

MINUTE ITEM

This Calendar Item No. 35
was approved as Minute Item
No. 35 by the State Lands
Commission by a vote of 2
to 0 at its 6/24/86
meeting.

CALENDAR ITEM

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S 3

06/26/86
W 23817 AD 53
G 06-03
Townsend
Stevens
Rusconi

REQUEST FOR AUTHORIZATION TO SETTLE TITLE TO AN
APPROXIMATELY 0.6-ACRE PARCEL OF LAND, CITY OF SAN RAFAEL,
MARIN COUNTY, IN EXCHANGE FOR A \$102,000 CONTRIBUTION TO
THE LAND BANK FOR THE CITY OF SAN RAFAEL

The staff of the State Lands Commission has been contacted by the City of San Rafael regarding the title to a 0.6-acre parcel of land adjoining the present location of the San Rafael Canal. The parcel is in the record ownership to Davood Kohanzadeh who, as a member of a partnership, intends to improve the site with a commercial office building. The subject parcel is shown for reference only on Exhibit "8" (which is attached and incorporated by reference as a part of this item) and will be referred to throughout this item as the TRUST TERMINATION PARCEL.

The staff of the Commission has completed analysis of the title to the TRUST TERMINATION PARCEL which shows that:

1. In its natural state, the TRUST TERMINATION PARCEL lay within San Rafael Creek or was part of an island within the Creek;
2. In its last natural condition, San Rafael Creek at the site of the TRUST TERMINATION PARCEL was below the line of ordinary high tide;
3. Several swamp and overflowed lands sales were made of land in the proximity of the TRUST TERMINATION PARCEL, including Swamp and Overflowed Patent Nos. 18 and 28 for Marin County. Because of conflicts in the descriptions of these sales at the site of the TRUST TERMINATION PARCEL, it is uncertain whether the TRUST

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TERMINATION PARCEL was within the perimeter of any of the sales.

4. In 1870, George Allardt surveyed the San Rafael Canal within San Rafael on behalf of the Board of Tide Land Commissioners. Allardt also surveyed and numbered lots adjoining the San Rafael Canal. These lots are depicted on Board of Tide Land Commissioners map dated May 10, 1871 and named Map No. 2 of Salt Marsh and Tidelands Situate in the County of Marin, State of California.
5. In 1871, the Board of Tide Land Commissioners issued deeds to lots or parts of lots lying along the San Rafael Canal. None of these deeds included the TRUST TERMINATION PARCEL.
6. By Chapter 83, Statutes of 1923, the State of California granted in trust to the City of San Rafael all tide and submerged land, whether filled or unfilled, within the City's boundaries.
7. A substantial part of the TRUST TERMINATION PARCEL remains subject to sovereign title interests held in trust by the City of San Rafael subject to supervisory and reversionary interests of the State of California.

It is the position of the PRIVATE PARTY that, in its last natural condition, the TRUST TERMINATION PARCEL was above the line of ordinary high tide. Further, the PRIVATE PARTY contends that any of the TRUST TERMINATION PARCEL which may have been below high tide was conveyed by Swamp and Overflowed Patent Nos. 18 or 28 for Marin County or by the Board of Tide Land Commissioners sale found at Page 594 Book I of Deeds for Marin County. The position of the PRIVATE PARTY 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 land title curative acts of the Legislature.

To resolve this impasse, the staff of the Commission has completed an appraisal and legal analysis of this matter. The staff has concluded that the value of remaining sovereign interests in the TRUST TERMINATION PARCEL is \$102,000.

