

STAFF REPORT

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CONSIDER A LITIGATION AND TITLE SETTLEMENT AGREEMENT BETWEEN THE CALIFORNIA STATE LANDS COMMISSION AND NP OAKLEY, LLC, (NORTHPOINT) REGARDING CERTAIN REAL PROPERTY LOCATED ADJACENT TO THE SAN JOAQUIN RIVER, CITY OF OAKLEY, CONTRA COSTA COUNTY

PARTIES:

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

NP Oakley, LLC

OVERVIEW OF PROPOSED LITIGATION AND TITLE SETTLEMENT:

The Litigation and Title Settlement Agreement (Agreement) concerns a 375.7-acre property located at 6000 Bridgehead Road, Oakley, Contra Costa County (Subject Property). The Subject Property is located near the Antioch Bridge and is bordered by the San Joaquin River to the north, railroad tracks and a private vineyard to the south, Big Break Road and Big Break Marina to the east, and Lauritzen Yacht Harbor and Highway 160 to the west.

In 2019, when NorthPoint took steps to acquire fee title to the Subject Property, a dispute arose between the Parties regarding the extent of the Parties' respective interests in the Subject Property.

Title to the Subject Property is derived from a combination of federal patents of public domain lands and state patents of swamp and overflowed (S&O) lands. Staff conducted an extensive investigation and review with respect to the Subject Property, analyzed the title history and physical characteristics of the Subject Property, and examined historical maps and surveys, aerial photographs and drone footage, and other evidence related to the Subject Property and surrounding area. Insufficient evidence exists to ascertain whether the S&O lands were correctly characterized as such, as opposed to tidelands or submerged lands, or to determine the extent to which the Subject Property was impressed with the Public Trust at statehood, if at all.

The Agreement is intended to settle the rights and interests of the Parties in two parcels of land within the Subject Property, with a Settlement Line being agreed upon to distinguish the respective interests in the two parcels. The Wetlands

STAFF REPORT NO. **69** (CONT'D)

Parcel is the area within the Subject Property that is waterward of the Settlement Line. The Development Parcel is the area within the Subject Property that is landward of the Settlement Line. Lands that were originally identified as U.S. Patent 1429 lie landward of the Settlement Line and are part of the Development Parcel. These U.S. Patent 1429 lands are referred to as the Southeast Corner Parcel. The Southeast Corner Parcel is adjacent to the southeastern section of the Wetlands Parcel.

The Parties propose to enter into a Litigation and Title Settlement Agreement wherein:

- 1) a Settlement Line is agreed upon across the Subject Property demarcating the maximum historic extent of the Public Trust Easement, dividing the Subject Property into the Wetlands Parcel waterward of the Settlement Line (across portions of which the Parties agree the historic Public Trust Easement existed) and the Development Area landward of the Settlement Line (across which the Parties agree the historic Public Trust Easement did not exist), with NorthPoint to retain fee title to the entire Subject Property;
- 2) a Public Trust Easement is impressed on the Wetlands Parcel;
- 3) NorthPoint will convey and the Commission will accept a Public Access Easement on the Wetlands Parcel;
- 4) NorthPoint will convey and the Commission will accept a Public Access Easement on a portion of the Southeast Corner Parcel, which shall remain and be conserved in its natural condition, for the enjoyment by the public;
- 5) if NorthPoint or an affiliated company acquires an interest in the real property situated between the Subject Property and Big Break Road, NorthPoint will cooperate diligently and in good faith with the Commission and other specified entities to facilitate as reasonably possible a public pedestrian right-of-way across that intervening property to connect the Development Parcel Trail (described below) to Big Break Regional Trail;
- 6) the Commission will quitclaim all right, title, or interest in the Development Parcel;
- 7) NorthPoint will convey and the Commission will accept a Public Access Easement on the Development Parcel (Development Parcel P.A.E.), consisting of pedestrian and vehicular access and parking, including specifically a Development Parcel Trail and Public Parking Lot;
- 8) the North Branch of the Development Parcel Trail will be in the nature of a "floating easement" in order to best facilitate connection to the Wetlands Parcel;

STAFF REPORT NO. **69** (CONT'D)

- 9) the Parties will work diligently with the Department of Toxic Substances Control (DTSC) to secure approval of the Development Parcel P.A.E., and will agree on alternate trail trajectories to the extent necessary;
- 10) the Commission may lease the Public Access Easement areas to other public agencies, or assign the easements to such agencies, including but not limited to the East Bay Regional Park District (EBRPD), as limited in the Agreement; and
- 11) NorthPoint will reserve certain rights with respect to the Wetlands Parcel and the Southeast Corner Parcel.

The proposed settlement will provide a substantial benefit to the public by creating public access to a portion of the San Joaquin River previously accessible only by boat. As a result of the settlement, the public will be able to view and enjoy the Wetlands Parcel by land. Public access (both vehicular and pedestrian) to the Wetlands Parcel and Southeast Corner Parcel will be provided as part of the present development.

