

MINUTE ITEM

This Calendar Item No. 36  
was approved as Minute Item  
No. 36 by the State Lands  
Commission by a vote of 2  
to 0 at its 2-28-80  
meeting.

CALENDAR ITEM

36.

2/80  
W 22173  
Cook

U. S. SURPLUS - ALAMEDA

By Notice of Surplus Determination dated January 11, 1980, the United States General Services Administration has determined that a 215.96 acre parcel of submerged land in San Francisco Bay, located southwesterly, of the Alameda Naval Air Station, and being a former portion of the station is surplus and subject to disposal.

The parcel is herein referred to as "the surplus parcel". The surplus parcel consists of the southerly portion of Contra Costa County Assessor's Parcel 074-0890-001. It is shown on plats (Quad & Airphoto) prepared by staff which are attached hereto as Exhibits A and B which are incorporated herein by reference. The surplus parcel is also identified by the United States General Services Administration in its Notice of Surplus Determination - Government Property, dated January 11, 1980, a copy of which is on file with the Commission. The Notice has given the parcel the number, 9-N-CA-639-F.

The federal notice states that the surplus parcel is zoned "R-1, one family residential".

The Commission staff has conducted a study of the title evidence relevant to ownership of the parcel and has reached the following findings and conclusions.

1. The parcel consists of, and at all times since 1850 has consisted, of submerged lands covered by about 9 to 16 feet of the tidal waters of San Francisco Bay;
2. Title to all or most of the parcel is asserted by the United States by reason of a deed from the City of Alameda dated December 2, 1930, which was recorded March 31, 1931 in 2588 OR 44, Contra Costa Recorder, as well as by later deeds necessary to correct descriptions.
3. The U. S. took only that title the City of Alameda owned and had power to convey.
4. The City title and its power to convey stemmed solely from a 1917 State legislative trust grant, Ch. 594, Stats. 1917. This was expressly set forth in the City deeds

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to the U. S.

5. The City title was only that of trustee (as expressly stated in the trust grant statute) to hold the land for public trust purposes.

6. The legislative trust grant contained express limitations, conditions and reservations of interests by the State.

7. The State in its trust grant and the City in its deed to the United States were both subject to implied limitations, conditions and reservations of the California Constitution, including the limitations on disposal of this land to private parties, protections of public access, and the required reservation of the absolute right of the public to fish thereon. See Art. X, Sections 3 and 4, and Art. 1, Section 25. Whether expressed or not, these constituted a part of the statute and the deed.

8. The State's trust grant to the City did not result in a termination of the public trust on submerged lands.

9. The trust grant statute authorized the City, as trustee to convey the parcel to the U. S. forever for public purposes of the United States. This appears to constitute a trust limitation on the federal use.

10. The City, as well as its grantee, the United States, received title subject to substantial express and implied in law reservations, limitations and conditions.

11. The United States, on the basis of both the express and implied limitations, reservations and conditions of its own source of title, has no power to convey the parcel into private ownership. As a result, it would be unable to carry its surplus disposal through to the end, if this should become necessary.

12. Staff is of the view that the deed to the United States should properly be construed as conveying the fee title to the United States, subject to the said limitations, reservations and conditions, "for only so long as the parcel was used for public purposes of the United States", and that title would revert to the State subject to the City Legislative Trust Grant at the end of such use; and that, in any event, the United States' title has at all times been subject to substantial State City reversionary and reserved interests both on, as well as outside the record.

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13. The General Services Administration disputes the State's conclusions and asserts U. S. title, free of any State City interest, and contends that the parcel can be disposed of to private parties, or otherwise, consistent with the Federal surplus property laws.

14. The State Department of Fish and Game has applied for the parcel. However, if the application is approved, the Department will obtain title in a proprietary capacity, probably subject to substantial reservations and limitations, and the question of existing State sovereign ownership will not be resolved.

15. The Commission staff has unsuccessfully requested the General Services Administration to quitclaim the parcel to the State Lands Commission free of U. S. interest as a reasonable means of resolving the matter with the least public cost. It is believed that it is in the State's interest that the open waters of San Francisco Bay be held in the State's sovereign ownership subject to the public trust, and the Legislative Trust Grant to the City. As the parcel is surplus and is no longer required for public purposes of the United States, it would appear that this simple solution would be in the public interest. By reason of the limitations on the U.S. title and the State's reversionary rights, it appears that there is no legal impediment to such Federal action.

