

MINUTE ITEM 44
This Calendar Item No. 44
was approved as Minute Item
No. 44 by the State Lands
Commission by a vote of 2
to 0 at its 4-12-88
meeting.

CALENDAR ITEM

44

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REQUEST FOR AUTHORIZATION TO SETTLE TITLE TO APPROXIMATELY
20,459 SQUARE FEET OF LAND IN THE CITY OF SAN RAFAEL,
MARIN COUNTY IN EXCHANGE FOR A \$75,000 CONTRIBUTION
TO THE LAND BANK FOR THE CITY OF SAN RAFAEL AND
FOR REAL PROPERTY AND INTERESTS THEREIN

APPLICANT: George H. Dexter, Jr.
445 Francisco Boulevard
San Rafael, California 94901

Staff of the Commission has been contacted by Mr. George Dexter regarding title to a 20,459-square-foot parcel of land in the former bed of the San Rafael Canal of which he is now record owner. The subject parcel is shown for reference only on Exhibit "B" (which is attached and incorporated by reference as a part of this item) and will be referred to throughout this item as the TRUST TERMINATION PARCEL.

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

1. In its natural state, the TRUST TERMINATION PARCEL lay within San Rafael Creek or was part of an island within the Creek;
2. In its last natural condition, San Rafael Creek at the site of the TRUST TERMINATION PARCEL was below the line of ordinary high tide;
3. Several swamp and overflowed land sales were made of land in the proximity of the TRUST TERMINATION PARCEL, including Swamp and Overflowed Patent Nos. 18, 28, and 39 for Marin County. Because of conflicts in the descriptions of these sales at the site of the TRUST TERMINATION PARCEL, it is uncertain whether the TRUST TERMINATION PARCEL was within the perimeter of any of the sales.

(CALENDAR ITEM NO. 44 CONT'D)

4. In 1870, George Allardt surveyed the San Rafael Canal within San Rafael 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.
5. In 1871, the Board of Tide Land Commissioners issued deeds to lots or parts of lots lying along the San Rafael Canal. None of these deeds included the TRUST TERMINATION PARCEL.
6. 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.
7. A substantial part of the TRUST TERMINATION PARCEL remains subject to sovereign title interests held in trust by the City of San Rafael subject to supervisory and reversionary interests of the State of California.

It is the position of the PRIVATE PARTY that, in its last natural condition, the TRUST TERMINATION PARCEL was above the line of ordinary high tide. Further, the PRIVATE PARTY contends that any of the TRUST TERMINATION PARCEL which may have been below high tide was conveyed by Swamp and Overflowed Patent Nos. 18, 28 or 39 for Marin County or by the Board of Tide Land Commissioners sale found at Page 594, Book I of Deeds for Marin County. The position of the PRIVATE PARTY is that, if any public trust interests existed in the TRUST TERMINATION PARCEL, they have been extinguished by the filling of the property, payment of taxes, and land title curative acts of the Legislature.

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 PARCEL is \$178,184.44.

The PRIVATE PARTY, 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

(CALENDAR ITEM NO. 44 CONT'D)

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 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 PARCEL to the PRIVATE PARTY.
2. The PRIVATE PARTY will quitclaim his interests in the GRANTED LANDS PARCEL to the City of San Rafael as land held under the 1923 legislative grant, as amended and subject to reversionary and supervisory rights reserved to the State by that act. The GRANTED LANDS PARCEL, shown for reference on Exhibit "B" to this item, is a submerged parcel located in the current San Rafael Canal.
3. The PRIVATE PARTY will grant fee title to the UPLAND PARCEL to the City of San Rafael as lands of the legal character of tide and submerged lands held under the 1923 legislative grant, as amended and subject to reversionary and supervisory rights reserved to the State by that act. The UPLAND PARCEL consists of approximately 5,000 square feet adjacent to the GRANTED LANDS PARCEL and is shown for reference purposes only on Exhibit "B" to this item.
4. The PRIVATE PARTY will grant a PUBLIC PEDESTRIAN EASEMENT to provide access from Francisco Boulevard to the UPLAND PARCEL and the GRANTED LANDS PARCEL. This access easement will be held by the City of San Rafael as granted land subject to the State's reversionary and supervisory rights. The Agreement allows the PRIVATE PARTY to relocate, without State or City cost, the access easement if and when a new public street is built, opened, and dedicated across the PRIVATE PARTY'S parcel.

5. The PRIVATE PARTY will contribute \$75,000 to a land bank fund account created by joint instructions from the City and the State. Funds will be released from the account only upon the joint instruction of the City and the State for the purchase of land in the City of San Rafael that is useful for public trust purposes. Any property so purchased will be held as granted lands pursuant to Chapter 83 of the Statutes of 1923, as amended.

The staff of the Commission recommends the approval and execution of the proposed Agreement in a form similar to that 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 through the property to the present waterway. At the same time, the Agreement will contribute funds to the City for its program to acquire 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.