The public access created by the Agreement is also consistent with and conducive to the future extension of Big Break Regional Trail, which presently terminates east of the Subject Property. It is staff's understanding that the City of Oakley (City) supports the intention of EBRPD to extend Big Break Regional Trail through the Subject Property to the Antioch/Oakley Regional Shoreline Park. The Public Access Easements provided for in the Agreement will be useful in meeting the City and EBRPD's goal, and staff will work with those entities to facilitate such connection.

NorthPoint will benefit from the expeditious resolution of the title dispute, and the ability to clear title to the Subject Property so that it may proceed with its development of the Development Parcel for commercial warehousing, referred to as the "Oakley Logistics Center" (Development Project). This Development Project has garnered significant City and community support. The employees of NorthPoint's tenants will also benefit from the public access to the Wetlands Parcel to be established on the Subject Property. The Commission will similarly benefit from the expeditious resolution of the title dispute, as it will be able to conserve funding and other resources that would otherwise be expended in litigation.

BACKGROUND:

Upon its admission to the United States of America on September 9, 1850, the State of California, by virtue of its sovereignty under the Equal Footing Doctrine of the U.S. Constitution, received in trust for the people of California all right, title, and interest in and to the tide and submerged lands within its boundaries, up to

STAFF REPORT NO. 69 (CONT'D)

the Ordinary High Water Mark, to be held for Public Trust purposes. Historically these Public Trust purposes included commerce, navigation, and fisheries. Over time, the Public Trust Doctrine broadened to include swimming, boating, other forms of water recreation, open space, and conservation of natural resources.

The Subject Property is adjacent to the left bank of the San Joaquin River. Staff contends that portions of the Wetlands Parcel are impressed with the Public Trust Easement. Portions of the Wetlands Parcel are submerged, and other portions are subject to tidal influence.

Base Title: Beginning with the passage of Chapter 151, Statutes of 1855, the California State Legislature authorized the sale of S&O lands, i.e., lands located above the line of ordinary high tide and too wet for agriculture without reclamation.

The Subject Property is comprised of portions of Sections 15 and 22, in Township 2 North, Range 2 East, Mount Diablo Meridian. Surveys of this area were conducted, and township maps created on December 24, 1862, November 13, 1867, and January 18, 1876. Each of these S&O maps identified the S&O line in the same position. The Subject Property consists entirely of lands surveyed as either federal public domain lands or S&O lands.

Private ownership of the Subject Property originated with four U.S. Patents of public domain lands and three California state patents of S&O lands. The federally patented lands are landward of the S&O line.

Agricultural Use: Prior to 1928, a levee or levees were constructed along the left bank of the San Joaquin River (bordering the Subject Property to the north) and portions of the Subject Property were used for agriculture. During 1927 and 1928, the levee system failed and the Wetlands Parcel became partially flooded. No reclamation of the Wetlands Parcel has been made and the Wetlands Parcel is presently partially submerged and partially subject to tidal influence.

Chemical Manufacturing Use: E.I. duPont de Nemours, Inc., a Delaware corporation (DuPont) acquired the Subject Property in or around 1955 and operated a chemical manufacturing plant there until approximately 1998. DuPont manufactured the gasoline “anti-knock” agent tetraethyl lead, Freon, and titanium dioxide. In 2015, DuPont transferred the Subject Property to Chemours Company FC, LLC, a Delaware limited liability company (Chemours).

Extensive remediation work has been completed on the Subject Property in the Development Parcel. DTSC imposed a Land Use Covenant on a large portion of the Subject Property, all of which lies within the Development Parcel. The Land

STAFF REPORT NO. 69 (CONT'D)

Use Covenant restricts the uses to which the Development Parcel may be put (i.e., it may not be used for residences, a hospital for humans, a public or private school for persons under 18 years of age, or a day care center for children, and the areas upon which recreational land use is permitted are limited). The Land Use Covenant does not apply to the Wetlands Parcel or the Southeast Corner Parcel.

NorthPoint's Planned Redevelopment of Brownfield Site: NorthPoint acquired title to the Subject Property from Chemours on September 11, 2019. NorthPoint is redeveloping the Subject Property for commercial use as a warehouse and distribution center partially intended to serve the e-commerce industry. The Development Project was approved by the Oakley City Council on December 17, 2019, and NorthPoint broke ground in January 2020. A title dispute arose during NorthPoint's acquisition of the Subject Property, giving rise to the proposed Agreement.

Chemours' remediation and monitoring obligations continue, notwithstanding NorthPoint's acquisition of fee title to the Subject Property.

City Support: The City has been very supportive of NorthPoint's Development Project. ([Oakley Officially Breaks Ground on New Logistics Center, Could Create 2,800 Jobs](#), East County Today, Jan. 28, 2020 [quoting Oakley Mayor Kevin Romick as saying, "To see this project come to fruition is so gratifying and exciting for the entire Oakley community."]; [Ground broken on site of Oakley's old DuPont plant](#), Judith Prieve, Bay Area News Group, East Bay Times, Jan. 28, 2020 [quoting Oakley Mayor Kevin Romick as stating, "Today, we broke ground on an oasis. This also represents a significant step forward for the city."].) Based on conversations with NorthPoint and a meeting including representatives from the City and EBRPD, it is staff's understanding that the City is also generally supportive of the type of public access that will be facilitated by the Agreement, including a potential future extension of Big Break Regional Trail. The trails and Public Access Easements contemplated by the Agreement are consistent with and conducive to a future extension of Big Break Regional Trail through the Subject Property to the Antioch/Oakley Regional Shoreline Park maintained by EBRPD.

