

MINUTE ITEM

This Calendar Item No. 23  
was approved as Minute Item  
No. 23 by the State Lands  
Commission by a vote of 3  
to 0 at its 10/28/82  
meeting.

MINUTE ITEM

23

10/28/82  
W 23009  
PRC 6343  
G01-02  
Cook  
Valentine

EXERCISE THE PUBLIC TRUST EASEMENT  
AT THE ALBANY WETLANDS  
FOR USE AS A WETLANDS WILDLIFE PRESERVE

During consideration of Calendar Item 23 attached, Clay M. Smith, attorney at law, appeared on behalf of Santa Fe Land Improvement Company, (Santa Fe), and requested that the hearing be continued to a later date on the grounds that Santa Fe objected to the proposed findings and conclusions and did not have sufficient time after notice to present its objections and submit alternative proposed findings and conclusions at this meeting.

After further Commission discussion, after comments of staff of the Commission and the Office of the Attorney General, and the Commission having fully considered the Staff Report and all the evidence, the Commission determined that Santa Fe had adequate notice of this meeting and all the previous proceedings; that its request for a postponement was not justified; and on motion duly made by Commission-Alternate Morgan and seconded by Commission-Alternate Ackerman, the Commission approved Calendar Item 23 as presented by a vote of 3-0.

See transcript for a verbatim account.

Attachment: Calendar Item 23

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CALENDAR ITEM

23

EXERCISE THE PUBLIC TRUST EASEMENT  
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At its May 27, 1982 meeting the Commission, pursuant to Calendar Item No. 47, authorized staff to:

1. Conduct a public meeting or meetings in the vicinity of the baylands known as the Albany mudflats, at Albany, California, for the purpose of inquiring into the nature, existence and needs of any public trust interest shown to exist there; and
2. Submit a written report on the existence and needs of the public trust at these Albany baylands with a recommended course of action for consideration by the Commission at a later meeting.

A public meeting has been held as authorized. The staff report concerning the parcel studied accompanies this Calendar Item and staff recommendation. The parcel of property with which this Calendar Item deals (the Trust Exercise Parcel) is located in the City of Albany and is depicted and described on Exhibits A and B which are attached to and incorporated in this Calendar Item. The Trust Exercise Parcel is undiked, unimproved wetlands subject to the tides of San Francisco Bay. It is bounded on the east by Hoffman Boulevard, a State highway, on the north by the Richmond city limit line, on the west by Albany's legislative trust grant lands (Chap. 1223, Stats. 1977) and on the south by fill extending from Golden Gate Fields to the Albany Trust Grant.

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The area in question is part of the East Bay Shoreline which was considered by the State Coastal Conservancy in its East Bay Shoreline Report and by the State Department of Parks and Recreation in its East Bay Shoreline Feasibility Study (Preliminary). The Report and Study covered the bayfront from the Bay Bridge to the Richmond city limits; both contemplated open space/wildlife use of the Trust Exercise Parcel. The studies are discussed in more detail in the Staff Report which accompanies this Calendar Item. Staff have performed a title study of the Trust Exercise Parcel and have conducted a public meeting on the existence, extent and needs of the public trust there. The title study revealed that the Trust Exercise Parcel was sold by the State Board of Tide Land Commissioners (BTLC) to private parties in 1872. Most is presently claimed by Santa Fe Land Improvement Company. In City of Berkeley v. Superior Court, 26 Cal.3d. 515 (1980) the State Supreme Court held that the State is the owner of the public trust easement over all those tidelands of the Bay included within BTLC deeds which on the effective date of the opinion had not been filled or improved. The private ownership in these wetlands is restricted to the bare underlying fee.

The public meeting was held in afternoon and evening sessions on June 30, 1982 at the Albany City Council Chambers. There was strong public support voiced at the meeting for an exercise by the Commission of the public trust at the Albany Baylands for wetland and wildlife preservation and open space purposes. The primary points raised at the meeting are set forth in more detail in the Staff Report.

Based on its title study, present physical conditions, the comment at the public meeting and the decision in City of Berkeley v. Superior Court, staff has concluded that the Trust Exercise Parcel is subject to the public trust easement and that the most appropriate use to which this trust interest can be put is as wetlands wildlife preserve.

AB 884: N/A.

