

MINUTE ITEM
This Calendar Item No. C73
was approved as Minute Item
No. 73 by the State Lands
Commission by a vote of 2
to 0 at its 2/27/96
meeting.

CALENDAR ITEM
C73

A 6
S 3

2/27/96
W 21670
Valentine
Olin
PRC 7886

**APPROVAL OF A TITLE SETTLEMENT AGREEMENT
CONCERNING 6.4 ACRES OF LAND IN THE
CITY OF PETALUMA, SONOMA COUNTY, AND
AUTHORIZATION TO ISSUE A PUBLIC AGENCY LEASE
TO THE CITY OF PETALUMA OF AN ADJOINING
PARCEL OF LAND**

APPLICANT:

City of Petaluma
Attn: Kurt Yeiter, Principal Planner
City of Petaluma
P.O. Box 61
Petaluma, CA 94953

Michael J. and Barbara J. Lind
c/o Julie Ann Kimelman
Seneff, Kelly, Kimelman and Beach
P.O. Box 3729
Santa Rosa, CA 95402

The staff of the State Lands Commission has been contacted by Michael J. and Barbara J. Lind (the "Private Parties") regarding an approximately 6.4 acre parcel of land in the City of Petaluma, Sonoma County, which they purchased in December, 1994. The subject parcel of this title settlement is shown in its general location on Exhibits A and B (attached to this calendar item and incorporated by reference), as three parcels denominated the "Public Trust Fee Parcel," the "Public Trust Easement Parcel," and the "Trust Termination Parcel." The subject property fronts on and

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includes land within the present bed of the Petaluma River. The Private Parties currently use the portion of the subject property fronting the Petaluma River for the treatment and shipment out of oyster shell delivered by barge to the site.

The staff of the Commission has completed research of land title records and historic topography of the subject property. The research has shown that:

1. A portion of the subject parcel lies within Rancho Petaluma and is not subject to a title interest of the State based upon sovereignty;
2. A small portion of the subject property was, prior to filling, bisected by the Petaluma River, a navigable and tidal waterway;
3. The Petaluma River within the subject parcel was never included within the perimeter description of any patent issued by California, the United States, Mexico, or Spain and remains subject to State ownership;
4. The portion of the subject parcel north of the historic Petaluma River lies within Swamp and Overflowed Patent No. 2 for Sonoma County. The United States refused to list Swamp and Overflowed Patent No. 2 to the State of California as lands of that character and determined that it was tidelands owned by the State by virtue of its sovereignty; and
5. Those portions of the subject property within Swamp and Overflowed Patent No. 2 which were subject to the tides prior to filling and development remain subject to a public trust easement as provided in People v. California Fish Company (1913) 166 Cal. 576.

The staff and the Private Parties have negotiated a settlement of sovereign title interests in the subject property. The settlement has been memorialized in a draft settlement agreement now on file in the offices of the Commission in Sacramento. Through the settlement, the subject property will be divided into three parcels shown on

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Exhibit B, denominated the Trust Termination Parcel, the Public Trust Easement Parcel, and the Public Trust Fee Parcel. The Private Party will deed its title in the Public Trust Fee Parcel (which lies below the top of the bank of the Petaluma River and within the River waterward of either the top of bank or mean high tide) to the State to be held by it as land of the legal character of tide and submerged lands. Also, the Private Party will deed a public trust easement to the State in the Public Trust Easement Parcel. In exchange, the State will deed to the Private Party any interest in may hold by virtue of sovereignty in the Trust Termination Parcel and will terminate the public trust in that Parcel.

The staff has examined the value of the subject property and has evaluated the evidence relating to the title history of the subject property and recommends entry into the settlement agreement as described. The settlement will establish secure state fee title in an area of private record ownership within the present waterway to the top of bank; it will establish a public trust easement in a 30' deep corridor from the top of the present bank in an area most useful to the public trust; and it will free landward areas of the property not useful for public trust purposes from sovereign land title.

Authority is also sought to issue a public agency lease regarding an adjoining parcel of land shown on Exhibit B as the City Lease Parcel. It is anticipated that the City of Petaluma will complete a purchase of the record title in the City Lease Parcel, to use the site for park and/or habitat purposes. Staff has researched the historic title of the City Lease Parcel and has concluded that it is subject to sovereign land title rights. Staff requests authority to issue a 49 year rent-free public agency lease for park and habitat purposes in the event that the City makes application for such a lease. The form of the document will be substantially similar to that now on file in the offices of the Commission.

STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code: Division 6, Parts 1 and 2; Division 13.
- B. Cal. Code Regs.: Title 2, Division; Title 14, Division 6.

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AB 884:

N/A

OTHER PERTINENT INFORMATION:

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

Authority: Public Resources Code Section 21080.11.

2. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 California Code of Regulations 15061), the staff has determined that the proposed lease of sovereign lands to the City of Petaluma is exempt from the requirements of the CEQA pursuant to a categorical exemption. Authority: Public Resources Code Section 21084 and 14 California Code of Regulations 15325.

EXHIBIT:

- A. Location Map of the Subject Parcel
- B. Site Map of the Subject Parcel and adjoining City Lease Parcel

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A STATUTORY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. FIND THAT THE PROPOSED LEASE OF SOVEREIGN LANDS TO THE CITY OF PETALUMA IS CATEGORICALLY EXEMPT FROM THE PROVISIONS OF CEQA PURSUANT TO 14 CALIFORNIA CODE OF REGULATIONS SECTION 15325.

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2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE THE PROPOSED TITLE SETTLEMENT AGREEMENT IN A FORM SUBSTANTIALLY SIMILAR TO THAT NOW ON FILE IN THE OFFICES OF THE STATE LANDS COMMISSION.

3. FIND, EFFECTIVE UPON RECORDATION OF THE PROPOSED SETTLEMENT AGREEMENT, THAT:
 - A. THE AGREEMENT IS IN THE BEST INTERESTS OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION; THE ENHANCEMENT OF THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND THE UPLAND; AND THE PROTECTION, PRESERVATION, AND ENHANCEMENT OF THE TIDELANDS AND SUBMERGED LANDS AND PUBLIC ACCESS THERETO;

 - B. THE LANDS OR INTERESTS IN LANDS TO BE DEEDED TO THE STATE THROUGH THE AGREEMENT ARE OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF SOVEREIGN INTERESTS IN THE PARCELS IN WHICH THE STATE IS TO TERMINATE THE PUBLIC TRUST;

 - C. THE PARCELS IN WHICH THE TRUST IS TO BE TERMINATED HAVE BEEN IMPROVED, RECLAIMED, AND FILLED; HAVE BEEN EXCLUDED FROM THE PUBLIC CHANNELS; AND ARE NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING AND ARE NO LONGER TIDE OR SUBMERGED LANDS IN FACT;

 - D. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS WITHIN THE SUBJECT PARCEL;

 - E. THE AGREEMENT CONSTITUTES A COMPROMISE OF CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED;