LEGAL BASIS:

Pursuant to Public Resources Code section 6107, the Commission is authorized to enter into agreements for the compromise or settlement of claims. The Agreement is intended to be a "title settlement," as that term is defined in Public Resources Code section 8601(d) ("Title settlements' means exchanges pursuant to Section 6307 and 6307.1 and any agreements between the commission and others as a part of, or in lieu of, litigation in compromise settlements of public

STAFF REPORT NO. **69** (CONT'D)

trust title questions, including real property exchanges, boundary determinations, or other means leading to a resolution of those questions and the necessary conveyances or other documentation provided by the agreements"). As set forth in Public Resources Code section 8602, the Legislature has encouraged the use of title settlements to resolve uncertainties and disputes with respect to the existence or nonexistence of a Public Trust right, title, or interest within or along waterways of the State.

This title settlement does not involve a Public Trust termination, and thus the findings and other requirements of Public Resources Code section 6307 are inapplicable and unnecessary. The State has not historically held a fee title or Public Trust interest in the federally patented portion of the Development Parcel, making a Public Trust termination inappropriate and unnecessary. As to the S&O lands within the Development Parcel, fee title passed from the State to private ownership under the S&O patents and there is no evidence to suggest that such S&O lands were improperly characterized, or that the lands within the Development Parcel ever constituted submerged lands or tidelands. S&O lands are, by definition, taken free of the common law Public Trust, and remain free of the Public Trust even if dredging results in navigable waters of the State flowing over such lands. (Pub. Resources Code, § 7552.5.)

The provisions of Public Resources Code section 6357, allowing the Commission to enter into agreements establishing the ordinary high and low water lines of any swamp, overflowed, marsh, tide, or submerged lands of the State, are similarly inapplicable and unnecessary. There is no dispute regarding the boundary of the San Joaquin River, and the grant deed by which NorthPoint obtained title to the Subject Property calls to the boundary of the San Joaquin River as the extent of NorthPoint's fee title interest. The contemplated Agreement does not alter the extent of NorthPoint's fee title interest. The State is not quitclaiming or disclaiming any interest in the San Joaquin River, nor is the State forfeiting an interest in any lands to which it has a fee title or Public Trust interest.

With respect to the Public Access Easements being conveyed by NorthPoint to the Commission, the Commission may acquire a right-of-way or easement to provide access to public land under Public Resources Code section 6210.9, which provides: "If the commission has public land, including...tide or submerged lands, and lands subject to the public trust for commerce, navigation, and fisheries, to which there is no access available, it may, in the name of the state, acquire by purchase, lease, gift, exchange...a right-of-way or easement across privately owned land or other land that it deems necessary to provide access to such public land." Further, under Public Resources Code section 6219, "[t]he commission may, if it determines it is in the best interests of the state, accept on

STAFF REPORT NO. 69 (CONT'D)

behalf of the state any gift, devise, grant, quitclaim, or other conveyance of title to, or interest in, real property.”

PROPOSED SETTLEMENT TERMS:

After lengthy discussions and negotiations, staff and representatives of NorthPoint have come to the following proposed resolution of the subject title dispute:

1. Establishment of Settlement Line. A Settlement Line is agreed upon across the Subject Property demarcating the historic maximum extent of the Public Trust Easement, dividing the Subject Property into the Wetlands Parcel waterward of the Settlement Line (across portions of which the Parties agree the historic Public Trust Easement existed) and the Development Area landward of the Settlement Line (across which the Parties agree the historic Public Trust Easement did not exist), with NorthPoint to retain fee title to the entire Subject Property. The Settlement Line shall be permanently fixed, not ambulatory, and thus not subject to modification by erosion, accretion, avulsion, reliction, submergence, or temporary levee failure, whether due to natural or artificial causes.
2. Confirmation of Public Trust Easement on Wetlands Parcel. The Parties agree that portions of the Wetlands Parcel are presently impressed by the Public Trust Easement. The Public Trust Easement across the Wetlands Parcel is and shall remain ambulatory, as provided for in common law. Irrespective of the ambulatory nature of the Public Trust Easement within the Wetlands Parcel, the Parties agree that the Public Trust Easement pursuant to the Agreement is intended to and shall exist across the entire Wetlands Parcel.
3. Grant of Public Access Easement on Wetlands Parcel. NorthPoint will convey and the Commission will accept a Public Access Easement across the entire Wetlands Parcel. The boundaries of the Public Access Easement across the Wetlands Parcel shall be permanently fixed, not ambulatory, and thus not subject to modification by erosion, accretion, avulsion, reliction, submergence, or temporary levee failure, whether due to natural or artificial causes.
4. Grant of Public Access Easement on Southeast Corner Parcel. NorthPoint will convey and the Commission will accept a Public Access Easement across a western portion (approximately the western two-thirds) of the Southeast Corner Parcel, which shall remain and be conserved in its natural condition, for the enjoyment of the public.