EXHIBITS: A. Plat of Trust Exercise Parcel.  
B. Description of Trust Exercise Parcel.

IT IS RECOMMENDED THAT THE COMMISSION FIND THAT:

1. THE PARCEL OF REAL PROPERTY IN THE CITY OF ALBANY, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DEPICTED AS THE TRUST EXERCISE PARCEL, WAS AT THE TIME OF STATEHOOD, AND CONTINUOUSLY THEREAFTER HAS BEEN, AND IS NOW, UNFILLED AND SUBJECT TO TIDAL ACTION OF THE BAY OF SAN FRANCISCO.

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2. THE STATE OF CALIFORNIA, IN ITS SOVEREIGN CAPACITY AS PUBLIC TRUSTEE, IS THE OWNER OF THE PUBLIC TRUST EASEMENT OVER THE TRUST EXERCISE PARCEL.
3. IT IS IN THE STATEWIDE PUBLIC INTEREST AND IT IS APPROPRIATE THAT USES OF THE TRUST EXERCISE PARCEL BE RESTRICTED TO THE PUBLIC PURPOSES OF PRESERVATION OF SAID LANDS IN THEIR NATURAL STATE, SO THAT THEY SERVE AS ECOLOGICAL UNITS FOR SCIENTIFIC STUDY, AS OPEN SPACE, AND ENVIRONMENTS WHICH PROVIDE FOOD AND HABITAT FOR BIRDS AND MARINE LIFE, FAVORABLY AFFECT THE SCENERY AND CLIMATE OF THE AREA, AND THAT PUBLIC FISHING, BOATING, ACCESS, AND RECREATION BE PERMITTED TO THE EXTENT THE ECOLOGICAL NEEDS OF THE TRUST EXERCISE PARCEL ARE NOT DAMAGED THEREBY.
4. IT IS IN THE STATEWIDE PUBLIC INTEREST THAT THE TRUST EXERCISE PARCEL BE MANAGED BY THE CALIFORNIA DEPARTMENT OF FISH AND GAME FOR SAID RESTRICTED USES AND PURPOSES; THAT THE DEPARTMENT HAVE THE AUTHORITY TO RESOLVE CONFLICTS AMONG THE DESIGNATED USES SHOULD ANY ARISE; THAT A LEASE OF THE PUBLIC TRUST EASEMENT OVER THE TRUST EXERCISE PARCEL SHOULD BE ISSUED TO THE DEPARTMENT FOR A PERIOD OF 49 YEARS AND; THAT THIS ACTIVITY IS EXEMPT FROM CEQA PURSUANT TO 14 CAL. ALM. CODE, DIV. 6, SECTION 15107.
5. IT IS IN THE BEST INTERESTS OF THE PEOPLE OF THE STATE OF CALIFORNIA THAT THE TRUST EXERCISE PARCEL BE PROTECTED FOR THE FUTURE BY RESTRICTING ITS USES AS STATED ABOVE BY A FORMAL EXERCISE OF THE PUBLIC TRUST EASEMENT BY THE COMMISSION.
6. THE LEGISLATURE HAS EXERCISED THE PUBLIC TRUST FOR HIGHWAY PURPOSES (STREETS AND HIGHWAYS CODE, SECTION 101.5), SO LONG AS CEQA AND ALL OTHER REQUIREMENTS OF LAW ARE MET, AND THAT TO THE EXTENT PORTIONS OF THE TRUST EXERCISE PARCEL ARE OR MAY BECOME NEEDED FOR HIGHWAY PURPOSES, THE TRUST EXERCISE PARCEL MAY BE SO USED.
7. THE PUBLIC TRUST EASEMENT IS HEREBY FORMALLY EXERCISED OVER THE TRUST EXERCISE PARCEL ON BEHALF OF THE PUBLIC FOR PRESERVATION OF THE LANDS IN THEIR NATURAL STATE, AS ECOLOGICAL UNITS FOR SCIENTIFIC STUDY, AS OPEN SPACE, AND AS ENVIRONMENTS WHICH PROVIDE FOOD AND HABITAT FOR BIRDS AND MARINE LIFE AND WHICH FAVORABLY AFFECT THE SCENERY AND CLIMATE OF THE AREA, AND THAT PUBLIC FISHING, BOATING, ACCESS, AND RECREATION BE PERMITTED TO THE EXTENT THE ECOLOGICAL NEEDS OF THE TRUST EXERCISE

