MINUTE ITEM
This Calendar Item No. 35
was approved as Minute Item
No. 35 by the State Lands
Commission by a vote of 2
to 0 at its 11/20/86
meeting

CALENDAR ITEM
35

A 9

S 3

11/20/86
W 23881
G 06-03
Townsend
Stevenson
Rusconi

REQUEST FOR AUTHORIZATION TO SETTLE TITLE TO AN APPROXIMATELY 8.5-ACRE PARCEL OF LAND, CITY OF SAN RAFAEL, MARIN COUNTY, IN EXCHANGE FOR A $103,000 CONTRIBUTION TO THE LAND BANK FOR THE CITY OF SAN RAFAEL AND FOR CERTAIN DEEDED INTERESTS IN LAND

In August of this year, the staff of the State Lands Commission was contacted by the City of San Rafael regarding the title to a 8.5-acre parcel of land adjoining the present San Rafael Canal. The parcel is now used for a shopping center with truck loading access at the rear along the present Canal. The shopping center is in the record ownership of Montecito Properties (a co-partnership consisting of Theodore Rosenberg, Edward Goodman, David Cohn, Abe Blumenfeld, Gordon Blumenfeld and Philip Corin) and Standard Brands Paint Co. of California The interests of Montecito Properties are scheduled for sale by the end of the year to Seagate Investments which plans to update the center. Montecito Properties and Standard Brands Paint Co. of California will be referred to jointly in this calendar item as PRIVATE PARTIES.

Exhibit "B" is attached to this calendar item and is incorporated by reference. It is a reference map which shows in a general way the various parcels which comprise the settlement area. The parcels which are to be retained by the PRIVATE PARTIES are named TRUST TERMINATION PARCELS and, under this proposal, are to be cleared of public trust interests held by the State and by the City of San Rafael as its legislative grantee under Ch. 83, Statutes of 1923, as amended.

(PAGES 92-92.7 ADDED 11/19/86)

The staff of the Commission has completed analysis of the title to the TRUST TERMINATION PARCELS which shows that:

1. In its natural state, San Rafael Creek traversed the TRUST TERMINATION PARCELS;

2. In its natural state, San Rafael Creek traversed the TRUST TERMINATION PARCELS and was below the line of mean high tide;

3. In 1870, George Allardt surveyed the San Rafael Canal within San Rafael Creek on behalf of the Board of Tide Land Commissioners. Allardt also surveyed and numbered lots adjoining the San Rafael Canal. These lots are depicted on Board of Tide Land Commissioners map dated May 10, 1871 and named Map No. 2 of Salt Marsh and Tidelands Situate in the County of Marin, State of California.

4. In 1871, the Board of Tide Land Commissioners issued deeds to certain lots or parts of lots lying between Allardt's San Rafael Canal and property included within Swamp and Overflowed lands sales. Allardt's San Rafael Canal was reserved from public sale and was retained by the State as a channel for public navigation.

5. By Chapter 83, Statutes of 1923, the State of California granted in trust to the City of San Rafael all tide and submerged land, whether filled or unfilled, within the City's boundaries as they then existed. Those City boundaries took in the TRUST TERMINATION PARCELS;

6. In 1955, the City of San Rafael executed and had recorded a deed from it to the Harbor Development Company which included the TRUST TERMINATION PARCELS. Apparently, the City was unaware of the historic character of San Rafael Creek and Canal. Until that time, the City had operated its municipal marina on the site. The property was subsequently filled and developed as a shopping center. It is the position of staff that any conveyance of the TRUST TERMINATION PARCELS free of sovereign tide and submerged lands interests was ineffective as contrary to California statutory and constitutional law barring such sales. Also, such a sale is barred by the specific terms of the legislative grant to the City of San Rafael.