STAFF REPORT NO. 69 (CONT'D)

5. Connectivity of Development Parcel Trail and Big Break Regional Trail. If NorthPoint or a related entity acquires an interest in the real property situated between the Subject Property and Big Break Road to the east, NorthPoint will cooperate diligently and in good faith with the Commission, and to the extent warranted with EBRPD and the City, to facilitate as reasonably possible a public pedestrian right-of-way across the intervening property to connect the Development Parcel Trail (part of the Development Parcel P.A.E., described below) to the existing Big Break Regional Trail. In the event such a public pedestrian right-of-way is established across the intervening property, NorthPoint shall bear no obligation or responsibility for the improvement of that right-of-way with a public trail.
6. Quitclaim of State's Right, Title, and Interest in Development Parcel. The Parties acknowledge and agree that the Commission does not have any right, title, or interest, including any Public Trust interest, in the Development Parcel. The Commission will disclaim and quitclaim all right, title, and interest in the Development Parcel. The Commission will agree to the validity of the federal patents and S&O patents and to the historic extent of the Public Trust Easement as confirmed by the Settlement Line agreement. The Quitclaim Deed will be made and recorded solely to affirm that the Commission does not have any right, title, or interest, including any Public Trust interest, in the Development Parcel, and as such the Quitclaim Deed does not constitute a termination of any State interests, including Public Trust interests, in the Development Parcel.
7. Grant of Public Access Easement Through Development Parcel. NorthPoint will convey and the Commission will accept the Development Parcel P.A.E. through the Development Parcel to facilitate public access to the Wetlands Parcel.
 - i. The portion of the Development Parcel P.A.E. comprising the Development Parcel Trail shall be devoted to solely pedestrian access, which generally shall extend easterly from Bridgehead Road, along the northerly and westerly sides of Wilbur Avenue, then continuing easterly along the northerly side of Building 4 to a junction, with the North Branch continuing from that junction easterly to the Wetlands Parcel, and the South Branch continuing from that junction southerly and then easterly to the northwestern boundary of the Southeast Corner Parcel (with all public access entry points outside of the Land Use Covenant area). NorthPoint agrees to construct, as part of its current development on the Subject Property, an asphalt sidewalk, not less than ten feet wide, on the Development Parcel Trail.

STAFF REPORT NO. **69** (CONT'D)

- ii. NorthPoint further agrees to construct a 15-space Public Parking Lot along the Development Parcel Trail, north of Building 4, that shall be devoted to public parking. The Public Parking Lot shall be asphalt paved and constructed within the Development Parcel, with sufficient signage to direct the public directly from the Public Parking Lot to the public access entry points at the Wetlands Parcel and the Southeast Corner Parcel.
- iii. NorthPoint agrees to plant trees and install signage along the entire length of the Development Parcel Trail, directing the public to the Public Parking Lot and adjacent public access entry points. The trees shall be planted in accordance with the City of Oakley's landscaping requirements or no farther than one hundred (100) feet apart, whichever distance is less.
- iv. The Parties further agree that the Development Parcel P.A.E. shall include public use of the Public Parking Lot and an easement for public vehicular ingress and egress from Bridgehead Road to the Public Parking Lot across Wilbur Avenue and the northerly parking lot for Building 4. The parking spaces within that northerly parking lot for Building 4 shall remain reserved for the private use of the owners, lessees, occupants, and guests of the development within the Development Parcel, and nothing in the Agreement or the respective conveyance documents for the Agreement shall be construed as a dedication of those parking spaces for public uses.
- v. The Development Parcel Trail and the Public Parking Lot may be completed in phases such that installation of each section of the Development Parcel Trail and the Public Parking Lot shall coincide with the construction of the adjacent Building or Buildings pursuant to the phased development of the Development Parcel, with the intent, among other factors, to prevent exposing the public to the hazards of construction at the Development Parcel. Regardless of the phased construction, however, installation of the Development Parcel Trail and the Public Parking Lot will be completed within six (6) years after the Effective Date of the Agreement. NorthPoint may in the future relocate the Development Parcel Trail and the Public Parking Lot to a Substantially Similar Location if warranted pursuant to NorthPoint's sole discretion by future development within the Development Parcel, in which event the Development Parcel P.A.E. will correspondingly transfer to that new location. As used in the Agreement, "Substantially Similar Location" means a trail location within the Land Use Covenant area that has the same basic trajectory as the Development Parcel

STAFF REPORT NO. 69 (CONT'D)

Trail and a public parking location that is northerly of Building 4, each of which shall provide pedestrian access or public parking, respectively, that provides comparable public access and is in a location that is comparable to the Development Parcel Trail and the Public Parking Lot specified in the Agreement. Any relocated Development Parcel Trail or Public Parking Lot shall be improved as specified in the Agreement. NorthPoint or its successor shall give thirty-day written notice to the Commission's Executive Officer prior to relocating the Development Parcel Trail or the Public Parking Lot, which shall include a description and exhibit plat of the location of the relocated Development Parcel Trail or Public Parking Lot ("30-Day Notice"). The Development Parcel Trail or Public Parking Lot cannot be relocated unless the Executive Officer gives consent in his or her discretion, but the Executive Officer may deny such consent only if the relocated Development Parcel Trail or Public Parking Lot is not in a Substantially Similar Location as defined above. Such consent shall be deemed granted unless the Executive Officer delivers written notice to NorthPoint denying consent within thirty (30) days after delivery to the Executive Officer of the 30-Day Notice.