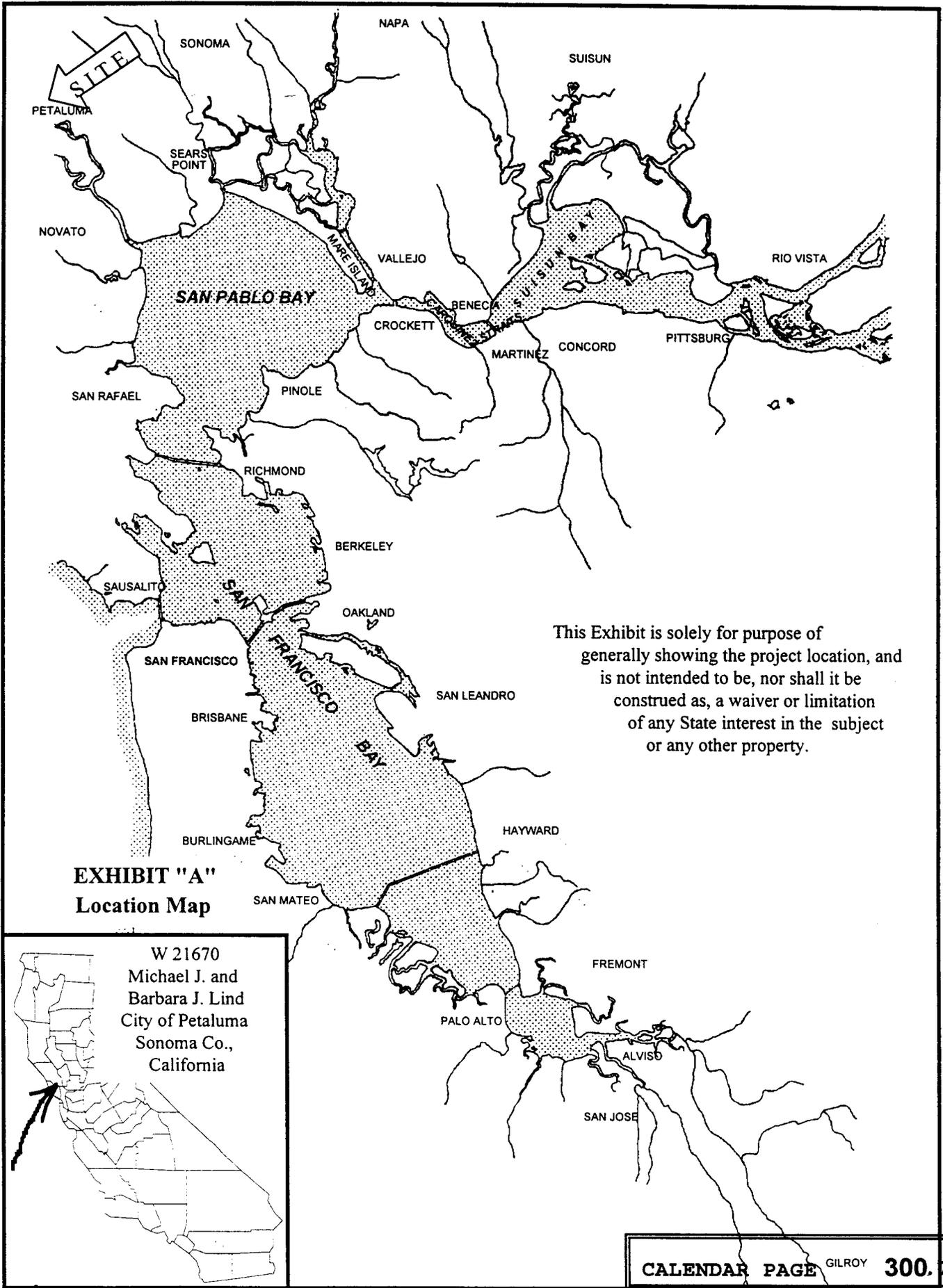
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- F. THE AGREEMENT IS ENTERED IN LIEU OF THE COSTS, DELAYS, AND UNCERTAINTIES OF LITIGATION AND IS CONSISTENT WITH AND IS AUTHORIZED BY LAW; AND
 - G. THE TRUST TERMINATION PARCEL IS NO LONGER NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THAT THE PUBLIC TRUST IS TERMINATED IN THEM.
4. APPROVE RECORDATION ON BEHALF OF THE COMMISSION OF THE FOLLOWING DOCUMENTS:
- A. THE TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE IN THE OFFICES OF THE COMMISSION;
 - B. A PATENT OF THE TRUST TERMINATION PARCEL DESCRIBED IN THE AGREEMENT; AND
 - C. A PATENT OF THE UNDERLYING FEE INTEREST IN THE PUBLIC TRUST EASEMENT PARCEL, SUBJECT TO A PUBLIC TRUST EASEMENT RESERVED TO THE STATE.
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 THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE COMPROMISE TITLE SETTLEMENT AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.
6. AUTHORIZE THE STAFF TO EXECUTE A PUBLIC AGENCY LEASE TO THE

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CITY OF PETALUMA IN THE CITY LEASE PARCEL FOR A TERM OF 49 YEARS, FREE OF RENT, FOR PUBLIC PARK AND HABITAT PURPOSES, IN A FORM SUBSTANTIALLY SIMILAR TO THE LEASE NOW ON FILE IN THE OFFICES OF THE COMMISSION.

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This Exhibit is solely for purpose of generally showing the project location, and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

EXHIBIT "A"
Location Map

W 21670
Michael J. and
Barbara J. Lind
City of Petaluma
Sonoma Co.,
California

This Exhibit is solely for purposes of generally defining the settlement and lease premises, and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.