It is the position of the PRIVATE PARTIES that, in their natural condition, the TRUST TERMINATION PARCELS were above the line of mean high tide. To the extent that the TRUST TERMINATION PARCELS may have been subject to mean high tides, the PRIVATE PARTIES assert absolute private title to the TRUST TERMINATION PARCELS based upon Swamp and Overflowed Patents Nos. 18 and 28 for Marin County, a Board of Tide Land Commissioners Sale found at Page 594, Book I of Deeds for Marin County, and the deed from the City of San Rafael to Harbor Development Company to which the PRIVATE PARTIES are successors in interest

To resolve this impasse, the staff of the Commission has completed an appraisal and legal analysis of this matter. The staff has concluded that the value of remaining sovereign interests in the TRUST TERMINATION PARCELS is less than or equal to $103,000 in addition to the interests in land which the PRIVATE PARTIES will convey under the proposed Agreement.

The PRIVATE PARTIES, the City of San Rafael, and the staff have reached a settlement of this dispute which has been memorialized in a title settlement Agreement. The Agreement utilizes Chapter 1742, Statutes of 1971, which authorizes the City to settle title to historic tide or submerged lands within the City's grant which (a) have been filled in connection with the development of the San Rafael Canal; (b) which are no longer below the line of mean high tide; and (c) which are no longer necessary or useful for commerce, navigation or fisheries. The consideration provided in an agreement terminating the public trust interests is required to be approved by the State Lands Commission. The Agreement has been approved by the San Rafael City Council.

The basic terms of the Agreement in this case are as follows:

1. The City of San Rafael and the State of California will quitclaim any remaining sovereign interests in the TRUST TERMINATION PARCELS to the PRIVATE PARTIES. The State will issue patents conveying its interests.

2. The PRIVATE PARTIES will quitclaim their interests in the GRANTED LAND PARCELS to the City of San Rafael as land held under the 1923 grant, subject to reversionary and supervisory rights reserved to the State by that act. The GRANTED LANDS PARCELS, shown for reference on Exhibit "B" to this item, are parcels of land lying between the mean high tide line of the present Canal as surveyed by the City and the waterward limit of private record title held by the PRIVATE PARTIES.

3. The PRIVATE PARTIES will grant pedestrian access easements in the PEDESTRIAN ACCESS EASEMENTS. These easements lead from Second Street to the GRANTED LANDS PARCELS on the present waterfront and continue along the waterfront. The access easements will be held by the City as granted land subject to the State's supervisory and reversionary powers. The title settlement agreement contemplates that the north line of the easements along the Canal may be relocated to the as-built location of a public walkway which the PRIVATE PARTIES intend to construct along the present Canal.

4. THE PRIVATE PARTIES will contribute $103,000 to the San Rafael Land Bank Fund account created by joint instructions from the City and the staff of the State Lands Commission. Funds will be released from the account only upon the joint instruction of the City and State for the purchase of land in the City of San Rafael useful for public trust purposes. Any property so purchased will be held as granted land of the legal character of tide and submerged lands and pursuant to Chapter 83, Statutes of 1923.

The staff of the Commission recommends the approval and execution of the proposed Agreement substantially in the form now on file in the Commission's offices. The Agreement will allow the private development of a tract not now amenable to public use while preserving public access though the property to the present waterway and along the waterway. The Agreement will also establish title in the City and State to the present waterway. At the same time, the Agreement will contribute funds to the City for its program to acquire other land along the present waterway for public parks and accessways.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutorily exempt project. The project is exempt because it involves the settlement of title and boundary problems.

   Authority: P.R.C. 21080.11.

EXHIBITS: A. Location Map.
B. Site Map for Reference Only.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.

2. AUTHORIZE THE EXECUTIVE OFFICER OR HER DESIGNEE TO EXECUTE AND TO DELIVER INTO ESCROW FOR RECORDATION IN THE OFFICE OF THE COUNTY RECORDER OF MARIN COUNTY, THE SUBJECT TITLE SETTLEMENT AGREEMENT IN A FORM SUBSTANTIALLY SIMILAR TO THAT NOW ON FILE WITH THE OFFICE OF THE STATE LANDS COMMISSION, AND PATENTS OF STATE SOVEREIGN INTERESTS IN THE TRUST TERMINATION PARCELS.