- vi. The term "Building 4" means the building intended on Lot 4 as shown on the Vesting Tentative Map for "Subdivision 9513, Oakley Logistics Center" for the Subject Property, approved by the Oakley City Council on December 17, 2019.
- 8. Grant of "Floating Easement" for the North Branch of the Development Parcel Trail. NorthPoint agrees to grant an easement for pedestrian public access in the nature of a "floating easement" to the Commission across the parcel currently identified as Assessor Parcel Number 037-020-022, for the North Branch of the Development Parcel Trail to connect the Development Parcel Trail to a public trail within the Wetlands Parcel in the event such public trail is developed in the future. The North Branch of the Development Parcel Trail will be in a location that most reasonably provides connectivity from the Development Parcel Trail to the future public trail in the Wetlands Parcel, and when installed, the North Branch of the Development Parcel P.A.E. shall be fixed at that location.
- 9. DTSC Approval of Development Parcel P.A.E. The Parties understand and agree that the Development Parcel P.A.E. is subject to approval by DTSC. NorthPoint agrees to work diligently with DTSC to complete the risk assessment for the Development Parcel P.A.E. and associated trail alignment. NorthPoint further agrees to work diligently with DTSC in the future with respect to the location of the North Branch of the Development Parcel

STAFF REPORT NO. 69 (CONT'D)

Trail. The Parties agree that in the event DTSC approval cannot be obtained for any trail alignment for the public trail or public parking within the Land Use Covenant area, NorthPoint will have no further responsibility to implement the Development Parcel P.A.E. or construct the Development Parcel Trail or the Public Parking Lot, and all the provisions of the Agreement otherwise shall remain in full force and effect. Nothing in the Agreement precludes the development of a public trail or public parking within the Wetlands Parcel. NorthPoint shall cooperate in good faith with the design, implementation, and permitting of such a public trail and public parking, but NorthPoint shall bear no financial responsibility for the construction or permitting of that public trail or public parking, and NorthPoint shall bear no liability for any agency's failure to issue a permit for the public trail or public parking.

10. Potential Lease or Assignment of Public Access Easement. It is understood and agreed by the Parties that the Public Access Easement areas identified in the Agreement may be leased by the Commission to other public agencies, or the easements assigned to such agencies, including but not limited to EBRPD, with the exception that a lease to any agency other than EBRPD, the City of Oakley, the California Department of Fish and Wildlife, or the California Department of Parks and Recreation is subject to the advance written approval of NorthPoint, which shall not be unreasonably withheld. Any such lease or assignment shall be subject to Commission approval at a regularly noticed public meeting. The Parties understand and agree that the Commission has no obligation to develop, including construct a trail on, the Public Access Easement areas.
11. The Commission agrees to NorthPoint's reservation of certain rights with respect to the Wetlands Parcel and the Southeast Corner Parcel, specifically:
 - i. To use the Wetlands Parcel and Southeast Corner Parcel for mitigation activities, purposes, credits, and banking, so long as such activities, purposes, credits, and banking do not interfere or conflict with the Public Trust and public access to the Wetlands Parcel.
 - ii. To use, access, and maintain an existing outfall pipe extending from the portion of the Development Parcel east of Central Slough, to the Wetlands Parcel.
 - iii. To maintain and renegotiate an existing license between NorthPoint and a third party for the eastern portion of the Southeast Corner Parcel. The Public Access Easement granted to the Commission on the Southeast Corner Parcel does not include the portion of the

STAFF REPORT NO. 69 (CONT'D)

Southeast Corner Parcel that is currently under license.

- iv. To install, use, and maintain a future connection to the existing manhole located on the Southeast Corner Parcel. The existing manhole is located on the portion of the Southeast Corner Parcel that will be subject to a Public Access Easement in favor of the Commission.
- v. To retain the ability to outfall stormwater, install new stormwater outfall piping, or install stormwater connection to the existing storm sewer pipe or existing storm sewer manhole within the Public Access Easement for future buildings or development phases in the Development Parcel, within the sole discretion of NorthPoint. Following installation of such piping or connections, NorthPoint shall restore the affected land to its condition prior to the installations. The Commission warrants and agrees that the use of the Wetlands Parcel for the existing stormwater outfall, existing storm sewer pipe, and existing storm sewer manhole, and the future outfall, piping, and connections to them as warranted in NorthPoint's sole discretion for the development of the Development Parcel, are not an unreasonable interference with the Public Access Easement. NorthPoint may install such future piping and connections upon thirty (30) days written notice to the Commission's Executive Officer without further approval. No additional right of entry onto the Public Access Easement area will be required of NorthPoint.

