

MINUTE ITEM

This Calendar Item No. 41
was approved as Minute Item
No. 41 by the State Lands
Commission by a vote of 3
to 0 at its 12/17/81
meeting.

CALENDAR ITEM

12/17/81
W 22833
Stevenson
Horton
SUL 77
G 02-04
W 22798

EXCHANGE AGREEMENT

SUMMARY OF TITLE DISPUTE:

A title dispute exists between the Richmond Redevelopment Agency (AGENCY), the City of Richmond (CITY) and the State Lands Commission (STATE) as to a parcel of filled land (TRUST TERMINATION PARCEL) located within the Richmond Marina development, Richmond Inner Harbor. The TRUST TERMINATION PARCEL is shown in its general location on Exhibit A and described in Exhibit B, both Exhibits being incorporated as a part of this Calendar Item by this reference. It comprises approximately 43 acres of land and is separated from the present waterway by filled Board of Tidelands Commissioners lots. The TRUST TERMINATION PARCEL was patented in 1864 to J. M. Tewksbury in swamp and overflowed land sale No. 149, Contra Costa County. In the following decade, the land bordering S&O 149 on three sides was sold as Board of Tidelands Commissioners lots. Chapter 311 of the Statutes of 1913 granted in trust to the City of Richmond sovereign lands interests in the historic Tidelands within the TRUST TERMINATION PARCEL.

The AGENCY now holds record title to the TRUST TERMINATION PARCEL by purchase from Santa Fe Railroad and claims that its title is free and clear of any sovereign lands interest of the STATE and CITY. The TRUST TERMINATION PARCEL is slated for redevelopment as part of the Richmond Marina. Part of it is to be improved with residences, part with public road and walkways, and the remainder is to be left as open space and parks.

The staff of the State Lands Commission has conducted a study of the title evidence relating to the TRUST TERMINATION PARCEL which shows that:

A 10, 11, 12
S 7, 8, 9

-1-

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1. The TRUST TERMINATION PARCEL lies entirely within the perimeter description of S&O No. 149;
2. In its last natural condition, S&O 149 was covered, at least partially, by tidal sloughs;
3. The precise extent to which the TRUST TERMINATION PARCEL was subject to tidal action is uncertain;
4. The tidelands within the TRUST TERMINATION PARCEL have been entirely filled and are now cut off from tidal waters;
5. The City of Richmond holds in trust a granted lands fee interest in former tidelands within the TRUST TERMINATION PARCEL under Chapter 311 of the Statutes of 1913, as amended, subject to the supervisory and reversionary rights of the STATE.

PROPOSED SETTLEMENT:

The AGENCY has proposed to settle this title dispute by entering into an Exchange Agreement with the STATE and CITY in the form of an agreement now on file at the office of the Commission and incorporated as a part of this item by this reference. The Agreement, if implemented, will do the following:

1. The CITY will quitclaim to the STATE its granted lands interest within the TRUST TERMINATION PARCEL;
2. The STATE will then quitclaim to the AGENCY its right, title, and interest existing by virtue of its sovereignty to the TRUST TERMINATION PARCEL;
3. The AGENCY will purchase for the STATE an undivided 6.20 percent share of a LAND BANK PARCEL at Hayward shown in its general location on the attached Exhibit C and described in the attached Exhibit D, both Exhibits being incorporated as a part of this Calendar Item by this reference. The LAND BANK PARCEL

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was approved by the State Lands Commission at its September 29, 1981 meeting; and

4. The AGENCY will provide the STATE a standard form of C.L.T.A. title insurance insuring the State's sovereign interest in a 6.20 percent share of the land bank parcel.

The staff of the State Lands Commission has evaluated the evidence and legal issues bearing upon the sovereign lands claim in the trust termination parcel and has applied that evaluation to its appraised value. The staff concludes that:

1. The LAND BANK PARCEL at Hayward is of benefit to the public trust because of its usefulness for marsh habitat and ecological study;
2. Public access needs in the TRUST TERMINATION PARCEL have been already met by BCDC's access requirements for approval of the Marina Project;
3. The value of a 6.20 percent share of the land bank parcel equals or exceeds that of sovereign land interests in the TRUST TERMINATION PARCEL.

AB 884: N/A.

EXHIBITS: A. TRUST TERMINATION PARCEL Plat.
B. TRUST TERMINATION PARCEL Description.
C. LAND BANK PARCEL Plat.
D. LAND BANK PARCEL Description.

IT IS THEREFORE RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE PROPOSED EXCHANGE AGREEMENT IS IN THE BEST INTEREST OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION; TO ENHANCE THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND UPLAND; FOR THE PROTECTION, PRESERVATION AND ENHANCEMENT OF THE TIDELANDS AND SUBMERGED LANDS AND PUBLIC ACCESS THERETO AND PUBLIC USE THEREOF PURSUANT TO THE PUBLIC TRUST; THAT IT WILL NOT INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING

IN THE WATER INVOLVED; AND THAT THE REAL PROPERTY TO BE RECEIVED BY THE STATE IS OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF THE STATE'S INTEREST IN THE LAND TO BE RELINQUISHED.