3. APPROVE THE EXECUTION OF THIS AGREEMENT BY THE CITY OF SAN RAFAEL AND THE QUITCLAIMING TO THE PRIVATE PARTIES OF ALL RIGHT, TITLE, AND INTEREST HELD BY THE CITY BY CHAPTER 83, STATUTES OF 1923, AS AMENDED.

4. FIND, UPON RECORDATION OF THE TITLE SETTLEMENT AGREEMENT AND PURSUANT TO CHAPTER 1742, STATUTES OF 1971, THAT:

   A. THE TRUST TERMINATION PARCELS HAVE BEEN FILLED AND RECLAIMED IN CONNECTION WITH THE DEVELOPMENT OF THE SAN RAFAEL WATERFRONT;

   B. THE TRUST TERMINATION PARCELS ARE NO LONGER BELOW THE PRESENT LINE OF MEAN HIGH TIDE;

   C. THE TRUST TERMINATION PARCELS ARE NOT NECESSARY OR USEFUL FOR COMMERCE, NAVIGATION, OR FISHERIES;

   D. THE TRUST TERMINATION PARCELS COMPRISE ONLY A SMALL PORTION OF LANDS LYING ALONG THE WATERFRONT OF THE SAN RAFAEL CANAL; AND

   E. THE PUBLIC TRUST FOR COMMERCE, NAVIGATION, AND FISHERIES AND ANY RIGHTS OF THE STATE AND THE CITY OF SAN RAFAEL BASED UPON CHAPTER 83, STATUTES OF 1923 (AS AMENDED) IN THE TRUST TERMINATION PARCELS ARE TERMINATED.

5. FIND, PURSUANT TO CHAPTER 1742, STATUTES OF 1971, THAT $103,000 AND THE INTERESTS IN LAND CONVEYED BY THIS AGREEMENT TO THE STATE AND TO THE CITY OF SAN RAFAEL ARE EQUAL TO OR GREATER THAN THE VALUE OF SOVEREIGN INTERESTS IN THE TRUST TERMINATION PARCELS AND THAT MONIES GENERATED BY THIS SETTLEMENT WILL BE DEPOSITED INTO THE SAN RAFAEL LAND BANK FUND CREATED PURSUANT TO MUTUAL INSTRUCTIONS OF THE CITY OF SAN RAFAEL AND THE STAFF OF THE STATE LANDS COMMISSION. THE FUND SHALL BE USED FOR THE PURCHASE OF LAND WHICH WILL TAKE ON THE LEGAL CHARACTER OF TIDE AND SUBMERGED LANDS GRANTED TO THE CITY OF SAN RAFAEL.

6. AUTHORIZE THE EXECUTIVE OFFICER OR HER DESIGNEE TO EXECUTE AND TO DELIVER FOR RECORDATION THOSE DOCUMENTS WHICH MAY BE NECESSARY TO THE RELOCATION OF THE NORTH LINE OF THE WATERFRONT PUBLIC ACCESS EASEMENTS TO THE AS-BUILT LOCATION OF A PUBLIC WALKWAY. WHEN AND IF THE RELOCATION OCCURS, THE CITY OF SAN RAFAEL AND THE EXECUTIVE OFFICER OR HER DESIGNEE SHALL TERMINATE SOVEREIGN RIGHTS IN THE FORMER LOCATION OF THE NORTH LINE OF THE PEDESTRIAN ACCESS EASEMENTS ALONG THE WATERFRONT AND WILL ACCEPT THE NEW LOCATION AS A GRANTED LANDS ASSET UNDER CHAPTER 83, STATUTES OF 1923.

7. AUTHORIZE THE EXECUTIVE OFFICER OR HER DESIGNEE AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS SHE/THEY DEEM NECESSARY OR APPROPRIATE TO EFFECTUATE THIS AGREEMENT INCLUDING REPRESENTATION OF THE COMMISSION IN ANY LEGAL ACTION TO DETERMINE THE LEGALITY OF THIS AGREEMENT.