ANALYSIS AND STAFF RECOMMENDATION:

The historic surveys and ownership history of the Subject Property reflect that the State does not have any right, title, or interest in the Development Parcel but may have a Public Trust interest in a portion of the Wetlands Parcel. Evidence does not exist that would clearly establish the historic extent of the State's Public Trust interest or the true character of the lands that were surveyed as S&O lands. While there are presently tidelands and submerged lands on the Wetlands Parcel, the evidence does not exist that would prove when those lands became tidelands and submerged lands, or whether they were appropriately surveyed and conveyed as S&O lands. Given the dearth of evidence, litigation of this matter would be time-consuming, costly, and uncertain. Staff recommends the proposed Litigation and Title Settlement Agreement as an expedient, efficient, and certain resolution of the existing title dispute.

The Development Parcel is a brownfield site that was historically used for chemical manufacturing, resulting in heavy contamination. A majority of the

STAFF REPORT NO. 69 (CONT'D)

Development Parcel is subject to the DTSC's Land Use Covenant. DTSC did not require any remediation on the Wetlands Parcel. NorthPoint and Chemours are best suited to conduct the continuing remediation and monitoring activities required at the Subject Property, including monitoring and maintenance of monitoring wells located on the Wetlands Parcel, making NorthPoint's retention of fee title to the Subject Property appropriate.

The resolution proposed provides a substantial public benefit and creates public access that did not previously exist. The Agreement includes the construction, as part of the current development, of a trail through the Subject Property, along with a designated paved parking lot for public access that will accommodate 15 cars. This allows vehicular and pedestrian access to the Wetlands Parcel and Southeast Corner Parcel so that the public may view and enjoy the wetlands.

The Public Access Easements to be conveyed by NorthPoint to the State also allow for the future extension of Big Break Regional Trail, which is being spearheaded by EBRPD, and which staff understands to be supported by the City. Big Break Regional Trail currently terminates east of the Subject Property, but the goal is to extend it west, to the Antioch/Oakley Regional Shoreline Park maintained by EBRPD.

The Commission is not terminating the Public Trust on any portion of the Subject Property, but it is assisting NorthPoint in clearing title to the Subject Property so that NorthPoint may proceed with its development.

Climate Change:

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The Subject Property is located on the San Joaquin River, in a tidally influenced site.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the "high emissions," "medium-high risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the location of the Subject Property. The San Francisco tide gauge was used for the projected sea-level rise scenario for the lease area as listed in Table 1.

STAFF REPORT NO. **69** (CONT'D)

Table 1. Projected Sea-Level Rise for San Francisco¹

Year	Projection (feet)
2030	0.8
2040	1.3
2050	1.9
2100	6.9

Source: Table 13, State of California Sea-Level Rise
Guidance: 2018 Update

Note: ¹ Projections are with respect to a 1991 to 2009 baseline.

Rising sea levels can lead to more frequent flood inundation in low-lying areas and larger tidal events. In addition, as stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, drought, extreme heat, and storms (especially when coupled with sea-level rise). In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Climate change and sea-level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. Near-coastal riverine areas will be exposed to increased wave force and run-up, potentially resulting in greater bank erosion than previously experienced. Finally, in rivers and tidally influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability and structure.

The Subject Property may experience periodic or continuous inundation with rising water levels and more frequent flooding, creating a public safety hazard. The San Joaquin River bank may be at risk of accelerated deterioration from higher and stronger currents and floods. But Sea-Level Rise modeling (using the Commission's Sea-Level Rise Viewer) for the Subject Property does not reflect any increased inundation or rise in water level even under a 6-foot rise scenario. The National Oceanic and Atmospheric Administration (NOAA) Office for Coastal Management Sea-Level Rise Viewer does not reflect any increased inundation or rise in water level at the Subject Property even under a 10-foot rise scenario (the maximum rise scenario allowed in the viewer).

The Parties nonetheless acknowledge that the Subject Property, including the Wetlands Parcel and the Development Parcel, may be subject to effects of climate change, including sea-level rise. In anticipation of this possibility, the Parties agree that should lands presently not subject to the common law Public Trust Easement become permanently inundated from waters of the San Joaquin River for more than 3 continuous years,

STAFF REPORT NO. 69 (CONT'D)

whether due to erosion, levee failure that is not repaired, or sea-level rise that results in the land being submerged or subject to the ebb and flow of the tide or below the then-existing elevation of ordinary high water mark, the Commission reserves its right to assert that the lands for so long as such conditions exist will be subject to the Public Trust. The Parties' reclamation rights pursuant to Civil Code Section 1015 shall be preserved. The Parties acknowledge and agree that NorthPoint has the right, and shall retain the right, subject to applicable permitting requirements, to install, maintain, repair, and replace fill and shore protection within the Development Parcel to preserve and maintain the upland character of the Development Parcel and prevent inundation of the Development Parcel, and no further authorization or approval from the Commission is required for the installation, repair, maintenance, or replacement of any such fill or shore protection. In the event the Development Parcel nevertheless becomes inundated, NorthPoint shall have the right to install, maintain, repair, or replace fill or shore protection to counteract the inundation within a reasonable period of time, which shall include all time periods during which NorthPoint is using good faith reasonable efforts to install, maintain, repair, or replace the fill or shore protection including but not limited to designing, seeking permits, obtaining bids, seeking financing, and sourcing materials.

