




**EAST BAY REGIONAL PARK DISTRICT  
BOARD OF DIRECTORS MEETING  
AGENDA STAFF REPORT**

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<b>DATE</b>	September 17, 2024
<b>TITLE</b>	Authorization to Accept from BNSF Railway Company a Permanent Trail and EVMA Easement to Keller Beach, a 1.94-Acre Fee Parcel, and a Deed Quit Claiming BNSF's Easement at Miller/Knox Regional Shoreline
<b>DIVISION</b>	Acquisition, Stewardship, and Development
<b>FROM</b>	Becky Bremser, Chief of Land Acquisition Ken Wysocki, Assistant General Manager, Acquisition, Stewardship & Development
<b>APPROVED</b>	Sabrina Landreth, General Manager 

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**RECOMMENDATION**

The General Manager recommends that the Board of Directors accept from BNSF Railway Company (BNSF) conveyance of the following interests in real property: (1) a permanent trail and emergency vehicle easement to Keller Beach; (2) a 1.94-acre fee portion of BNSF's Ferry Point property commonly referred to as "No Man's Land," and (3) quit claim of a railway easement previously held by BNSF on East Bay Regional Park District (Park District) property at Miller/Knox Regional Shoreline.

**BACKGROUND**

The East Bay Regional Park District ("Park District") opened what is now called the Miller/Knox Regional Shoreline in 1972. In 1991, the Park District acquired Ferry Point, consisting of 10-acres of dry land and 18-acres of subtidal land from Atchison, Topeka and Santa Fe Railway Company ("AT&SF") to expand the park. At the time, Ferry Point was largely abandoned, former industrial property that had previously been served by the AT&SF railway. When the Park District acquired Ferry Point, AT&SF retained an easement over the railroad tracks on the property ("the Railway Easement") ostensibly to provide rail service to neighboring industrial properties. The Railway Easement by its own terms would terminate when no longer needed for rail service.

In 2017, the Park District filed a lawsuit against BNSF (successor to AT&SF) to quiet title to the Railway Easement because it had not been used for rail services for more than 20 years and the Park District wanted to complete plans to improve park facilities, including a segment of the San Francisco Bay Trail between Keller Beach and Ferry Point Beach. BNSF took the position that the Railway

Easement was not terminated so long as it continued to have a rail purpose. In November 2019, the Contra Costa County Superior Court granted the Park District's motion for summary adjudication agreeing with the Park District that the Railway Easement had terminated based on nonuse.

On November 15, 2022, and prior to entry of Judgment in the lawsuit, the Park District Board approved a settlement of the lawsuit between the Park District and BNSF. The Settlement Agreement provided BNSF would convey to the Park District fee title to "No Man's Land", an approximately 1.94-acre area south of a concrete barrier at the BNSF railroad track and north of Milepost 1191, adjacent to Park District property. The Settlement Agreement also provided BNSF would convey to the Park District a permanent trail easement to provide public access to Keller Beach. Access to Keller Beach was previously provided pursuant to a 1977 lease, which was terminable by BNSF at any time on 30-days' notice. The Park District agreed to pay BNSF \$750,000 for No Man's Land and the permanent trail easement. In accordance with the Court's order granting summary adjudication, BNSF agreed to provide the Park District a deed quieting title to the Railway Easement. The Settlement Agreement was signed by both parties and contingent upon BNSF applying to the Surface Transportation Board (STB) for approval to abandon its rail line upon the Railway Easement. STB issued a decision approving the abandonment on May 30, 2024, and that decision is now final.

The Board Operating Guidelines provide that the Board of Directors is responsible for approving acquisitions of real property. Additionally, Government Code section 27281 requires a certificate of acceptance evidencing a formal resolution by which a government agency receives by deed real property rights. For these reasons, staff recommends that the Board adopt a Resolution evidencing the acquisition of No Man's Land, the permanent trail easement to Keller Beach, and the deed quieting title to the Railway Easement.

### **FISCAL IMPACT**

There is no fiscal impact associated with this item. In accordance with the previously approved Settlement Agreement with BNSF, the Park District made a \$750,000 payment into an escrow with BNSF on August 15, 2024, for purchase of the fee parcel and the permanent trail and EVMA easement. The proposed Resolution will allow the escrow to move towards closing and finalization of the Park District's 2022 settlement agreement with BNSF.

### **ATTACHMENT**

Map of Fee Parcel and Trail Easement



**EAST BAY REGIONAL PARK DISTRICT  
RESOLUTION NO. 2024 – 9 -  
SEPTEMBER 17, 2024**

**AUTHORIZATION TO ACCEPT FROM BNSF RAILWAY COMPANY A  
PERMANENT TRAIL AND EVMA EASEMENT TO KELLER BEACH, A 1.94-ACRE  
FEE PARCEL, AND A DEED QUIT CLAIMING BNSF'S EASEMENT AT  
MILLER/KNOX REGIONAL SHORELINE**

**WHEREAS**, the East Bay Regional Park District (Park District) in the early 1990s purchased unused and largely abandoned property from Atchison, Topeka and Santa Fe Railway Company ("AT&SF") for development of the Miller/Knox Regional Shoreline; and

**WHEREAS**, AT&SF retained an easement over the property to provide rail service to neighboring properties ("the Easement"), and the Easement was to terminate when no longer needed for rail service; and

**WHEREAS**, the Park District filed a lawsuit against BNSF Railway Company ("BNSF", successor to AT&SF) in 2017 to quiet title to the Easement because it was no longer being used for rail services, and the Contra Costa County Superior Court in November 2019 granted the Park District's motion for summary adjudication establishing that the Easement had been terminated; and

**WHEREAS**, the Park District Board approved a settlement of the lawsuit between the Park District and BNSF on November 15, 2022, providing that BNSF would, in exchange for the Park District's payment to BNSF of \$750,000, (1) convey to the Park District fee title to "No Man's Land", an approximately 1.94-acre area south of a concrete barrier that crosses BNSF railroad track on BNSF's Ferry Point Property, and (2) convey to the Park District a permanent trail easement to provide public access to Keller Beach; and

**WHEREAS**, BNSF also agreed to provide the Park District a deed quieting title to the Easement; and

**WHEREAS**, the Settlement was contingent upon BNSF obtaining approval from the Surface Transportation Board (STB) to abandon its rail line on the Easement, and STB issued a decision approving the abandonment on May 30, 2024; and

**WHEREAS**, acceptance of these interests in real property is categorically exempt from California Environmental Quality Act (CEQA) requirements for preparing and processing environmental documentation pursuant to Section 15325 of State CEQA Guidelines which in part exempts the transfer of ownership of an interest in land (such as an easement right) for park

purposes;

**NOW, THEREFORE BE IT RESOLVED**, that the Board of Directors of the East Bay Regional Park District hereby authorizes the General Manager to accept (1) fee title to the approximately 1.94-acre area commonly known as “No Man’s Land, (2) a permanent trail easement to Keller Beach; and (3) a deed quieting title to the BNSF’s Easement at Miller/Knox Regional Shoreline; and

**BE IT FURTHER RESOLVED**, that the General Manager is hereby authorized and directed, on behalf of the Park District and in its name, to execute and deliver such documents and to do such acts as may be deemed necessary or appropriate to accomplish the intentions of this resolution.

Moved by Director \_\_\_\_\_, and seconded by Director \_\_\_\_\_, and adopted September 17, 2024, by the following vote:

FOR:

AGAINST:

ABSTAIN:

ABSENT: