

MINUTE ITEM
This Calendar Item No. C72
was approved as Minute Item
No. 72 by the State Lands
Commission by a vote of 3
to 0 at its 11-26-01
meeting.

CALENDAR ITEM
C72

A 6
S 3

11/26/01
AD 415 W25594
B. Stevenson
D. Plummer
K. Olin
J. Rusconi

**APPROVAL OF A COMPROMISE TITLE SETTLEMENT AGREEMENT INVOLVING
APPROXIMATELY 9.6 ACRES OF LAND IN THE CITY OF SAN RAFAEL, MARIN
COUNTY**

APPLICANTS:

The Roman Catholic Archbishop of San Francisco
C/o John C. Callan, Jr.
Tobin & Tobin
500 Sansome Street
8th Floor
San Francisco, CA 94111

In 1999, the staff of the State Lands Commission was contacted by an attorney for the Archbishop of San Francisco (the "Private Party") regarding the determination of possible State interest in a parcel of land (the "Subject Parcel") in the City of San Rafael, Marin County. The Subject Parcel is approximately 9.6 acres in size, and is shown for reference purposes only on Exhibits A and B, both of which are attached to this calendar item and included by reference as parts of it.

The Subject Parcel is in the record ownership of the Private Party, and has a chapel and parking areas within it, in addition to undeveloped land. The Private Party has entered an option agreement to sell the majority of the Subject Parcel, so that it may be developed with single family homes and associated roads and infrastructure. The purpose of the initial contact with Commission staff, and the title research, appraisals, and negotiations which followed, was to settle sovereign title rights in the Subject Parcel through a land exchange and contribution to the Kapiloff Land Bank Fund (Public Resources Code, Sections 6307 and 8600-8633).

Commission staff completed its historic mapping and survey studies in 2000, and has asserted that the State has an interest based upon sovereignty in approximately 5 acres

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of the Subject Parcel, subject to factual and legal dispute by the Private Party. The staff's research has shown that :

1. An early topographic chart (T-472, 1854) containing the Subject Parcel shows it as a combination of salt marsh and sloughs extending to San Francisco Bay and higher ground lying within Rancho San Pedro Santa Margarita y Las Gallinas;
2. The non-Rancho portion of the Subject Property lies within the perimeter description of Swamp and Overflowed Lands Survey #50, for which a state Certificate of Purchase was issued on February 6, 1861;
3. All or a part of the non-Rancho areas of the Subject Parcel were historically tidelands, and remain subject to state title in the form of a public trust easement or fee. The assertion of the staff on this point is supported, in part, by the interpretation and literature regarding early topographic charts, and by the existence of historic boat landings on similar sloughs in nearby areas; and
4. The existence, nature, and extent of remaining sovereign interests in the Subject Parcel are disputed by the Private Party. Among other points, the Private Party asserts that neither the marshes nor sloughs within the Subject Parcel were subject to the normal tides, and that any state interest in the land passed into private ownership upon the sale of the land in Swamp and Overflowed Lands Survey #50.

In 2000 and 2001, development planning by the Private Party and the City of San Rafael proceeded. On August 6, 2001, the San Rafael City Council approved an amendment to a neighborhood land use plan to allow 15 single family homes, open space, the chapel, and parking within the Subject Property.

The purpose of this calendar item is to seek authorization to enter an agreement to settle sovereign title rights within the Subject Parcel by land exchange. The staff, working with representatives of the Private Party, has negotiated a settlement of this dispute, which has been memorialized in an agreement now on file in the Sacramento offices of the State Lands Commission (the "Agreement"). Through the settlement, the State will quitclaim its sovereign interests in the Subject Parcel to the Private Party,

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using the authority conferred by Public Resources Code Sections 6307 and 8600-8633. As a part of the Agreement, the Private Party will place the sum of \$150,000 into the Kapiloff Land Bank Fund for the purchase by the State Lands Commission of other land useful for public trust purposes.

The staff has determined the economic value of the Subject Parcel, and has evaluated the evidence and legal issues relating to the Subject Parcel. Staff recommends entry into the Agreement at the amount specified here. The settlement will allow development to proceed on a parcel of land not useful for public trust purposes, while contributing funds for the purchase of other land that would be useful for public trust purposes.

STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code: Div. 6, Parts 1 and 2; Div. 13.
- B. Cal. Adm. Code: Title 2, Div.3; Title 14, Div. 6.

PERMIT STREAMLINING ACT DEADLINE

N/A

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 CEQA as a statutorily-exempt project because it involves settlements of title and boundary problems.

Authority: Public Resources Code 21080.11.

EXHIBITS:

- A. Location Map of the Subject Parcel
- B. Site Map of the Subject Parcel

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IT IS RECOMMENDED THAT THE COMMISSION:

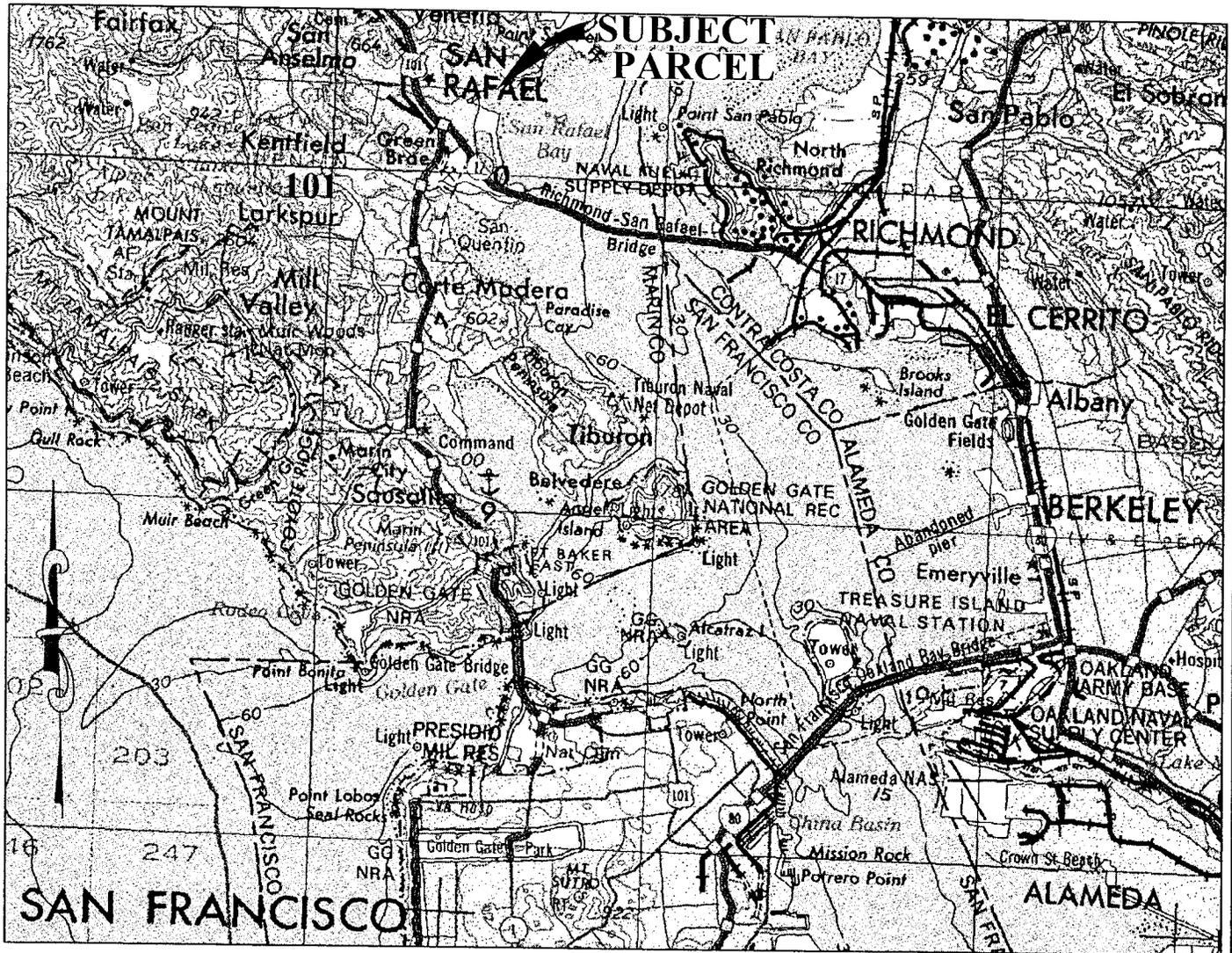
1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTION 21081.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. AUTHORIZE THE EXECUTIVE OFFICER OR 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, INCLUDING THE FINDINGS TO TAKE EFFECT UPON RECORDING OF THE AGREEMENT, WHICH WILL RESULT IN A TERMINATION OF SOVEREIGN RIGHTS IN THE SUBJECT PARCEL.
3. FIND, EFFECTIVE UPON RECORDATION OF THE PROPOSED SETTLEMENT, 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 AMOUNT OF FUNDS TO BE DEPOSITED INTO THE KAPILOFF LAND BANK FUND THROUGH THE AGREEMENT IS 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 PARCEL IN WHICH THE TRUST IS TO BE TERMINATED HAS BEEN IMPROVED, RECLAIMED, AND FILLED; HAS BEEN 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 TIDE OR SUBMERGED LANDS IN FACT;

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- D. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTEREST WITHIN THE PARCEL IN WHICH THE PUBLIC TRUST IS TO BE TERMINATED.
 - E. THE AGREEMENT CONSTITUTES A COMPROMISE OF CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED.
 - F. THE AGREEMENT IS ENTERED IN LIEU OF THE COSTS, DELAYS, AND UNCERTAINTIES OF LITIGATION AND IS CONSISTENT WITH AND IS AUTHORIZED BY LAW.
 - G. THE SUBJECT PARCEL IS NO LONGER NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THAT THE PUBLIC TRUST IS TERMINATED IN IT.
4. APPROVE RECORDATION AT THE OFFICE OF THE MARIN COUNTY RECORDER OF THE TITLE SETTLEMENT AGREEMENT, INCLUDING THE PATENT WITHIN IT, IN SUBSTANTIALLY THE FORM OF THE AGREEMENT ON FILE IN THE OFFICES OF 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 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.

NO SCALE

LOCATION MAP



SAN FRANCISCO BAY

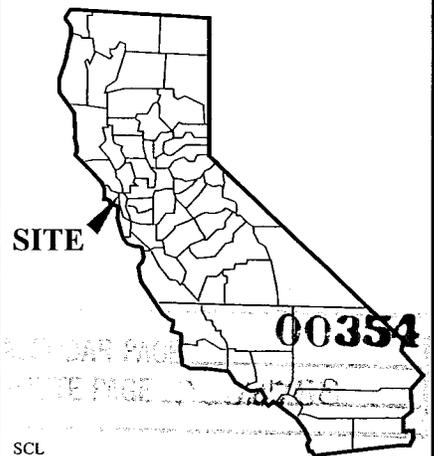
Exhibit A

LOCATION MAP

W 25594

Lands in Recorded Ownership of
 Roman Catholic Archdiocese of San Francisco
SAN RAFAEL **MARIN COUNTY**

