

**MINUTE ITEM**

This Calendar Item No. C43 was approved as Minute Item No. 43 by the California State Lands Commission by a vote of 3 to 0 at its 5/12/97 meeting.

**CALENDAR ITEM**

**C43**

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S 3

05/12/97  
W 24199  
D. Plummer  
B. Stevenson  
K. Olin

**CONSIDER APPROVAL OF A COMPROMISE TITLE SETTLEMENT AGREEMENT AMONG THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE STATE LANDS COMMISSION; THE CITY OF SAN RAFAEL; SHAMROCK MATERIALS INC.; LA TERRA, A PARTNERSHIP; AND BENJAMIN R. OSTLIND REGARDING CERTAIN LANDS SITUATED WITHIN THE CITY OF SAN RAFAEL.**

**PARTIES:**

Shamrock Materials Inc.  
C/O Cappiello & Associates  
50 California Street, Suite 1400  
San Francisco, CA 94111  
Attn.: Matthew R. Cappiello

La Terra, a Partnership  
C/O Cappiello & Associates  
50 California Street, Suite 1400  
San Francisco, CA 94111  
Attn.: Matthew R. Cappiello

Benjamin R. Ostlind  
2 Dunfries  
San Rafael, CA 94901

City of San Rafael  
Redevelopment Agency  
P.O. Box 151560  
San Rafael, CA 94915-1560  
Attn.: Jake Ours

Staff of the Commission has been requested by a representative of Shamrock Materials Inc.; La Terra, a Partnership; and Benjamin R. Ostlind, (collectively referred to as Shamrock) to determine the extent of State interest within a 4.56 acre parcel of land (TRUST TERMINATION PARCEL) located within the City of San Rafael. The TRUST TERMINATION PARCEL is shown for reference only on Exhibit A (which is attached and incorporated by reference as a part of this item).

Commission staff has conducted a study of the evidence of title to the TRUST TERMINATION PARCEL and has drawn a number of factual conclusions, including those summarized below:

1. Portions of the TRUST TERMINATION PARCEL were purportedly patented by the State to Timothy Mahon on November 12, 1868 as Survey No. 1, and on February 3, 1869 as Survey No. 28, Swamp and Overflowed lands, Marin County.

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2. Within the perimeter description of Swamp and Overflowed Survey Nos. 1 and 28 were several substantial tidal sloughs that traversed the area, and marshes which may have been subject to tidal action.

3. By Chapter 83, Statutes of 1923, as amended, the State of California granted in trust to the City of San Rafael all tide and submerged lands, whether filled or unfilled, within the City's boundaries.

The staff is of the opinion that the title evidence and the applicable legal principles lead to the conclusion that a portion of the TRUST TERMINATION PARCEL remains subject to sovereign title interests held by the City of San Rafael subject to supervisory and reversionary interests of the State of California. The exact extent and nature of the State's interest is, however, subject to uncertainty and dispute.

Shamrock contends that, in its last natural condition, the TRUST TERMINATION PARCEL was above the line of ordinary high tide. Further, Shamrock contends that any portion of the TRUST TERMINATION PARCEL which may have been below the Ordinary High Water Mark was conveyed or was intended to be conveyed by Survey Nos. 1 and 28, Swamp and Overflowed lands, Marin County. The position of Shamrock 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 curative acts of the Legislature.

Shamrock, the City of San Rafael, and the Commission staff have reached a settlement of this dispute which has been memorialized in a title settlement agreement which is on file with the office of the State Lands Commission. 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. 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:

A. The City, acting as trustee pursuant to Chapter 83, Statutes of 1923, as amended, shall quitclaim to Shamrock any and all sovereign interests in the Trust Termination Parcel it may hold by virtue of that statute, as amended.

B. The State shall quitclaim to Shamrock any and all of the State's rights by virtue of its sovereignty in the Trust Termination Parcel reserved to the State by Chapter 83, Statutes of 1923, as amended.

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C. Shamrock will make a contribution of the sum of \$75,000 to a land bank fund administered by the City of San Rafael for the acquisition of land in or along the present San Rafael Canal, which property shall take on the legal character of tide and submerged lands granted to the City of San Rafael pursuant to Chapter 83, 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.

**OTHER PERTINENT INFORMATION:**

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 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 settlements of title and boundary problems.  
Authority: Public Resources Code section 21080.11.

**EXHIBITS:**

- A. Site Map (for reference only)
- B. Location Map

**PERMIT STREAMLINING ACT DEADLINE:**

N/A

**IT IS RECOMMENDED THAT THE COMMISSION:**

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTION 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS 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; TOGETHER WITH ALL OTHER SUPPORTING DOCUMENTS NECESSARY TO EFFECTUATE THE AGREEMENT.

