MINUTE ITEM

This Calendar Item No. C33 was approved as Minute Item No. 33 by the California State Lands Commission by a vote of 3 to ø at its 10-20-03 meeting.

CALENDAR ITEM
C33

A 6

S 3

10/20/03
AD 478 W 25498
D. Plummer
B. Stevenson
K. Olin
J. Rusconi

APPROVAL OF A COMPROMISE TITLE SETTLEMENT AGREEMENT CONCERNING APPROXIMATELY 3 ACRES OF LAND IN THE CITY OF SAN RAFAEL, MARIN COUNTY

APPLICANTS:

Nancy Mackle
Economic Development Director
City of San Rafael
Redevelopment Agency
P. O. Box 151560
San Rafael, CA 94915-1560

Susan Wooten
Pacific Gas and Electric Company
Mail Code N10A
P. O. Box 77000
San Francisco, CA 94177-0001

This calendar item seeks authorization to settle title issues in an approximately 3-acre parcel of land in the city of San Rafael, Marin County. The property, referred to as the "Subject Parcel," is shown for reference purposes in Exhibit A. Exhibit A is attached to this calendar item and incorporated by reference as a part of it. The Subject Parcel has been assigned Marin County Assessor Parcel Number 011-265-01.

The proposed settlement of this title dispute is by means of a title settlement agreement (the "Agreement"), part of which requires payment to a land bank fund administered by the city of San Rafael. The purpose of the fund is for the acquisition of land to be made an asset of the Public Trust. The parties to the Agreement are Pacific Gas and Electric Company (the current record owner of the Subject Parcel), which will be referred to as "PG&E"; the city of San Rafael (the "City"), which is a party because it holds a grant in trust of tide and submerged lands under Chapter 83, Statutes of 1923, as amended; and the State of California, acting by and through the California State Lands Commission.

The staff of the Commission has researched the title history of the Subject Parcel. The research has shown that the Subject Parcel has a complex title history. Some of the facts related to the Subject Parcel are that:

1. Title to the Subject Parcel has been uncertain since the first deeds out from State and federal government pertaining to the Subject Parcel. In part, this is because State and federal deeds and patents affecting the Subject Parcel have used different surveyed township lines in their descriptions.

2. In 1858, the State of California issued Swamp and Overflowed Survey #1 (S&O 1), Marin County, to Timothy Mahon. This was surveyed and monumented in reference to a ground survey performed by Alfred Eskoot. The northern boundary of S&O 1 was the township line, located by Eskoot approximately 75 feet south of the accepted township line later surveyed by Hoffman. The Supreme Court of California determined that S&O 1 extended only to the Eskoot line, leaving a gap of land for which there was no conveyance to a private party. Mahon v. Richardson (1875) 50 Cal. 333.

3. In 1870, the United States located the townsite of San Rafael to the north of the Hoffman township line. In 1871, the United States General Land Office completed a segregation survey to separate marsh and tidelands from uplands. Part of the townsite lay in the marsh or tidelands, both of which were State property.

4. The California Board of Tidelands Commissioners surveyed lots #31 and #32 within the Subject Parcel. Payment records were found for lot #32, but not for lot #31, meaning that the latter was almost certainly never sold.

Based upon the title facts concerning the Subject Parcel, the staff, with the advice of the Office of the Attorney General, has asserted that a public title interest in tidelands (or possibly unconveyed swamp and overflowed lands) remains within the Subject Parcel.

PG&E has performed its own research, and asserts that no State or City title remain in the Subject Parcel for several reasons. Without agreement by the State as to the arguments or their underlying premises, some of PG&E's arguments are that:

1. The Subject Parcel, in a natural condition, was located at the highest reaches of the marshes surrounding San Rafael Creek, where the marsh meets the upland. The Subject Parcel contains no sloughs or tributaries of San Rafael Creek. The Subject Parcel is not tide or submerged land, but rather a mix of marsh land and upland.

2. All of the Subject Parcel has been sold into private ownership through multiple sources. One source is Board of Tideland Commissioners Lot #32; another is deeds for the San Rafael townsite, which, by federal law, may include areas of swamp and overflowed land; and a third is S&O #1.

3. In the remand to the trial court in the Mahon v. Richardson case, the predecessor in title to PG&E took judgment by stipulation to the Subject Parcel. That judgment has never been disturbed throughout PG&E's use and possession of the Subject Property.

4. All of the Subject Parcel has been in the possession of PG&E for more than a century, and all taxes paid. PG&E demonstrated its ownership openly, and has improved the property extensively over the course of a century. Any title uncertainty related to swamp and overflowed lands has been cured by PG&E's adverse possession of the Subject Parcel. Lands of this type could be adversely possessed during the applicable time period. (People v. Banning Co. (1914) 167 Cal. 643).

The City, PG&E, and the staff (with advice of the Office of the Attorney General) have negotiated a settlement of sovereign or possible swamp and overflowed title interests within the Subject Parcel. The settlement has been memorialized in a draft settlement agreement now on file in the office of the Commission in Sacramento. Through the settlement, PG&E will make a payment of $17,200.00 to a land bank fund held by the city of San Rafael under its settlement statute (Chapter 1741, Statutes of 1971). This fund is held for the purpose of acquisition of lands within the City, which become Public Trust lands held by virtue of Chapter 83, Statutes of 1923. Monies are released from the fund only with approval of the State Lands Commission.

The staff has performed an appraisal of the Subject Parcel and has evaluated the evidence relating to the title history of the property and applicable law. Given the evidence and law, the amount to be paid to the land bank fund is greater than or equal to the economic value of title interests in the Subject Parcel. The staff and the Office of the Attorney General recommend the Agreement to the Commission, so that title to the Subject Parcel will be made certain, and so that development of it may proceed with title known.

STATUTORY AND OTHER REFERENCES:

A. Public Resources Code: Div. 6, Parts 1 and 2; Div. 13.
B. California Administrative 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. The project is exempt because it involves settlements of title and boundary problems.

   Authority: Public Resources Code section: 21080.11.

EXHIBIT:

A. Location Map of the Subject Parcel.

RECOMMENDED ACTION:

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 SACRAMENTO OFFICE OF THE CALIFORNIA STATE LANDS COMMISSION, INCLUDING THE FINDINGS TO TAKE EFFECT UPON RECORDING OF THE AGREEMENT WHICH WILL RESULT IN A TERMINATION OF SOVEREIGN OR SWAMP AND OVERFLOWED RIGHTS IN THE TRUST TERMINATION 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 ($17,200.00) TO BE DEPOSITED INTO THE SAN RAFAEL LAND BANK FUND THROUGH THE AGREEMENT, IS OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF SOVEREIGN (OR POSSIBLE SWAMP AND OVERFLOWED) INTERESTS IN THE TRUST TERMINATION PARCEL;

C. THE TRUST TERMINATION PARCEL HAS BEEN IMPROVED, RECLAIMED, AND FILLED ABOVE THE LINE OF MEAN HIGH TIDE; 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;

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

G. THE TRUST TERMINATION PARCEL IS NO LONGER NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST OR THE TERMS OF THE GRANT TO THE CITY OF SAN RAFAEL, AND THE PUBLIC TRUST IS TERMINATED IN IT.

4. APPROVE RECORDATION IN MARIN COUNTY ON BEHALF OF THE COMMISSION OF THE FOLLOWING DOCUMENTS:

   A. THE TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF SUCH AGREEMENT ON FILE IN THE OFFICE OF THE CALIFORNIA STATE LANDS COMMISSION.