2. FIND THAT THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE RESPECTING THE PRIVATE-STATE TITLE WITHIN THE SUBJECT PARCEL; THAT THE PROPOSED EXCHANGE AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED; THAT IT IS IN LIEU OF THE COSTS, DELAYS AND UNCERTAINTIES OF TITLE LITIGATION; THAT IT IS CONSISTENT WITH AND IS AUTHORIZED BY THE REQUIREMENTS OF LAW INCLUDING SECTION 6307 OF THE P.R.C., AS WELL AS THE OTHER PROVISIONS OF DIVISION 6 THEREOF, AND IS CONSISTENT WITH THE STATE'S POWER TO RESOLVE AND SETTLE A CONTROVERSY IN LIEU OF LITIGATION; THAT UPON RECORDATION OF THE AGREEMENT AND CONSISTENT WITH THE TERMS THEREOF, THE TRUST TERMINATION PARCEL IS FOUND TO HAVE BEEN IMPROVED, FILLED, AND RECLAIMED AND HAS BEEN THEREBY EXCLUDED FROM THE PUBLIC CHANNELS AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING, AND IS NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS, AND IS FREED FROM THE PUBLIC TRUST FOR COMMERCE, NAVIGATION, FISHING, AND RECREATION.
3. FIND THAT BECAUSE THIS TRANSACTION IS IN SETTLEMENT OF A TITLE DISPUTE THE PROVISIONS OF CEQA ARE INAPPLICABLE.
4. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGEMENT, AND RECORDATION ON BEHALF OF THE COMMISSION OF THE EXCHANGE AGREEMENT IN SUBSTANTIALLY THE SAME FORM AS THE PROPOSED AGREEMENT ON FILE WITH THE COMMISSION.
5. AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION, AND/OR THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE STATE LANDS COMMISSION, INCLUDING, BUT NOT LIMITED TO, THE EXECUTION, ACKNOWLEDGEMENT AND RECORDATION OF DOCUMENTS OF TITLE, CONVEYANCES, STIPULATIONS, ESCROW INSTRUCTIONS, DEEDS, AGREEMENTS, CERTIFICATES OF ACCEPTANCE AND CONSENTS TO RECORDATION, AND SUCH OTHER DOCUMENTS AS MAY BE REASONABLE AND CONVENIENT TO CARRY OUT THE SAID EXCHANGE AGREEMENT AND LEASE; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER THEREOF.

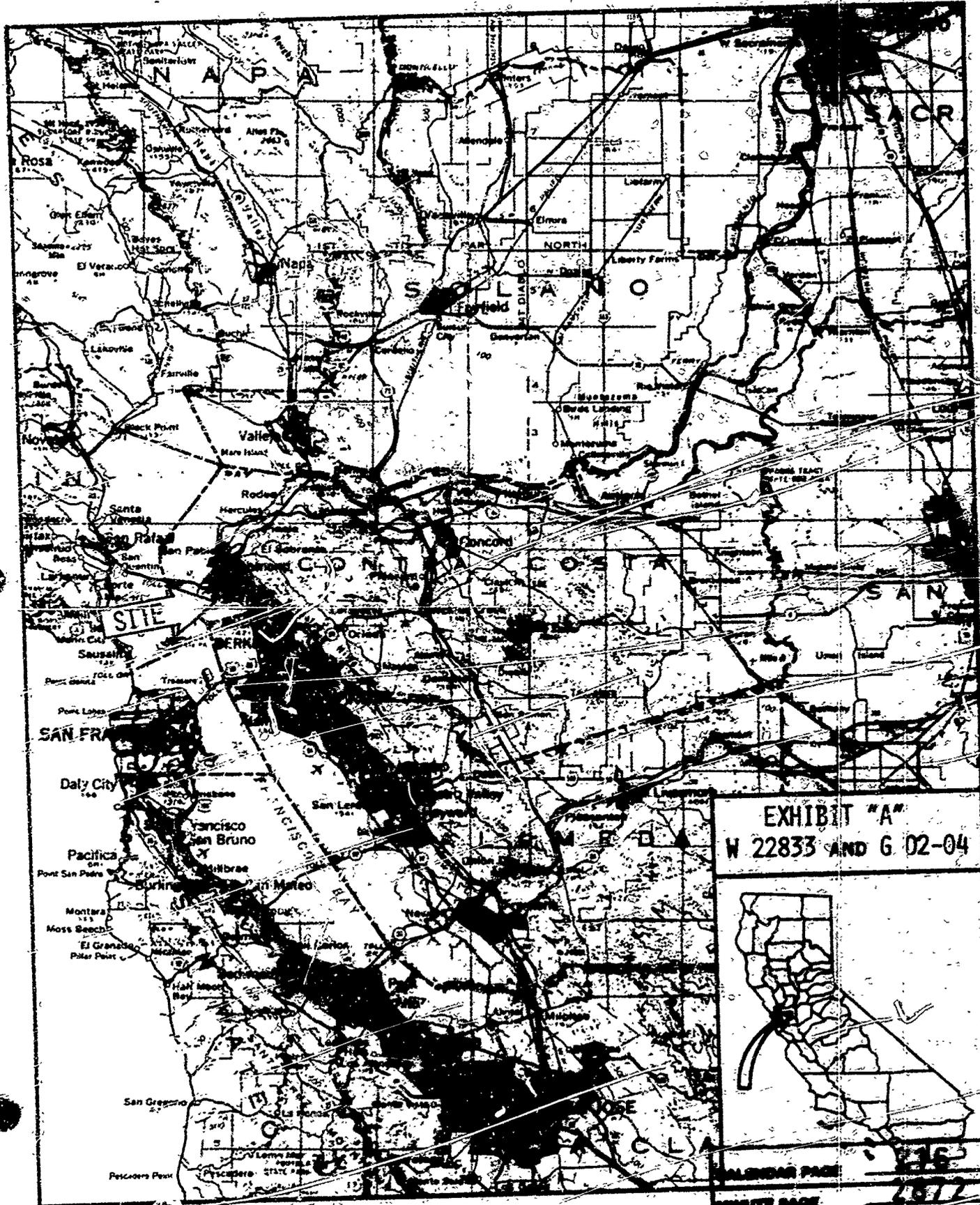
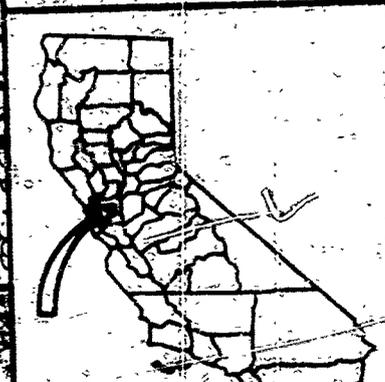