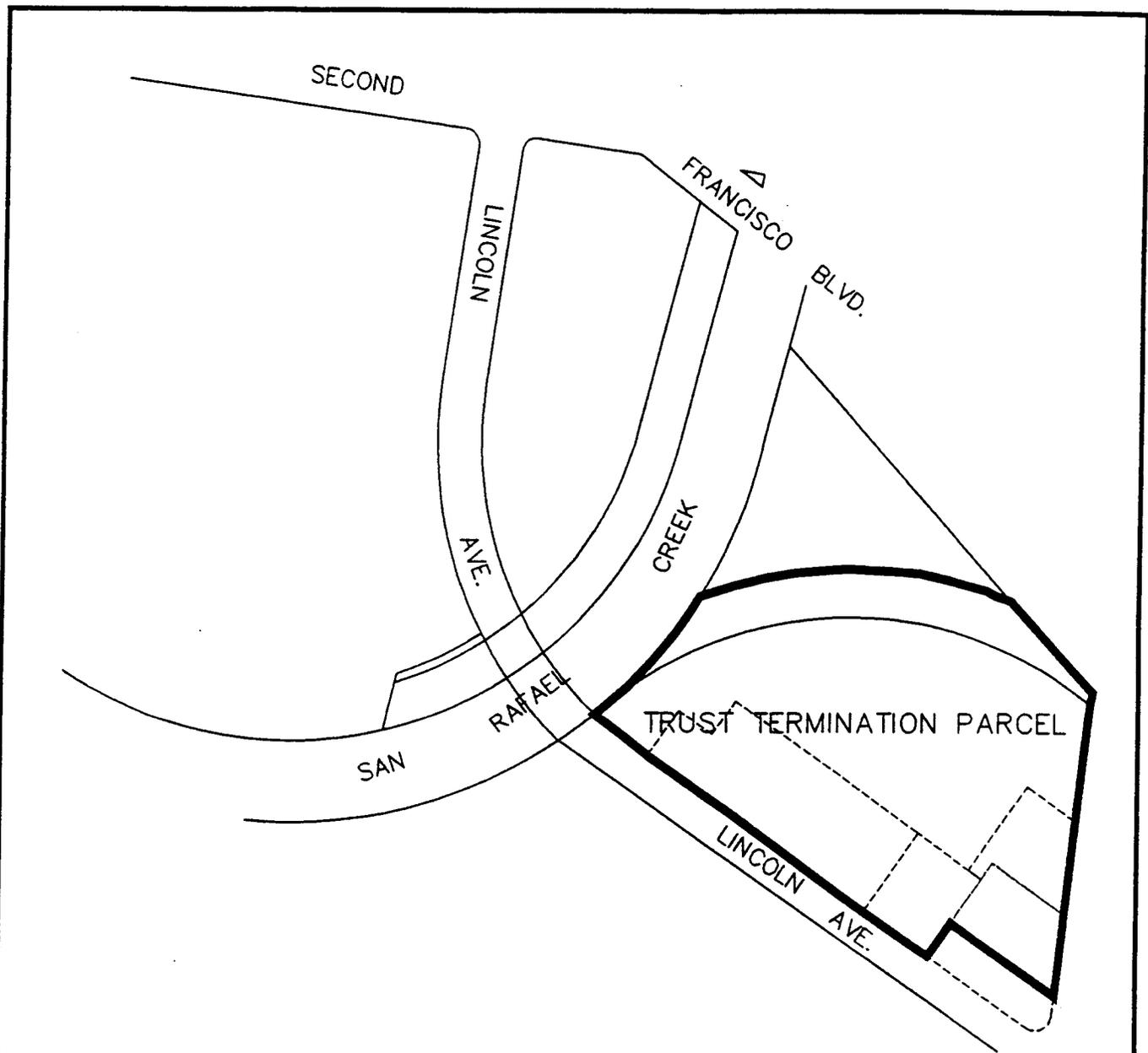
**CALENDAR ITEM NO. C43 (CONT'D)**

3. APPROVE THE EXECUTION OF THE AGREEMENT BY THE CITY OF SAN RAFAEL AND THE QUITCLAIMING TO SHAMROCK OF ALL RIGHT, TITLE, AND INTEREST HELD BY THE CITY BY CHAPTER 83, STATUTES OF 1923, AS AMENDED, IN LAND IN THE AGREEMENT REFERRED TO AS THE TRUST TERMINATION PARCEL.
  