   B. ANY DEEDS OR PATENTS NECESSARY TO IMPLEMENT THE TERMS OF THE TITLE SETTLEMENT AGREEMENT.

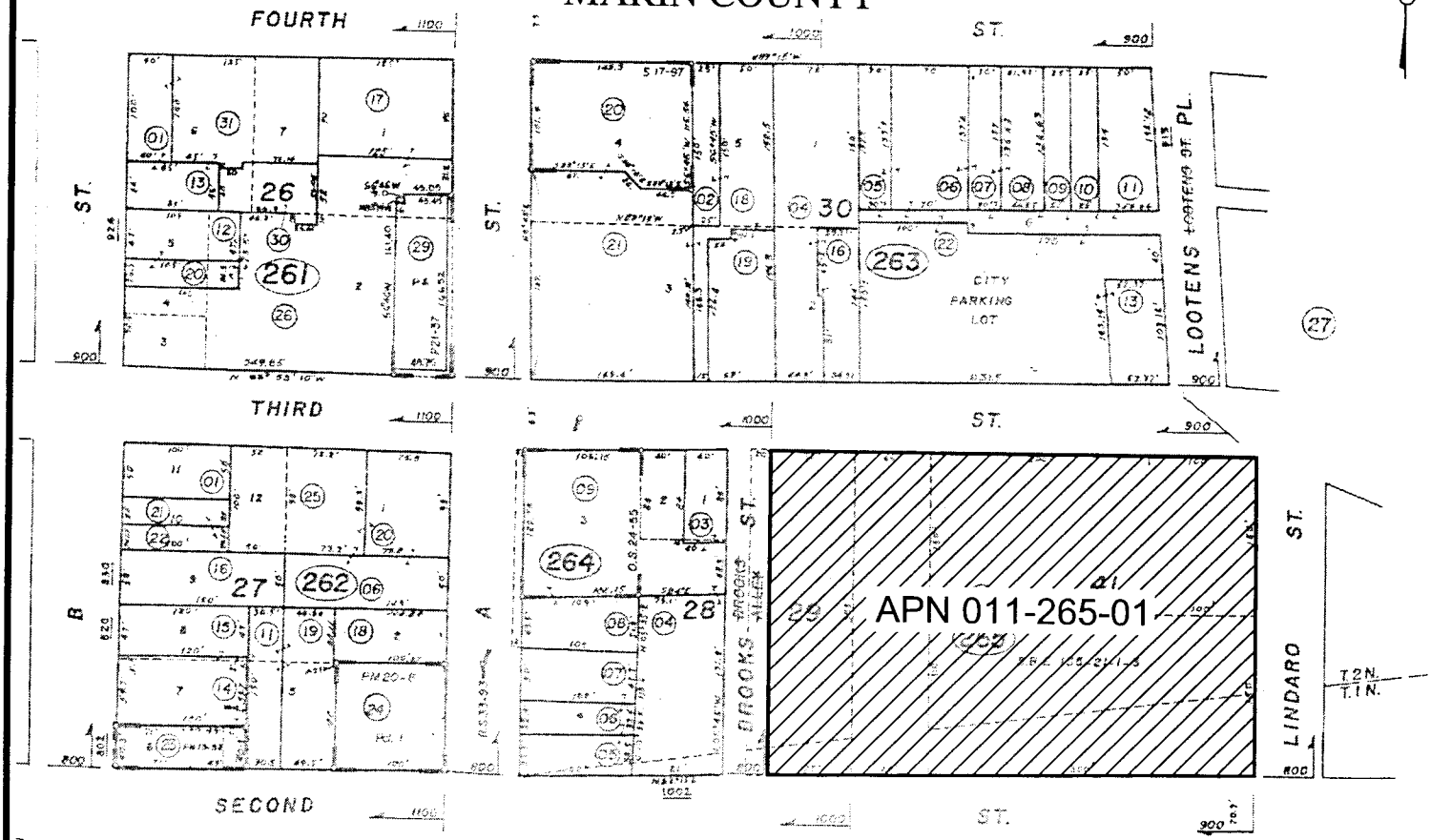
5. AUTHORIZE AND DIRECT THE STAFF OF THE OF THE CALIFORNIA STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AS MAY BE 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. UNDER SECTION 8.5 OF CHAPTER 1741, STATUTES OF 1971, THE RESERVATION OF MINERALS BY THE STATE WOULD PREVENT THE SETTLEMENT OF BOUNDARY OR TITLE DISPUTES IN THE SUBJECT PARCEL. THEREFORE, MINERALS SHALL NOT BE RESERVED.

NO SCALE

SITE

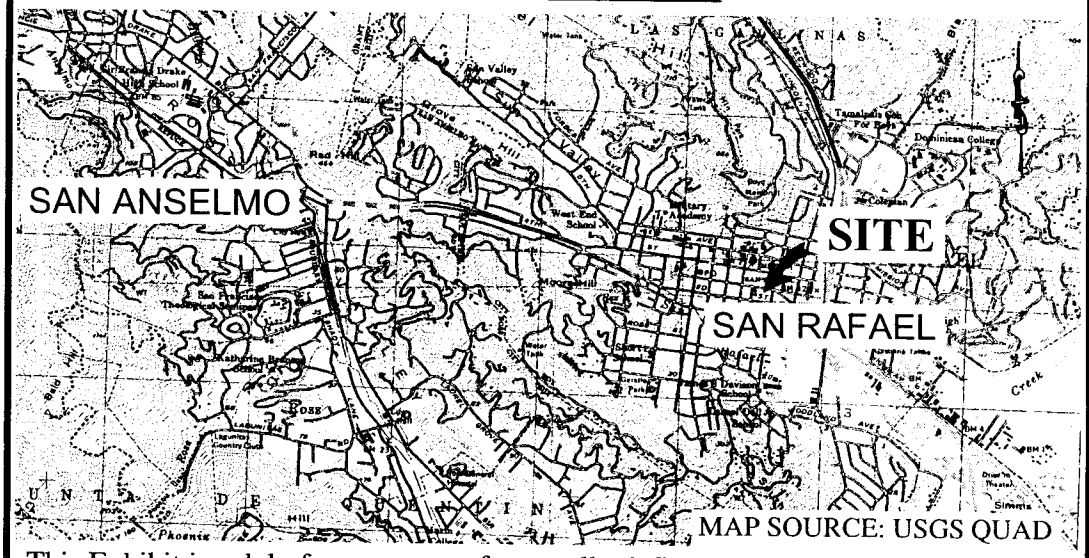
COMPROMISE TITLE SETTLEMENT AGREEMENT CONCERNING APPROXIMATELY 3 ACRES OF LAND IN THE CITY OF SAN RAFAEL, MARIN COUNTY



PROPOSED TITLE SETTLEMENT BETWEEN PG&E, CITY OF SAN RAFAEL AND STATE OF CALIFORNIA

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

W 25498
TITLE SETTLEMENT
SAN RAFAEL
MARIN COUNTY

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties 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.

CALENDAR PAGE MINUTE PAGE

JAK 10/03