

MINUTE ITEM

This Calendar Item No. 28
was approved as Minute Item
No. 28 by the State Lands
Commission by a vote of 3
to 0 at its June 24, 1981
meeting.

CALENDAR ITEM

28

6/81
W 20832
Townsend

AMENDMENT TO TITLE SETTLEMENT AGREEMENT
(BLA 150)

PERTINENT BACKGROUND:

On April 28, 1976, the Commission entered into a Compromise Title Settlement Agreement (BLA 150) with Novato Center, a Limited Partnership. In the Agreement the State, in its sovereign capacity, received fee title to 278 acres of land, described in the Agreement, and subject to the public trust (depicted on the attached Plat of Settlement Parcels and referred to therein as Parcels B and C), to be owned by the State as land of the legal character of tidelands and submerged lands in exchange for clearing the title to 127 acres in Novato Center (also depicted on the attached Plat of Settlement Parcels, and referred to therein as Parcel A). The land is located in the Novato Creek flood plain north of State Highway Route 37. The Agreement was self-executing with respect to the conveyances. It was recorded February 28, 1977, in 3159/445, Marin County Records.

As a part of the Agreement, Novato Center reserved an easement to extract up to 500,000 cubic yards of fill material from Parcel B, at a royalty of \$0.10 per cubic yard. The fill material was to be used to raise the elevation of the Novato Center parcel (said Parcel A) for construction of a regional shopping center. The resulting pond to be created by the extraction would serve as a holding pond for flood control for water purity and for other environmental concerns; was not to exceed 37 acres; and its size and shape were to be according to the plans and specifications of the State.

As contemplated at the time of the Agreement, the Commission later issued a 66-year permit (PRC No. 5455.9) of Parcels B and C, to

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CALENDAR PAGE	137
MINUTE PAGE	1392

CALENDAR ITEM No. 28 (CONTD)

the Department of Fish and Game, for wildlife management and/or public recreation, and/or other like purposes consistent with the public trust. The Department of Fish and Game assumed the responsibility for the plans and specifications of the pond. The preliminary plans and specifications were completed by Novato Center and were approved by the Department of Fish and Game on February 4, 1981. It appeared unnecessary to complete the plans and specifications prior to completion of the permit process.

The reserved extraction easement was for a five-year period, which, at the time of the Agreement, was expected to constitute sufficient time for the State to prepare its plans for the pond, to enable Novato Center to pursue its Shopping Center permit requirements; and to remove the fill material. The permit process had not been completed however, and as a result, Novato Center had been unable to extract any of the fill.

On April 7, 1981, the Commission approved an amendment of the Boundary Line Agreement 150 (Minute Item 24) to extend the extraction easement for five years, with an increase in the royalty payment for the fill material from \$0.10 per cubic yard to \$0.15 per cubic yard.

Prior to executing the amended BLA of April 7, 1981, Novato Center was granted the permit from the Corps of Engineers necessary to commence work on the Novato Center project, and thus began finalizing the mitigation plans. In doing so, they found several areas (comprising approximately 8⁺ acres) within the 37-acre area, had already been excavated to maximum depth, prior to the title settlement, making the 37-acre area inadequate to provide the 500,000 cubic yards of fill necessary for the Corps' requirements and permitted by the original and amended BLA.

As the preliminary plan stands, the excavation possible within the 37-acre limit would be approximately 330,000 cubic yards. Being

limited to depth, Novato Center has requested, subject to the approval of the Commission and the Department of Fish and Game, that they be allowed to increase the pond area to closer approach the originally contemplated 500,000 cubic yards.

The final plans including the increase in the pond size have been reviewed and approved by staff of the Department of Fish and Game, as required by the Settlement Agreement, and are on file in the Offices of the Commission.

In addition, the mitigation requirements of this Agreement shall not apply in the event no material is removed from Parcel B and no material from any source is placed on Parcel A.

The proposed Amended Agreement on file with the Commission when it approved Minute Item No. 24, dated April 7, 1981, amending said Agreement (BLA 150), was not executed by Novato Center pending resolution of the request for the above-mentioned changes. Thus, Novato Center has returned the unexecuted Agreement to the Commission in order that the additional amendments be incorporated, comprising one mutually agreeable document.