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 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 MONIES TO BE RECEIVED BY THE CITY AND STATE IS 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

**CALENDAR ITEM NO. C43 (CONT'D)**

CHARACTER OF TIDE AND SUBMERGED LANDS GRANTED TO THE CITY OF SAN RAFAEL.

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



**EXHIBIT A**  
**Site Map**



*This Exhibit is solely for the purpose of generally defining the settlement area, 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.*

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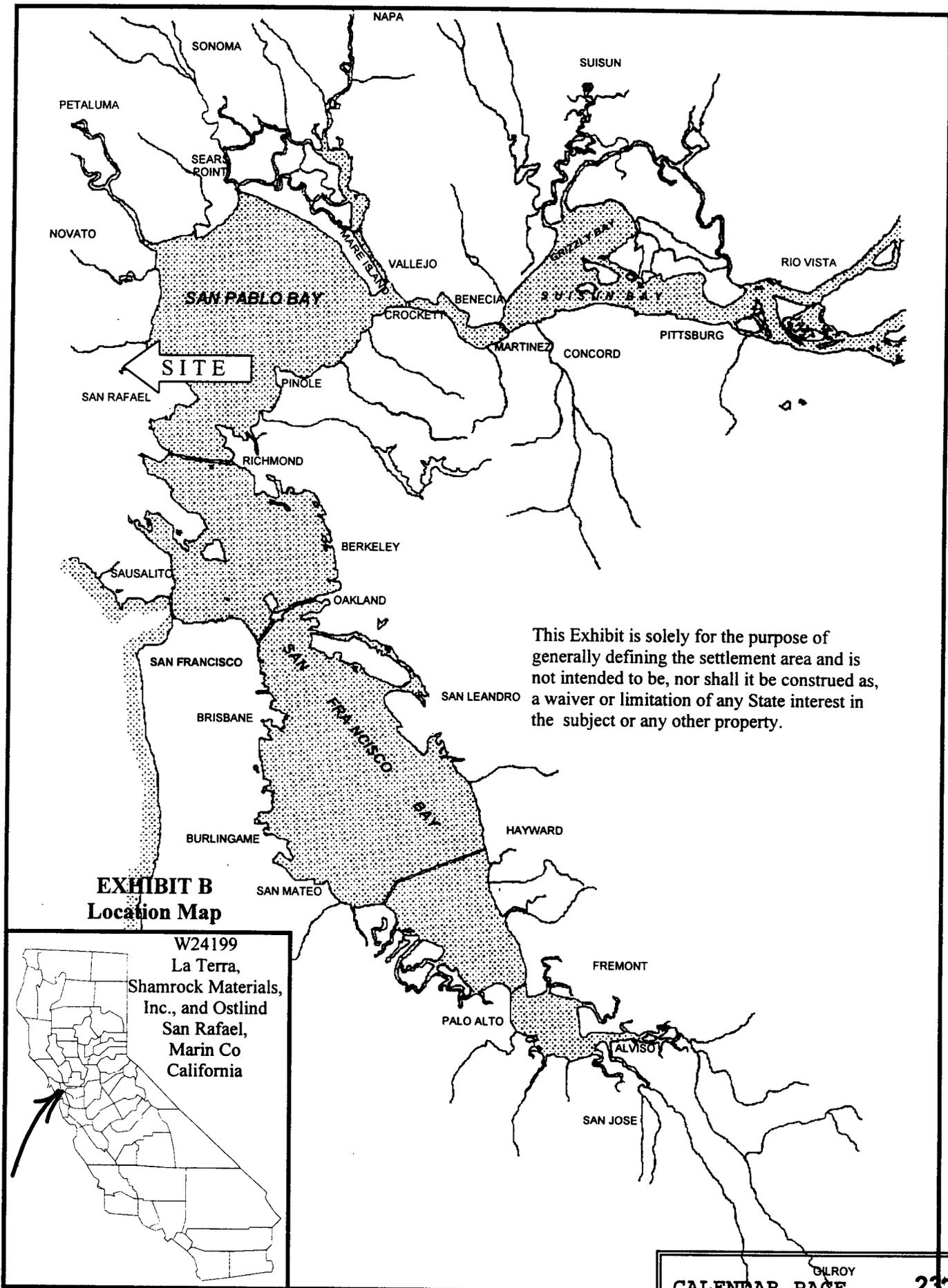
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This Exhibit is solely for the purpose of generally defining the settlement area and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

**EXHIBIT B  
Location Map**



W24199  
La Terra,  
Shamrock Materials,  
Inc., and Ostlind  
San Rafael,  
Marin Co  
California