(ADDED 11/19/86)

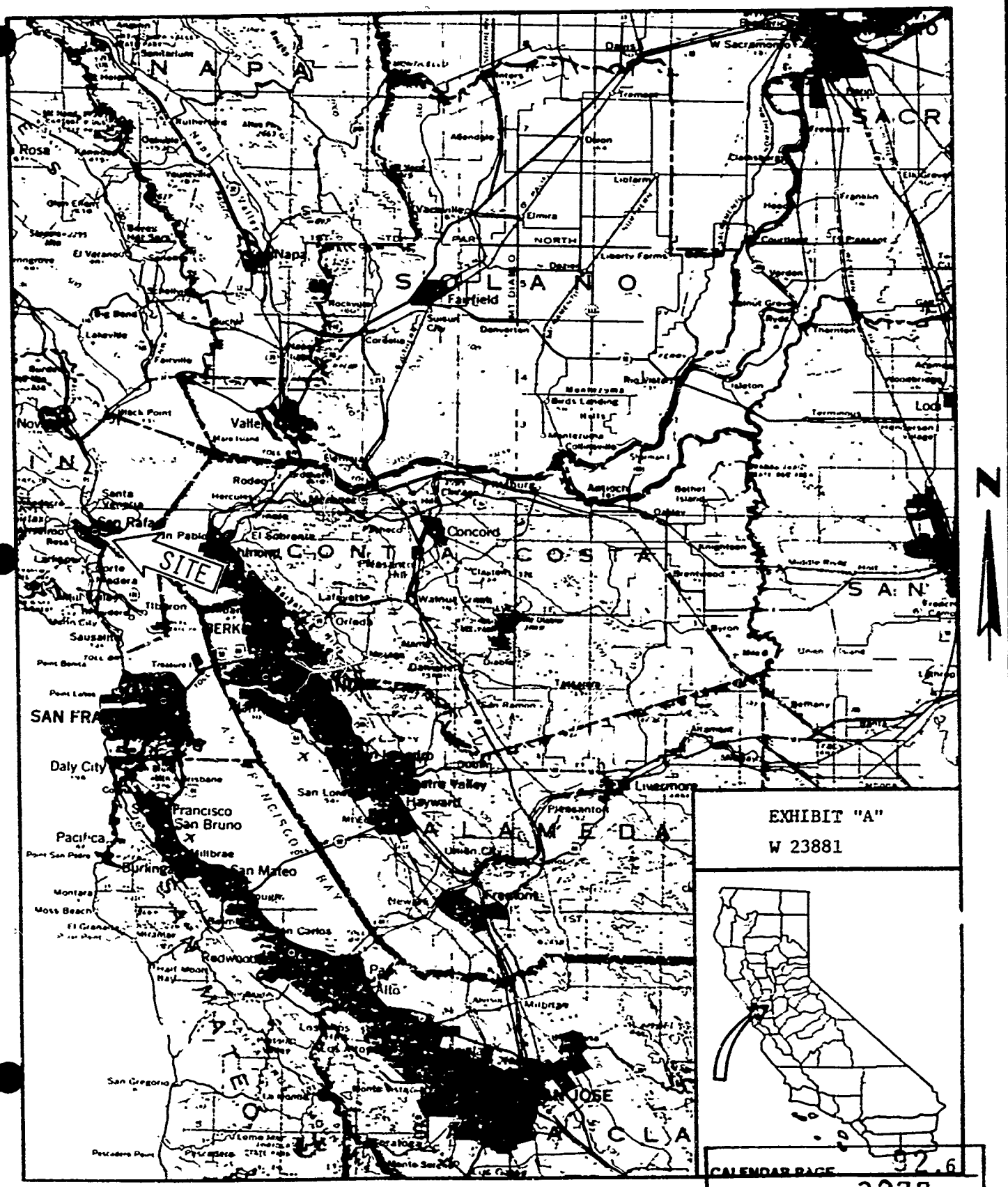
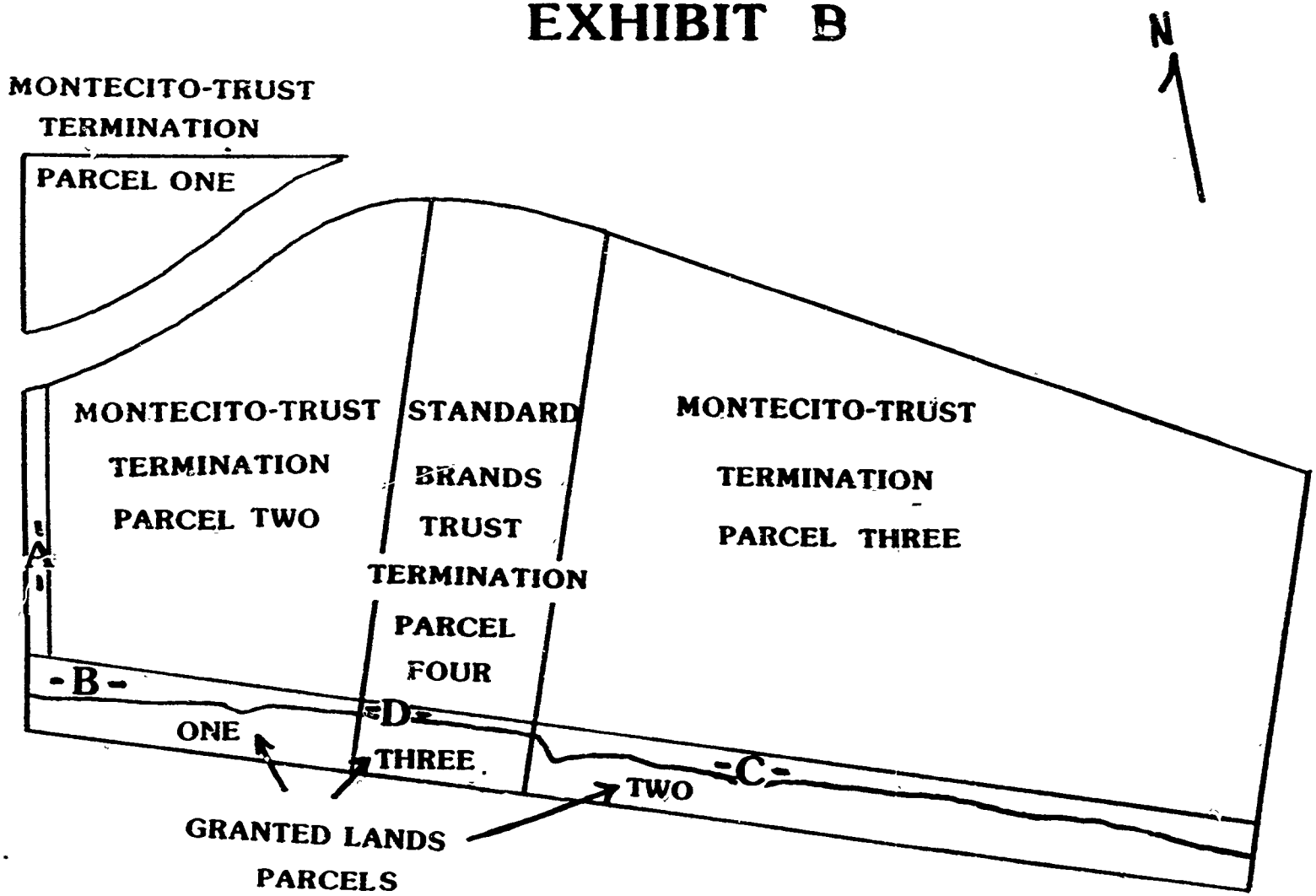

SITE
N
EXHIBIT "A"
W 23881
CALENDAR PAGE 92.6
MINUTE PAGE 3877

EXHIBIT B



PUBLIC PEDESTRIAN EASEMENT
PARCEL ONE -A, TWO -B, THREE-C, FOUR-D

CALENDAR PAGE
MINUTE PAGE
3878