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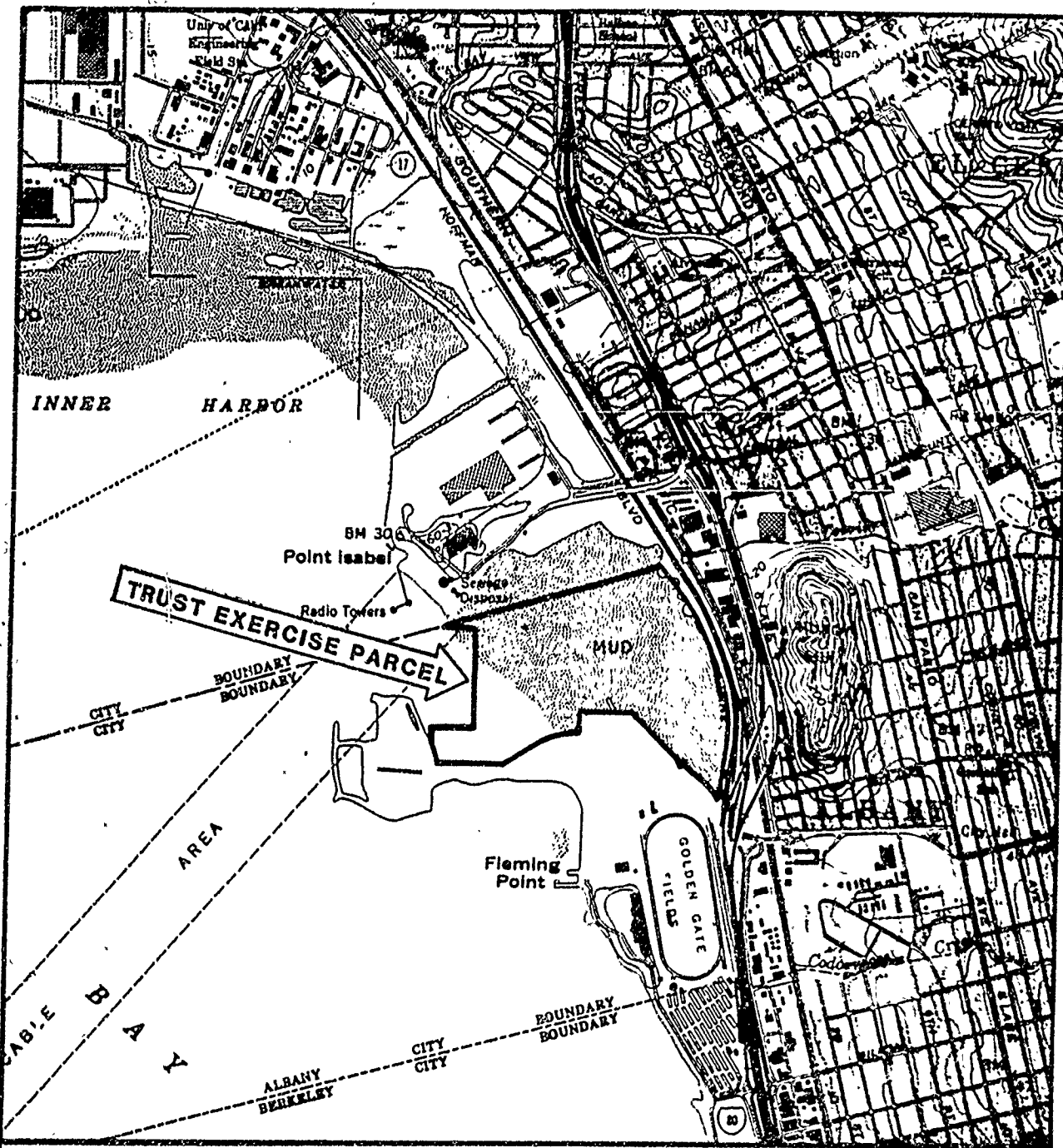
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PARCEL ARE NOT DAMAGED THEREBY; USE OF PORTIONS OF THE TRUST EXERCISE PARCEL FOR HIGHWAY PURPOSES PURSUANT TO THE REQUIREMENTS OF LAW IS CONSISTENT WITH THIS TRUST EXERCISE.