Conclusion:

The Agreement results in a substantial gain and benefit to the public, creating public access to the San Joaquin River where previously none existed. In exchange, no Public Trust interest is forfeited or lost, but rather the State's lack of any right, title, or interest in a long-developed and contaminated brownfield property is confirmed. NorthPoint will retain fee title to the Subject Property, while several Public Access Easements will facilitate public enjoyment of the Wetlands Parcel from land. Staff recommends that the Commission find the Agreement to be in the State's best interests and authorize the Agreement.

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 6107 of such code, to enter into title settlements. Pursuant to Public Resources Code section 8601(d), "Title settlements" means exchanges pursuant to Section 6307 and 6307.1 and any agreements between the commission and others as a part of, or in lieu of, litigation in compromise settlements of public trust title questions, including real property exchanges, boundary determinations, or other means leading to

STAFF REPORT NO. **69** (CONT'D)

a resolution of those questions and the necessary conveyances or other documentation provided by the agreements.”

2. The proposed action is consistent with Strategy 1.3 of the Commission’s Strategic Plan to protect, expand, and enhance appropriate public use and access to and along the State’s inland and coastal waterways.
3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as statutorily exempt. The project is exempt because it involves settlement of title and boundary disputes.

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

4. The construction of the sidewalk and parking lot contemplated by the Agreement, as part of the Public Access Easement across the Development Parcel, are within the permissible scope of the Development Project approved by the City in December 2019, for which an Environmental Impact Report was prepared.
5. The Attorney General’s Office has reviewed and approved the substance of the Agreement in the form on file at the Commission.
6. Staff has been communicating with DTSC staff and, while nothing is final, the current understanding is that the Development Parcel P.A.E. and trail trajectory as set forth in the Agreement and proposed to DTSC are generally acceptable to DTSC, so long as NorthPoint completes a formal request for a variance to the Land Use Covenant.

EXHIBIT:

- A. Map of Subject Property, Designating Parcels and Easements

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE’S BEST INTERESTS:

Find that the proposed litigation and title settlement agreement is consistent with the Public Trust needs and values at this location; is consistent with the common law Public Trust doctrine; and is in the best interests of the State.

STAFF REPORT NO. **69** (CONT'D)

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, settlement of title and boundary disputes.

AUTHORIZATION:

1. Authorize the Executive Officer or her designee to approve the final drafts of all legal descriptions and exhibits and take all necessary and appropriate action on behalf of the Commission to execute, acknowledge, accept, and record that certain agreement entitled "Litigation and Title Settlement Agreement Between the California State Lands Commission and NP Oakley, LLC (NorthPoint) Regarding Certain Lands in Oakley, Contra Costa County, CA," wherein:
 - 1) a Settlement Line is agreed upon across the Subject Property demarcating the maximum historic extent of the Public Trust Easement, dividing the Subject Property into the Wetlands Parcel waterward of the Settlement Line (across portions of which the Parties agree the historic Public Trust Easement existed) and the Development Area landward of the Settlement Line (across which the Parties agree the historic Public Trust Easement did not exist), with NorthPoint to retain fee title to the entire Subject Property;
 - 2) the Public Trust Easement is impressed on the Wetlands Parcel;
 - 3) NorthPoint will convey and the Commission will accept a Public Access Easement on the Wetlands Parcel;
 - 4) NorthPoint will convey and the Commission will accept a Public Access Easement on a portion of the Southeast Corner Parcel, which shall remain and be conserved in its natural condition, for the enjoyment of the public;
 - 5) if NorthPoint or an affiliated company acquires an interest in the real property situated between the Subject Property and Big Break Road, NorthPoint will cooperate diligently and in good faith with the Commission and other specified entities to facilitate as reasonably possible a public pedestrian right-of-way

STAFF REPORT NO. 69 (CONT'D)

across that intervening property to connect the Development Parcel Trail to Big Break Regional Trail;

6) the Commission will quitclaim all right, title, or interest in the Development Parcel;

7) NorthPoint will convey and the Commission will accept the Development Parcel P.A.E., consisting of pedestrian and vehicular access and parking, including specifically the Development Parcel Trail and Public Parking Lot;

8) the North Branch of the Development Parcel Trail will be in the nature of a "floating easement" in order to best facilitate connection to the Wetlands Parcel;

9) the Parties will work diligently with DTSC to secure approval of the Development Parcel P.A.E., and will agree on alternate trail trajectories to the extent necessary;

10) the Commission may lease the Public Access Easement areas to other public agencies, or assign the easements to such agencies, including but not limited to the EBRPD, as limited in the Agreement; and

11) NorthPoint will reserve certain rights with respect to the Wetlands Parcel and the Southeast Corner Parcel.