EXHIBIT "A"
 W 22833 AND G 02-04



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EXHIBIT "B"

LAND DESCRIPTION

W 22833
G 02-04

A parcel of land situated in the City of Richmond, Contra Costa County, California, described as "Swamp and Overflowed Lands Survey No. 149, Contra Costa County" patented to Jacob M. Tewksbury on December 20, 1854, and recorded June 15, 1878, in Book T, page 337, of Official Records in the Office of the Recorder for Contra Costa County as said Swamp and Overflow Survey is shown on that map entitled "Map No. One of Salt Marsh and Tide Lands Situated in the County of Contra Costa, State of California" on file in the Office of the California State Lands Commission.

END OF DESCRIPTION

PREPARED DECEMBER 9, 1981 BY TECHNICAL SERVICES UNIT, ROY MINNICK, SUPERVISOR.

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EXHIBIT "C"
W 22798



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EXHIBIT "D"

LAND DESCRIPTION

W 22798

All that certain real property in the township of Eden, County of Alameda, State of California, described as follows:

A portion of the land conveyed to the City of Hayward by deed dated June 19, 1978, and recorded August 3, 1978, in Reel 5516 of Official Records of Alameda County, Image 237 (78-148844), described as follows:

COMMENCING at the most northern corner of said land, being the most eastern corner of the 235-acre, more or less, parcel of land conveyed to the City of Hayward by deed dated May 21, 1965, and recorded September 24, 1965, in Reel 1604 of Official Records of Alameda County, Image 69 (AX 132369), said corner being marked by a bolt shown on Record of Survey No. 508, filed in Book 3 of Record of Surveys at page 32, in the Office of the Alameda County Recorder; run thence southeasterly along the general eastern line of said land, (78-148844) 914.22 feet to an angle point therein marked by a "Found Concrete Monument per R/S - 3/32" shown on said Record of Survey No. 508, said point being the POINT OF BEGINNING of this description; and running thence southwesterly parallel with the southeastern line of said 235-acre parcel of land S 66° 16' 58" W 993.54 feet to the northern line of the southeast 1/4 of the northeast 1/4 of Section 36, Township 3 South, Range 3 West, Mount Diablo Meridian; thence west along last said line 350.00 feet to the western line of said southeast 1/4, being the western line of said land (78-148844); thence south along last said line 2640.00 feet to the southern line of said land; thence east along last said line 800.00 feet; thence N 45° E 650.00 feet to a line drawn south from the actual point of beginning; thence North 2580.00 feet to the point of beginning.

Containing 77.7 acres, more or less.

END OF DESCRIPTION

PREPARED DECEMBER 9, 1981 BY TECHNICAL SERVICES UNIT, ROY MINNICK, SUPERVISOR.

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