16. This is not a project within the meaning of ~~CEQA~~.

EXHIBITS:           A: Parcel Plat (Quad)  
                      B: Parcel Plat (Airphoto)

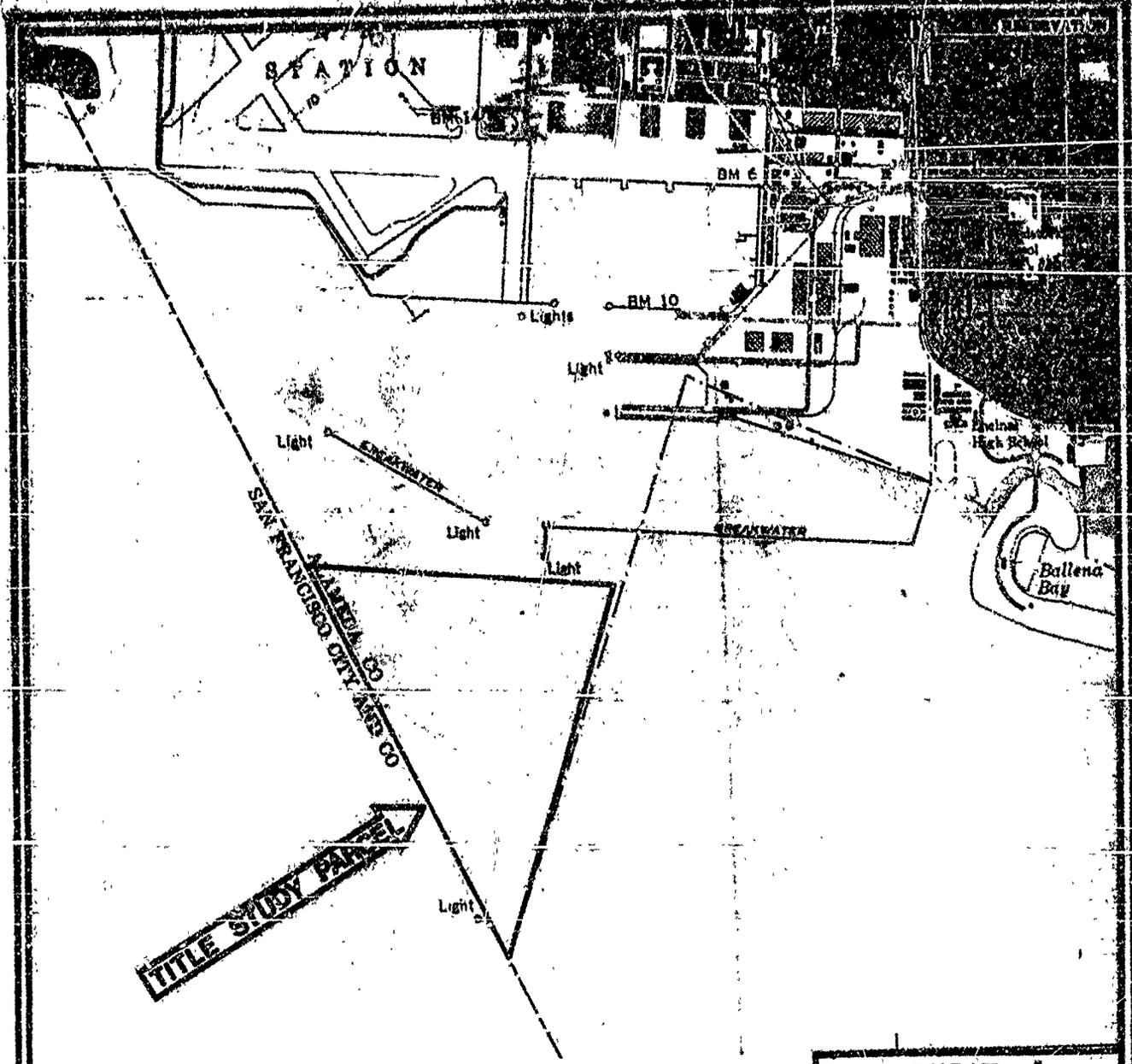
IT IS THEREFORE RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT AN EIR HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH REPORT IS NOT REQUIRED UNDER THE PROVISIONS OF PRC 21065, 14 CAL. ADM. CODE 15037 AND 2 CAL. ADM. CODE 2903(d).
2. HEREBY REQUEST THE UNITED STATES TO QUITCLAIM OR OTHERWISE CONVEY ALL RIGHT, TITLE AND INTEREST OF THE UNITED STATES TO THE STATE LANDS COMMISSION BY AND ON BEHALF OF THE STATE OF CALIFORNIA IN ITS SOVEREIGN CAPACITY, SUBJECT TO ANY RIGHTS OF THE CITY OF ALAMEDA AS TRUSTEE FOR THE STATE.
3. ACCEPT SUCH CONVEYANCE AND AUTHORIZE ITS RECORDATION.

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4. AUTHORIZE THE COMMISSION STAFF AND/OI THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS WHICH MAY BE REASONABLY NECESSARY OR CONVENIENT TO IMPLEMENT THE COMMISSION REQUEST, INCLUDING BUT NOT LIMITED TO THE TRANSMITTAL OF THE REQUEST TO ANY FEDERAL OFFICIALS AS MAY BE DEEMED APPROPRIATE, AND TO THE EXECUTION OF DOCUMENTS OF TITLE, RECORDATION, AND ESCROW INSTRUCTIONS.