2. Authorize the Executive Officer or her designee to approve the final drafts of all deeds, easements, and acceptances associated with the Agreement and take all necessary and appropriate action on behalf of the Commission to execute, acknowledge, accept, and record such deeds, easements, and acceptances.
3. Authorize the Executive Officer to accept the conveyance of the Public Access Easement on the Wetlands Parcel, the Public Access Easement on the Southeast Corner Parcel, the Development Parcel P.A.E., including the floating easement for the North Branch of the Development Parcel Trail, and the potential future pedestrian right-of-way on the real property situated between the Subject Property and Big Break Road.
4. Authorize the Executive Officer to grant or deny consent for the relocation of the Development Parcel Trail or Public Parking Lot to

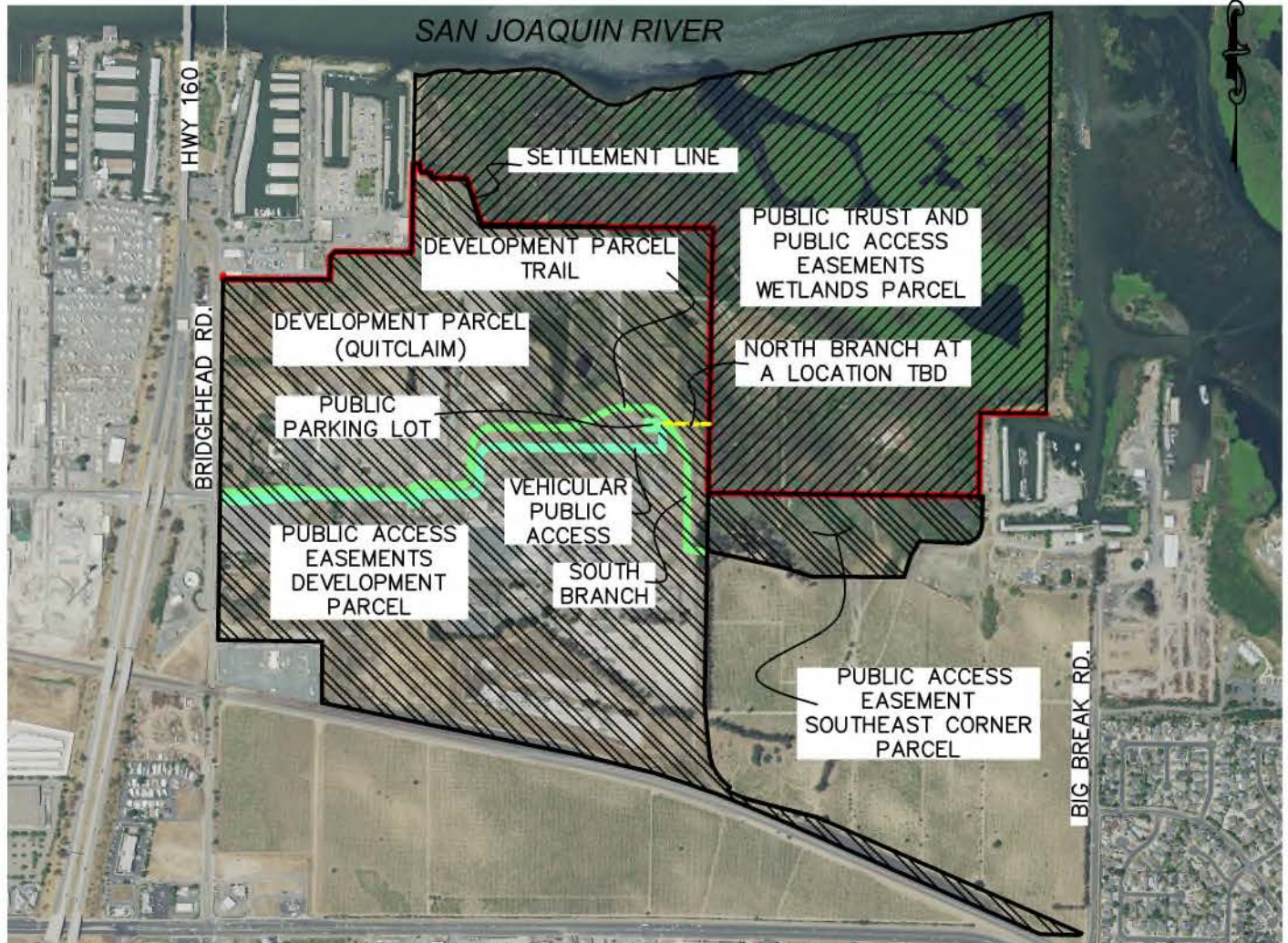
STAFF REPORT NO. **69** (CONT'D)

a Substantially Similar Location within the Development Parcel, in the event a 30-Day Notice is served by NorthPoint as the Development Project progresses.

5. Find that the Wetlands Parcel is impressed with the Public Trust Easement.
6. Authorize the Executive Officer or her designee and the Office of the Attorney General to take all other necessary or appropriate action on behalf of the Commission to effectuate the terms and conditions of the Agreement, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary to carry out the Agreement, and to appear on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement.

NO SCALE

SITE



6000 BRIDGEHEAD ROAD, OAKLEY

NO SCALE

LOCATION



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 27240
NP OAKLEY, LLC
TITLE SETTLEMENT
CONTRA COSTA COUNTY



MJF 4/10/2020