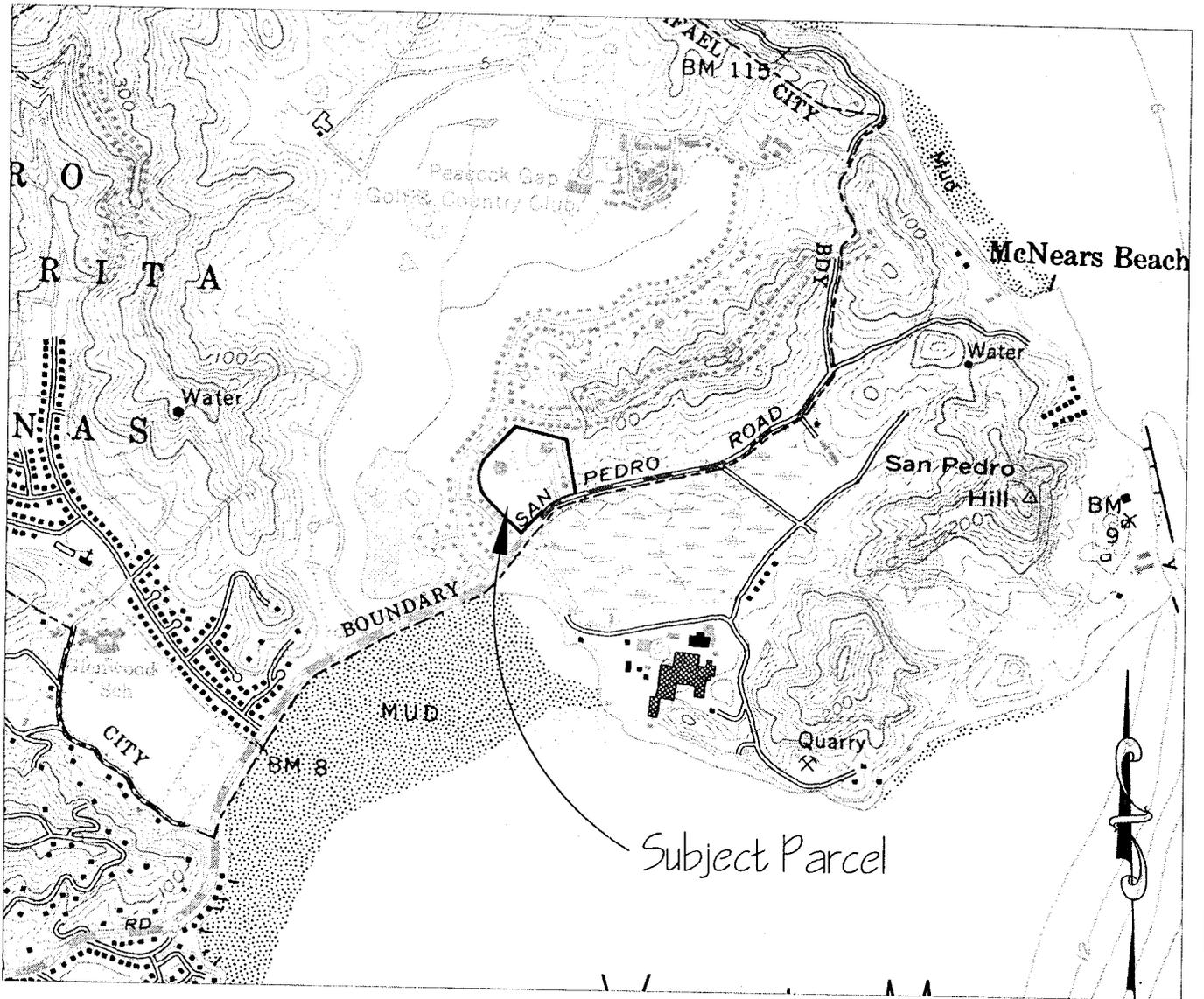
This Exhibit is solely for purposes of generally defining the settlement area, and is not intended to be, nor shall it be construed as, a waiver of limitation of any state interest in the subject or any other property.



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NO SCALE

SITE MAP

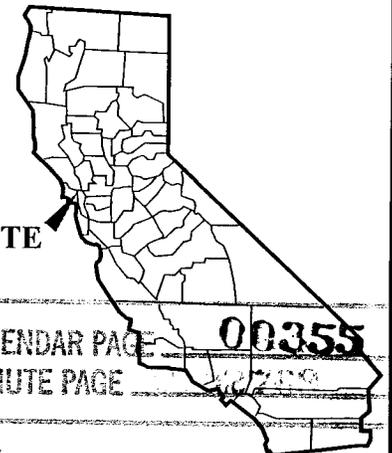


SAN RAFAEL

Exhibit B

SITE MAP
W 25594

Lands in Recorded Ownership of
Roman Catholic Archdiocese of San Francisco
SAN RAFAEL MARIN COUNTY



SITE

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