust easement which would not be the entire value of the parcel. We calculated and evaluated that on that kind of a basis, which is standard, the standard practice.

The prior settlement that we had in this area was, I think, on the basis of 25 percent. And we felt that in this particular instance that perhaps the facts were favorable toward the state ownership.

We still are faced with the uncertainty of the ultimate appeal in the Carmen-Ryles case. It may turn out that the state in effect didn't have anything in this parcel.

It's possible. But on the other hand, it could be the other
CHAIRMAN ACKERMAN: What if an exchange is consummated and the case is actually decided that the state didn't have an interest? Do you go back and undo the exchange or is that water under the bridge?

MR. RUMP: No, sir. Basically the settlement is in lieu of litigating this particular parcel. And the issues are not identical. In fact, the issues in Carmen-Ryles are somewhat more conducive toward the public trust because it's open water. This is filled area.

But irrespective of that, the settlement is being done as of now. The settlement is a completed agreement. We can be proved wrong or we can be proved right. And we're trying to determine what our best judgement is as to the ultimate results of this.

Now, if we lose the Carmen-Ryles case, I think that certainly should not jeopardize the state's title in this area and should not jeopardize this agreement.

CHAIRMAN ACKERMAN: I agree with that.

MR. SPIELBERG: We are just anxious to get this resolved so we can get title.

CHAIRMAN ACKERMAN: I understand your situation very clearly.

Are there other parties in the audience that wish to speak to the issue?
Yes, sir. Come forward and identify yourself.

MR. DAVIES: Sure. Thank you. I'm Dean Davies, president of Equitec properties company, one of the people responsible for this project.

I'd just like to reinforce what our counsel has said. In addition, we are very pleased with the efforts of both the Port and the State Lands Commission to resolve this issue. The issue is not completely resolved. As you know, title is a complicated matter. And we're not going to get the title insurance that we desire on the property. However, that is not saying that this phase one agreement does not allow us to move on. And we are going to move on next Monday and provide, we hope, 2500 jobs to some people who need it.

For the record, I would like to have Mr. Ackerman and his staff know that we advised the State Lands Commission as early as May 5th, 1980 of our intentions on this parcel. And, in fact, worked with the B.C.D.C. staff through the fall and up to, of course, the B.C.D.C. hearing.

We're just happy we can move on and get this behind us. And we're prepared to go elsewhere, but we think we're going to stay where we're at and do it. Thank you.

CHAIRMAN ACKERMAN: I'm pleased for that.

Is there anyone else in the audience that wishes to address the commission on the item before us?

Any question from any of the commissioners on the
COMMISSIONER MORGAN: I want to ask whether this commission would have any involvement in the long-term lease.

MR. RUMP: Only to the extent that the commission determines that the uses under this long-term lease are not unduly interfering with the public trust needs of this particular parcel considering the conditions of this particular parcel that's surrounded by industrial development, etc.

CHAIRMAN ACKERMAN: Does that lease have to come back before the commission for final approval?

MR. RUMP: No. The lease is not being approved formally by the commission. It's merely being determined that the uses under the lease -- that the commission will not and certainly in effect barred by the contract from attempting to interfere with the use of this parcel for this particular office building under the terms of the lease for 66 years.

CHAIRMAN ACKERMAN: John, do you have any questions?

COMMISSIONER JERVIS: No.

COMMISSIONER MORGAN: How about you?

CHAIRMAN ACKERMAN: I think I've already asked mine. I again express my satisfaction for the staff's effort in this area. I know what happens, and we've had several of these before, where we just pull the staff off whatever assignments they're on to facilitate and expedite
the matter. I hope we don't have too many more occurrences, but I have to say if and when you do, that the effort put forth is admirable. I think it's appreciated by both the public and private sectors.

I'll entertain a motion.

COMMISSIONER MORGAN: I'll move approval.

CHAIRMAN ACKERMAN: It's moved by Miss Morgan.

COMMISSIONER MORGAN: The motion will incorporate the language suggested relating to the true, natural boundary. CHAIRMAN ACKERMAN: The motion is accepted as being in order. I will second the motion.

All those in favor say aye?

(Ayes)

CHAIRMAN ACKERMAN: Not hearing any other comments, the item will be deemed approved, and the meeting is adjourned.

(Thereupon the State Lands Commission meeting was adjourned at 3:58 P.M.)
I, Michael Appelman, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing State Lands Commission meeting was reported in shorthand by me, Michael Appelman, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of April, 1981.

Michael Appelman
Certified Shorthand Reporter
License No. 3448