8. THE COMMISSION STAFF AND/OR THE OFFICE OF THE ATTORNEY GENERAL ARE AUTHORIZED TO TAKE ALL FURTHER STEPS REASONABLY NECESSARY OR APPROPRIATE TO IMPLEMENT THIS MINUTE ITEM, INCLUDING THE RECORDATION OF DOCUMENTS AND THE APPEARANCE ON BEHALF OF THE COMMISSION IN ANY LITIGATION OR ADMINISTRATIVE HEARING RESPECTING THE SUBJECT HEREOF.
9. THE COMMISSION STAFF IS AUTHORIZED TO ENTER INTO A LEASE WITHOUT CHARGE OF THE PUBLIC TRUST EASEMENT IN THE TRUST EXERCISE PARCEL TO THE CALIFORNIA DEPARTMENT OF FISH AND GAME FOR A PERIOD OF 49 YEARS FOR THE RESTRICTED USES AND PURPOSES SET FORTH IN THIS TRUST EXERCISE WITH THE AUTHORITY IN THE DEPARTMENT TO RESOLVE ANY CONFLICT WHICH MIGHT ARISE AMONG THE SPECIFIC USES AND PURPOSES FOR WHICH THE TRUST IS EXERCISED. THIS TRUST EXERCISE IS CONSISTENT WITH THE McATEER PETRIS ACT (GOVERNMENT CODE 66600, ET SEQ.) AND THE REQUIREMENTS OF THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION.
10. AN ENVIRONMENTAL DOCUMENT HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH DOCUMENT IS NOT REQUIRED UNDER THE PROVISIONS OF P.R.C. SECTION 21084 AND 14 CAL. ADM. CODE 15100 ET SEQ.
11. AT SOME TIME IN THE FUTURE IT MAY BE NECESSARY OR DESIRABLE TO STABILIZE THE SLOPES AND PROVIDE SEALING FOR THE ALBANY LANDFILL, NECESSITATING SOME FILL AT THE PERIMETER OF THE TRUST EXERCISE PARCEL. THE ACTIONS TAKEN AND FINDINGS MADE PURSUANT TO THIS CALENDAR ITEM ARE WITHOUT PREJUDICE TO AN APPLICATION BY THE CITY OF ALBANY FOR A PERMIT TO PERFORM SUCH WORK.

EXHIBIT "A"



**PLAT of TRUST EXERCISE PARCEL**

Parcel being recommended for Trust Exercise by the State Lands Commission.

(Trust Exercise Parcel Acreage = Approx. 160 Ac.)



**Figure 4**

(Revised 10/27/82)

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Exhibit "B"

DESCRIPTION OF TRUST EXERCISE PARCEL

The real property in the City of Albany, Alameda County, California, being portions of Board of Tide Land Commissioners Lots 30, 31 and 32, in Section 29; Board of Tide Land Commissioners Lots 25, 26 and 27, in Section 28; Board of Tide Land Commissioners Lots 1, 2, 14, 15 and 16, in Section 32; and Board of Tide Land Commissioners Lots 3, 4, 5, 6, 11, 12, 13 and 14, in Section 33; all in T1N, R4W, MDM; as shown on Official "Map No. 4, Salt Marsh and Tidelands Situate in the County of Alameda, State of California", described as follows:

Bounded on the North by the boundary line common to Alameda and Contra Costa Counties as described in California Government Code Sections No. 23101 and No. 23107; bounded on the West by Parcel 1 of the lands described in the California Legislative Trust Grant to the City of Albany, Chapter 1223, Statutes of 1977; bounded on the South by Parcel 3 of said grant; and bounded on the East by those properties acquired for right-of-way purposes, extending northerly from Buchanan Street, City of Albany to the northerly Alameda County boundary as said acquisition parcels are shown on Right-of-Way Record Map R-102.1 (dated 5/68), Right-of-Way Record Map R-102.2 (dated 5/68), and Right-of-Way Record Map R-89.19 (revised 8/6/69), said maps being on file with the California Department of Transportation.

EXCEPTING THEREFROM those portions which have been filled and are not subject to tidal action.

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