

## Memorandum

To: CHAIR AND MEMBERS  
Airspace Advisory Committee

Date: April 1, 2003

File No. EXCESS LAND

From: STEVEN M. IKEDA   
Senior Right of Way Agent  
Division of Right of Way

Subject: Direct Exchange to Mills Land & Water Company

### RECOMMENDATION:

We are requesting that the Airspace Advisory Committee (AAC) consider and recommend for approval to the California Transportation Commission (CTC) an exchange transaction with Mills Land and Water Company (ML&W). The State will receive approximately 23.54 acres of land and \$1,500,000.00 in cash from ML&W, and ML&W would receive approximately 12.22 acres in exchange. This transaction is in the State's best interest on several grounds:

- The State will receive fair market value (in terms of land and cash) as measured by an independent appraisal (attached);
- This exchange also renders moot the cloud on the State's title of the subject property raised by the Manger's Bill (attached);
- An existing legal cloud – also a product of the Mangers' Bill – on a separate State-owned adjacent wetland excess property would be lifted;
- Liability and responsibility for two tenancies – a boat storage/sales yard and a mobile home park – would be transferred to ML&W;
- The risk to the State of being required to prematurely develop and dedicate the State-owned adjacent wetlands excess parcel would be eliminated;
- The exchange will allow the State to be a good neighbor to the City of Huntington Beach in their stewardship of environmentally sensitive lands;
- The property to be conveyed to the State provides mitigation lands for future transportation projects that affect wetlands within the region and possibly elsewhere in the State.

### BACKGROUND:

The excess land parcel was acquired from ML&W in the mid-1960's for the proposed Coastal Freeway. The route was rescinded in the 1970's. At that time ML&W sued Caltrans for inverse condemnation for loss of special benefits that would have accrued to their property from the Coastal Freeway project. This action was mitigated by special legislation known as the "Mangers Bill" which granted ML&W certain rights

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to repurchase their former holdings. A judgment in the inverse case was never entered and the suit expired under the five-year statute of limitations.

In 1976 the California Coastal Act was enacted, which required Huntington Beach to prepare and submit a Local Coastal Program for the California Coastal Commission's review and approval. ML&W and other landowners filed lawsuits in the early 80's against the city challenging the city's jurisdiction for land use regulation under the Coastal Act on the grounds that their plans for development pre-dated the Coastal Act. The City of Huntington Beach's Local Coastal Program was certified by the California Coastal Commission in 1987, but because all of ML&W's undeveloped land was certified as 'wetland/conservation' under the local plan, ML&W's ability to develop their remaining lands was severely limited. The State's excess land acquired from ML&W was also designated 'wetland/conservation' except for a portion along Pacific Coast Highway, which includes 4.14 acres improved with Cabrillo Mobile Home Park (45 units), 3.31 acres of land leased to Action Boats and 4.77 acres of vacant land.

In 1989 ML&W again sued the City of Huntington Beach over land development issues. Settlement negotiations eventually involved the State. Eventually, the City of Huntington Beach and ML&W approached the State with the following proposal: (1) the State would convey the subject 12.22 acre excess property to ML&W; (2) ML&W would convey to the State 23.54 acres of degraded wetland property; (3) ML&W would release an adjacent State owned wetland excess parcel - previously owned by ML&W - from the "Manger's Bill" requirement; (4) ML&W would drop their suit against the City of Huntington Beach; and (5) the City of Huntington Beach would grant waivers of substantial development fees to ML&W for a proposed development project at a nearby property.

As a result of the proposal, the State hired Thomas Pike, MAI, to value all parcels to be exchanged. ML&W hired Mike Waldron, MAI with the same assignment. The approved conclusion of value in the State's appraiser's report was for a value of the State's property of \$2,735,000, and a value to MLW property of \$1,235,000, for a surplus to the State of \$1,500,000. Although we do not know the value conclusions ML&W's appraiser reached, we have been informed that he concluded both properties were of equal value. Department staff and MLW engaged in negotiations and reached agreement - subject to CTC approval - for an exchange of properties plus a cash payment to the Department of \$1,500,000.00.

### ANALYSIS:

Manger's Bill - The "Manger's Bill", as interpreted by Caltrans Legal, requires the State to offer ML&W their former land holdings at fair market value prior to an open market offering. ML&W interpret the bill to mean that the State must sell back former holdings at a negotiated price. The exchange transaction represents an opportunity for

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the State to divest a long-held, title clouded and litigated excess parcel at fair market terms, as determined by an independent appraiser. If this transaction is not executed by the State, the Manger's Bill will remain in effect and the State will be required to offer the property to ML&W at fair market value prior to a public sale.

State Tenancies- Portions of the State's excess parcel are leased to Action Boat Sales and Cabrillo Mobile Home Park Owner's Association. By selling the excess parcel subject to the two tenancies, the State would be relieved of these management responsibilities.