**PUBLIC TRUST
EASEMENT PARCEL**

PUBLIC TRUST FEE PARCEL

TRUST TERMINATION PARCEL

Approximate top of bank

CITY LEASE PARCEL

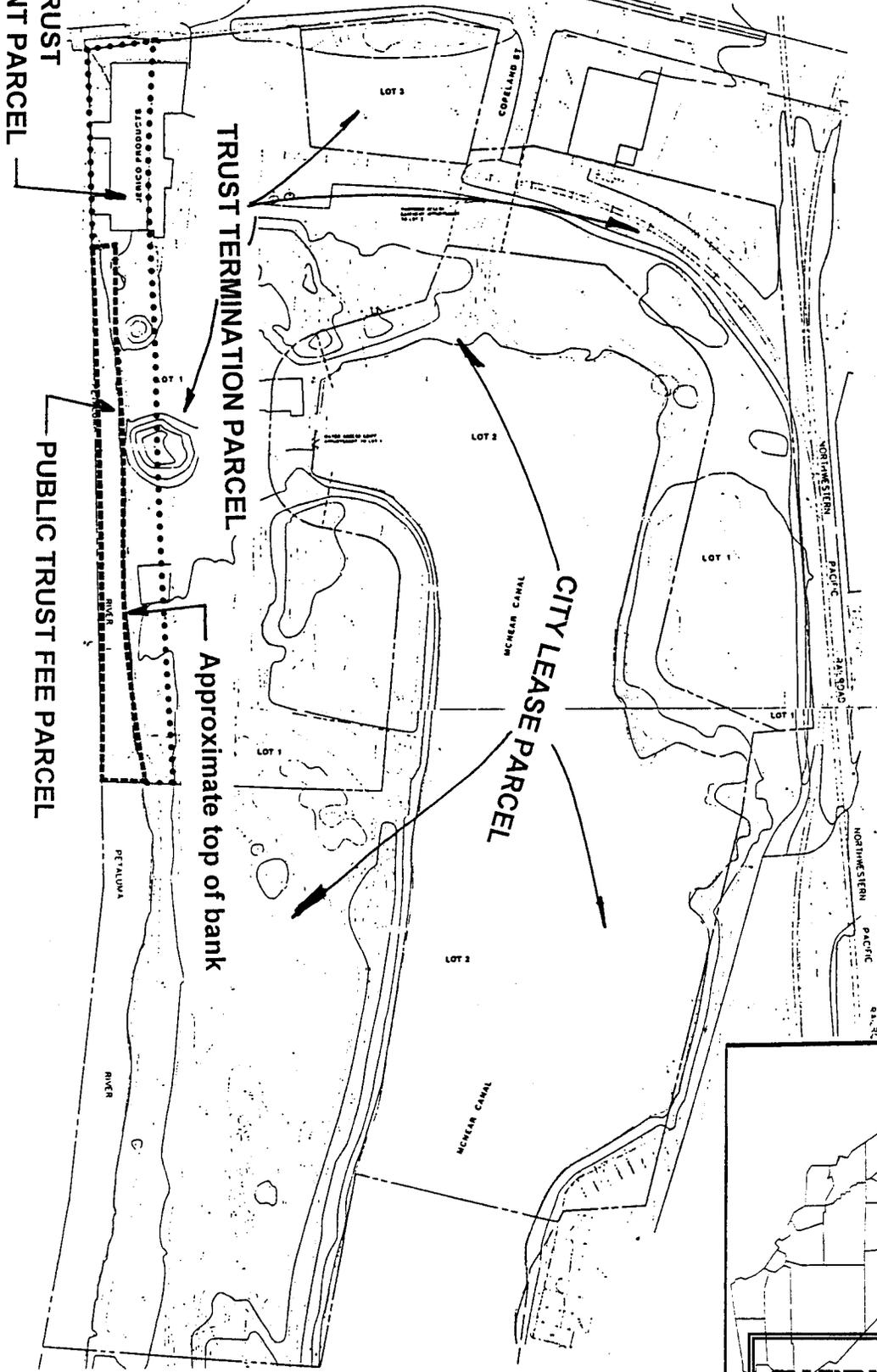


EXHIBIT "B"
W 21670
Michael J. and Barbara
J. Lind and
City of Petaluma
Sonoma Co., California