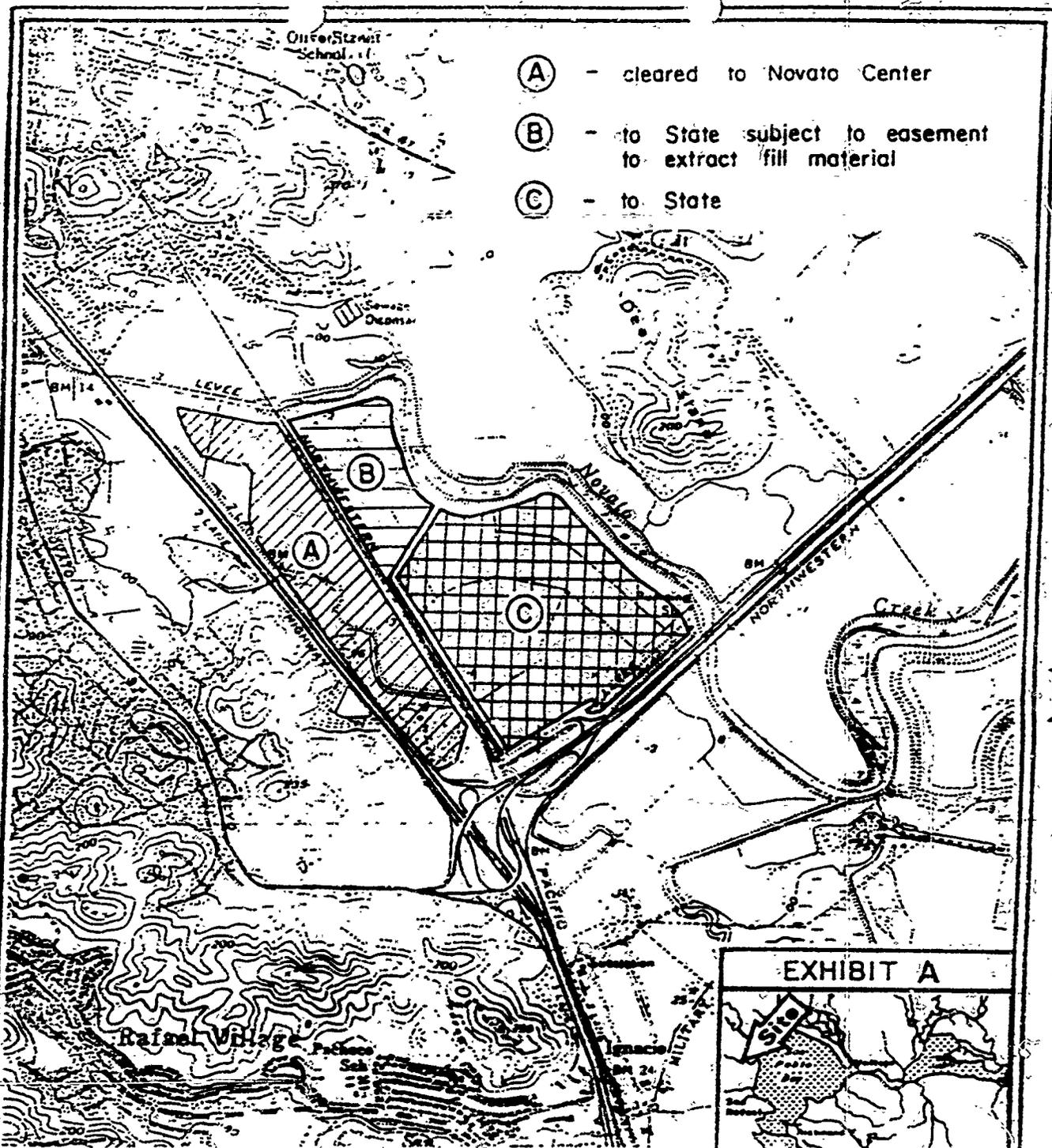
EXHIBITS: A. Plat of Settlement Parcels.

IT IS RECOMMENDED THAT THE COMMISSION:

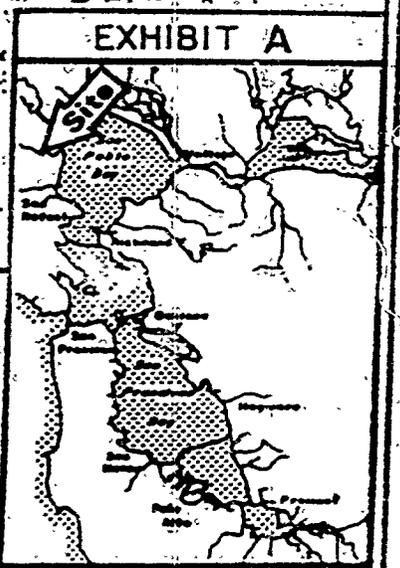
1. DETERMINE THAT THE COMMISSION MADE ENVIRONMENTAL FINDINGS, PURSUANT TO CEQA, RELATIVE TO THIS PROJECT AT ITS MONTHLY MEETING ON APRIL 7, 1981, (MINUTE ITEM NO. 24), AND THAT THESE NEWLY PROPOSED CHANGES DO NOT REQUIRE ADDITIONAL ENVIRONMENTAL FINDINGS.
2. APPROVE THE AMENDMENT TO THE SETTLEMENT AND LAND EXCHANGE AGREEMENT (BLA 150) IN SUBSTANTIALLY THE SAME FORM AS THE COPY ON FILE WITH THE COMMISSION. SAID AMENDMENT WILL INCREASE THE SIZE OF THE POND AS SHOWN ON THE FINAL MITIGATION PLAN ON RECORD IN THE OFFICES OF THE COMMISSION, AND PROVIDE THAT THE MITIGATION REQUIREMENTS OF THIS AGREEMENT SHALL NOT APPLY IN THE EVENT NO MATERIAL IS REMOVED FROM PARCEL B AND NO MATERIAL FROM ANY SOURCE IS PLACED ON PARCEL A.

CALENDAR ITEM NO. 28 (CONTD)

3. AUTHORIZE THE STAFF OF THE STATE LANDS COMMISSION AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE TRANSACTION DESCRIBED ABOVE, INCLUDING BUT NOT LIMITED TO APPEARANCES IN ANY LEGAL PROCEEDINGS BROUGHT CONCERNING THE ABOVE TRANSACTION.



- (A) - cleared to Novato Center
- (B) - to State subject to easement to extract fill material
- (C) - to State



STATE LANDS COMMISSION

PLAT OF SETTLEMENT PARCELS

Prepared by: jsf Rev. Date: 3-25-81 A: 9 S: 2

Title Study: Novato Center

W 20832

25 N 58 E 14
 SECTION 141
 TOWNSHIP 25 N RANGE 14 E
 COUNTY PAGE 1396