Wetlands Benefits - A benefit accrues to the State by acquiring ML&W's 23.54 acre degraded wetlands. This acquisition would give the State ownership and control of a single wetlands system totaling over 43 acres, which could be used as mitigation credit for future transportation projects. There is currently a project within District 12 at Pacific Coast Highway (PCH) at Bolsa Chica, where 3.8 acres of coastal wetlands will be affected (lost). Because the California Coastal Commission currently requires a minimum of a 4:1 ratio for wetland impacts, the Department will need to mitigate over 15.2 acres for the project. The cost of purchasing 1 acre of coastal property within this area could conceivably be in the range of \$5 Million, as estimated by a local Realtor in Newport Beach. This is because there are no other privately owned "open space" properties that exist for restoration within the vicinity. Hence, it is conceivable that areas zoned for development would have to be purchased and converted to wetlands. Additionally, it would cost approximately \$75,000 to \$100,000 per acre to create coastal wetlands habitat. This exchange would provide the Department with an opportunity to save over \$75M in mitigation costs for that project alone.

An additional argument for acquiring the ML&W degraded wetlands property is to protect the adjacent State-owned excess wetland property from a premature remediation and dedication requirement. Absent the proposed exchange, ML&W has indicated their intention to sell their property either to a wetlands conservancy or developer for immediate remediation. The State could then be forced – by political pressure or public opinion - into participating in a premature and costly project to improve degraded wetlands in concert with the buyer of ML&W's wetlands. This is because the State wetlands and ML&W wetlands are part of a larger system which would need to be mitigated at the same time. In this scenario, the property would also ultimately be wetlands, but it would leave the State without wetland mitigation land (or credit) for future transportation projects since it would already have been committed for mitigation use.

Hazardous Waste – Hazardous waste studies are in process on all properties involved in the exchange. The exchange transaction agreement requires that each party will be responsible for delivering their property free of hazardous waste, if any.

**CONCLUSION:**

The proposed exchange transaction with ML&W represents the most beneficial and highest return to the State given all of the above circumstances. The State will receive fair market value for the property with an otherwise clouded title and have the maximum opportunity to leverage these wetlands properties for future mitigation needs. It is therefore requested that the AAC recommend approval of this transaction to the CTC.

Attachments

An act relating to state highways, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 21, 1978. Filed with Secretary of State August 21, 1978.]

*The people of the State of California do enact as follows:*

SECTION 1. Notwithstanding any other provision of law or regulation, the Department of Transportation shall first offer for sale, at fair market value as determined by the department, to the Mills Land & Water Company the approximate 28.5 acres portion of the northwest quarter and southwest quarter of Section 13, Township 6 South, Range 11 West, in the Rancho Las Bolsas the department acquired from the company by judgment on May 11, 1965.

SEC. 2. Within 60 days after receipt of the first offer of the Department of Transportation to sell the approximate 28.5 acres, the Mills Land & Water Company shall notify the department of its acceptance of that offer, or any subsequent offer from the department, and any conditions attached to the acceptance.

SEC. 3. After acceptance of the department's offer by the Mills Land & Water Company and opening of escrow, the department shall, from 45 days after opening of escrow until the closing of escrow and transfer of title, join in the execution of any documents or applications reasonably related to efforts by the company to obtain necessary local zoning approvals, use permits, and other land use approvals for development of the property.

The department shall bear none of the expenses or costs of obtaining such approvals and permits.

SEC. 4. The acceptance of the offer to purchase the approximate 28.5 acres pursuant to Section 1 of this act by the Mills Land & Water Company shall constitute a settlement of any and all claims the company may have against the State of California arising from the acquisition and retention of the parcel by the Department of Transportation prior to its resale to the company, including the dismissal with prejudice of any and all actions brought by the company against the state with respect to the parcel.

SEC. 5. When the Department of Transportation acquired the approximate 28.5 acres in 1965 for the construction of State Highway Route 1 as a freeway, no severance damages were granted to the Mills Land & Water Company for the remainder of its holdings, on the basis that frontage roads which would provide access to the remaining holding would be constructed.

The California Highway Commission, on October 15, 1975, adopted a resolution to rescind its prior authorization to construct the Route 1 freeway and to authorize the disposition of property acquired for such construction.

The sale of the parcel to any entity other than the company would result in its holding being landlocked.

Because of the unique problem presented in this situation, the legislature finds and declares that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution and that the enactment of this act as a special law is necessary for the solution of this problem.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order that the disposition of the approximate 28.5 acre parcel acquired from the Mills Land & Water Company by the Department of Transportation for the construction of State Highway Route 1 as a freeway be resolved without the necessity of a lawsuit, it is necessary that this act take effect immediately.