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NOTE:  
 Excess 215.96 Ac. parcel 9-N-Calif-639-F per Notice of Availability of Sept. 5, 1975, plotted from drawing by O. KAUL dated 10-10-75 attached to the Notice.

STATE LANDS COMMISSION  
 PORTION OF U.S.G.S. QUADRANGLE  
 OAKLAND WEST 1959  
 PHOTOREVISED 1968

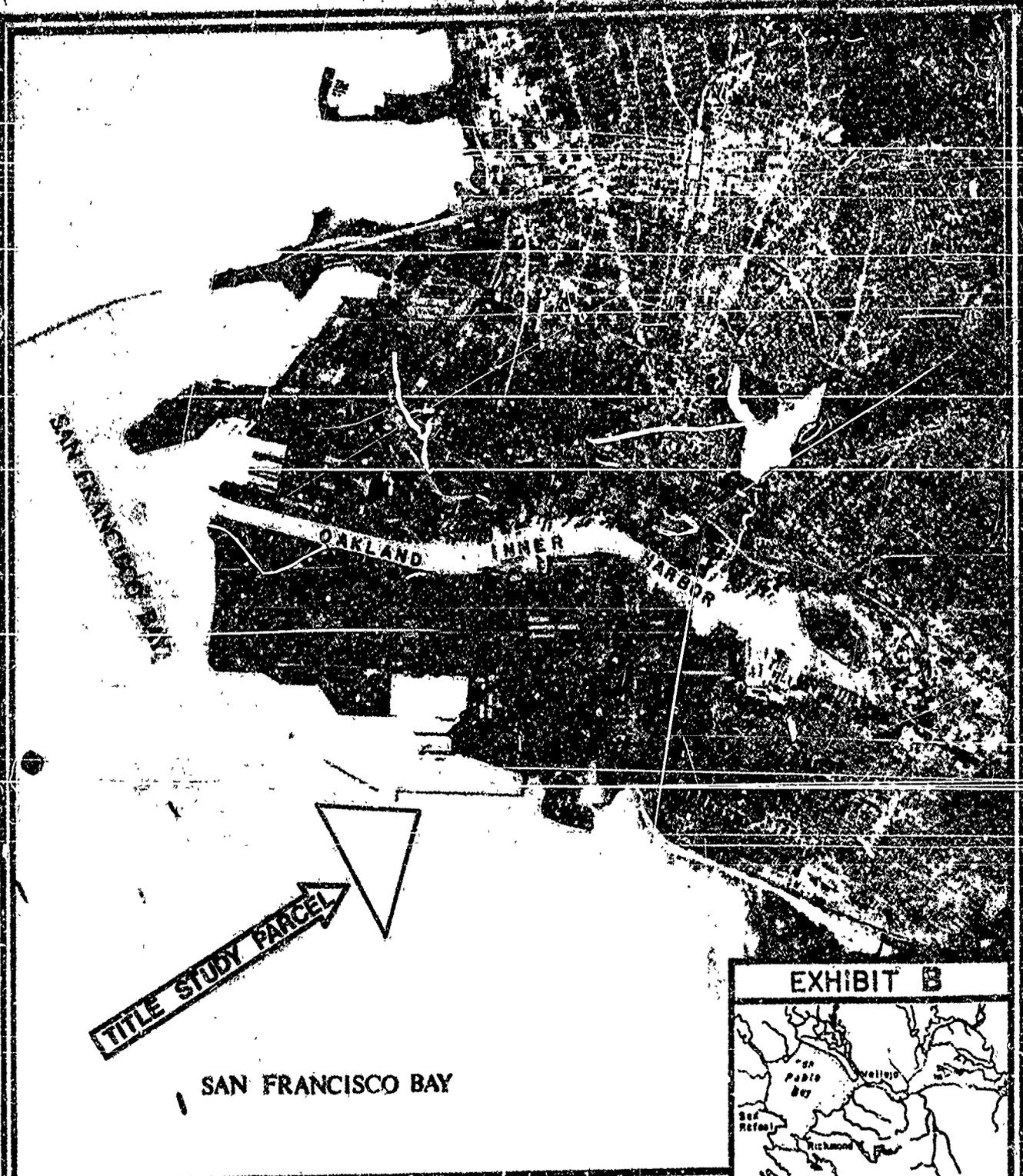
Prepared by: B Lee  
 Title Study: U S SURPLUS- ALAMEDA

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**TITLE STUDY PARCEL**

**SAN FRANCISCO BAY**

**STATE LANDS COMMISSION  
AIR PHOTO PLAT  
EXPOSURE NO. 8262 of NASA FLIGHT  
75-077 on May 28, 1975**

Prepared by: B. Lee

Rev: 2-1-80 A: 13  
Date: 5-17-79 S: 9

Title Study: U.S. SURPLUS - ALAMEDA

W 22173



Z SAN FRANCISCO