CALENDAR ITEM NO. 44 CONT'D)

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.
3. APPROVE THE EXECUTION OF THIS AGREEMENT BY THE CITY OF SAN RAFAEL AND THE QUITCLAIMING TO GEORGE H. DEXTER, JR. AND GERALDINE L. DEXTER 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 PARCEL HAS BEEN FILLED AND RECLAIMED IN CONNECTION WITH THE DEVELOPMENT OF THE SAN RAFAEL WATERFRONT;
 - B. THE TRUST TERMINATION PARCEL IS NO LONGER BELOW THE PRESENT LINE OF MEAN HIGH TIDE;
 - C. THE TRUST TERMINATION PARCEL IS NOT NECESSARY OR USEFUL FOR COMMERCE, NAVIGATION, OR FISHERIES;
 - D. THE TRUST TERMINATION PARCEL COMPRISES 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 PARCEL, ARE TERMINATED.
5. FIND, PURSUANT TO CHAPTER 1742, STATUTES OF 1971, THAT THE COMBINATION OF CASH AND REAL PROPERTY EQUALS \$178,184.44 WHICH IS AN AMOUNT EQUAL TO OR GREATER THAN THE VALUE OF SOVEREIGN INTERESTS IN THE TRUST TERMINATION PARCEL AND THAT MONIES GENERATED BY THIS SETTLEMENT WILL BE DEPOSITED INTO A 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.

(CALENDAR ITEM NO. 14 CONT'D)

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 PUBLIC ACCESS EASEMENT AND TO APPROVE THE VACATION OF THE PRIOR LOCATION OF THE PUBLIC ACCESS EASEMENT BY THE CITY OF SAN RAFAEL. 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 PEDESTRIAN ACCESS EASEMENT 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.

CALENDAR PAGE	<u>325.5</u>
MINUTE PAGE	<u>1210</u>

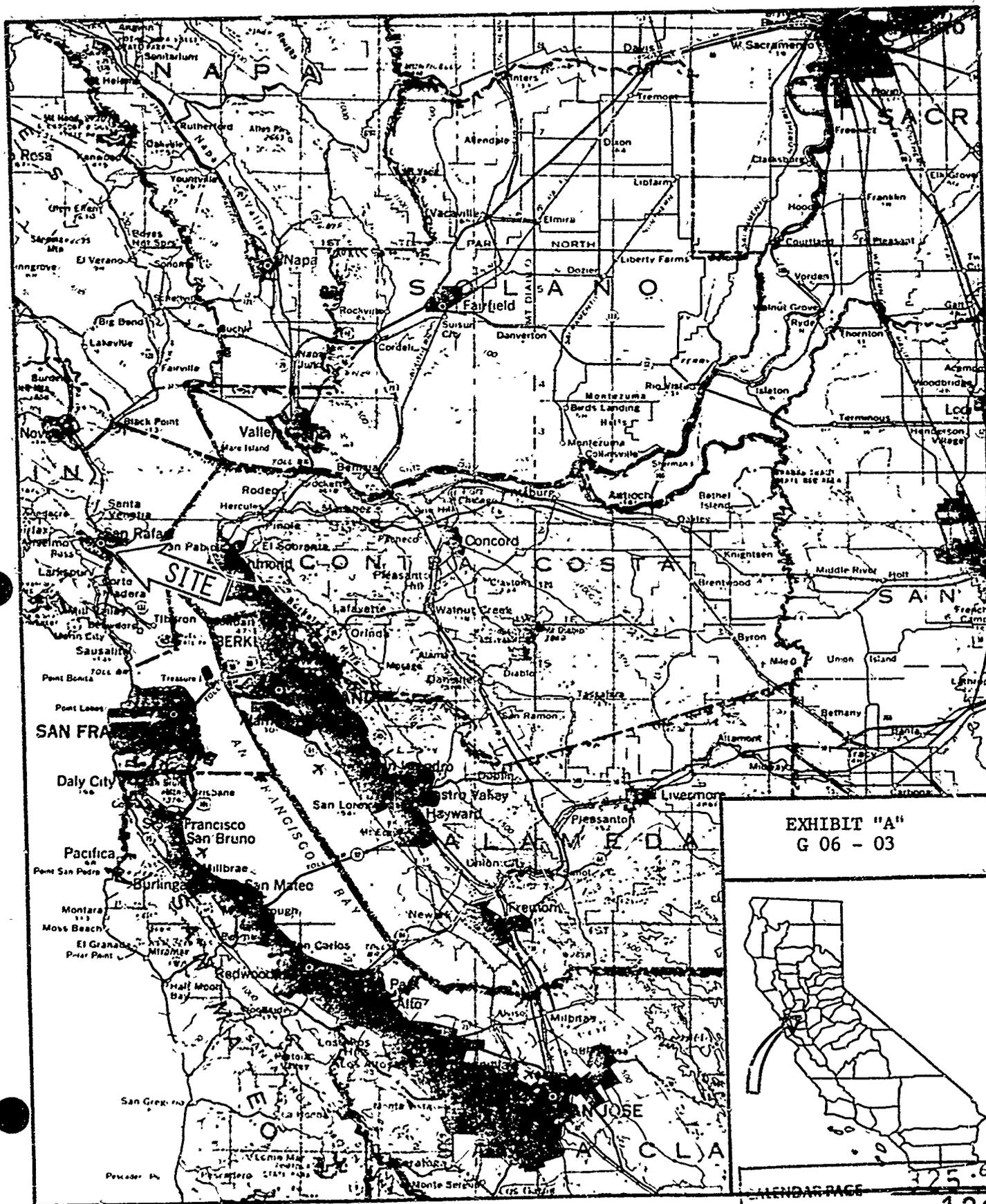


EXHIBIT "A"
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MINUTE PAGE 1211