The PRIVATE PARTY, the City of San Rafael, and the staff have reached a settlement of this dispute which has been memorialized in a title settlement agreement. The Agreement

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utilizes Chapter 1742, Statutes of 1971, which authorizes the City to settle title to historic tide or submerged lands within the City's grant which (a) have been filled in connection with the development of the San Rafael Canal; (b) which are no longer below the line of mean high tide; and (c) which are no longer necessary or useful for commerce, navigation or fisheries. 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:

1. The City of San Rafael and the State of California will quitclaim any remaining sovereign interests in the TRUST TERMINATION PARCEL to the private party, Davood Kohanzadeh. The State will issue a patent conveying its interests.
2. Davood Kohanzadeh will quitclaim his interests in the GRANTED LAND PARCEL to the City of San Rafael as land held under the 1923 grant, subject to reversionary and supervisory rights reserved to the State by that act. The GRANTED LANDS PARCEL, shown for reference on Exhibit "B" to this item, is a strip of land lying between the present San Rafael Canal and the TRUST TERMINATION PARCEL.
3. The PRIVATE PARTY will grant a pedestrian access easement in the PEDESTRIAN ACCESS EASEMENT leading from Second Street to the GRANTED LANDS PARCEL on the present waterfront. This access easement will be held by the City as granted land subject to the State's supervisory and reversionary powers. The title settlement agreement contemplates that the easement will be relocated to the as-built location of a walkway which the private party intends to construct between Second Street and the present waterway.
4. Davood Kohanzadeh will contribute \$102,000 to a land bank fund account created by joint instructions from the City and the staff of the State Lands Commission. Funds will be released from the account only upon the joint instruction of the City and State for the purchase of land in the City of San Rafael useful for public trust purposes. Any property so purchased will be held as granted land of the legal character of tide and submerged lands and pursuant to Chapter 83, Statutes of 1923.

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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. The Agreement will allow the private development of a tract not now amenable to public use while preserving public access though the property to the present waterway. At the same time, the Agreement will contribute funds to the City for its program to acquire land along the present waterway for public parks and accessways.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 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 the settlement of title and boundary problems.

Authority: P.R.C. 21080.11.

EXHIBITS: A. Location Map.
B. Site Map for Reference Only.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. AUTHORIZE THE EXECUTIVE OFFICER OR HER 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, AND A PATENT OF STATE SOVEREIGN INTERESTS IN THE TRUST TERMINATION PARCEL.
3. APPROVE THE EXECUTION OF THIS AGREEMENT BY THE CITY OF SAN RAFAEL AND THE QUITCLAIMING TO DAVOOD KOHANZADEH OF ALL RIGHT, TITLE, AND INTEREST HELD BY THE CITY BY CHAPTER 83, STATUTES OF 1923, AS AMENDED.

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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 TRUST TERMINATION PARCEL COMPRISES ONLY A SMALL PORTION OF LANDS LYING ALONG THE WATERFRONT OF THE SAN RAFAEL CANAL; AND
 - E. 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 \$102,000 IS AN AMOUNT EQUAL 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 CHARACTER OF TIDE AND SUBMERGED LANDS GRANTED TO THE CITY OF SAN RAFAEL.
6. AUTHORIZE THE EXECUTIVE OFFICER OR HER DESIGNEE TO EXECUTE AND TO DELIVER FOR RECORDATION THOSE DOCUMENTS WHICH MAY BE NECESSARY TO THE RELOCATION OF THE PUBLIC ACCESS EASEMENT TO ITS AS-BUILT LOCATION AND TO APPROVE THE VACATION OF THE PRIOR LOCATION OF THE PUBLIC ACCESS EASEMENT BY THE CITY OF SAN RAFAEL. WHEN AND IF THE RELOCATION OCCURS, THE CITY OF SAN RAFAEL AND THE EXECUTIVE OFFICER OR HER DESIGNEE SHALL TERMINATE SOVEREIGN RIGHTS IN THE FORMER LOCATION OF THE PEDESTRIAN ACCESS EASEMENT AND WILL ACCEPT THE NEW LOCATION AS A GRANTED LANDS ASSET UNDER CHAPTER 83, STATUTES OF 1923.
7. AUTHORIZE THE EXECUTIVE OFFICER OR HER DESIGNEE AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS SHE/THEY DEEM NECESSARY OR APPROPRIATE TO EFFECTUATE THIS AGREEMENT INCLUDING REPRESENTATION OF THE COMMISSION IN ANY LEGAL ACTION TO DETERMINE THE LEGALITY OF THIS AGREEMENT.

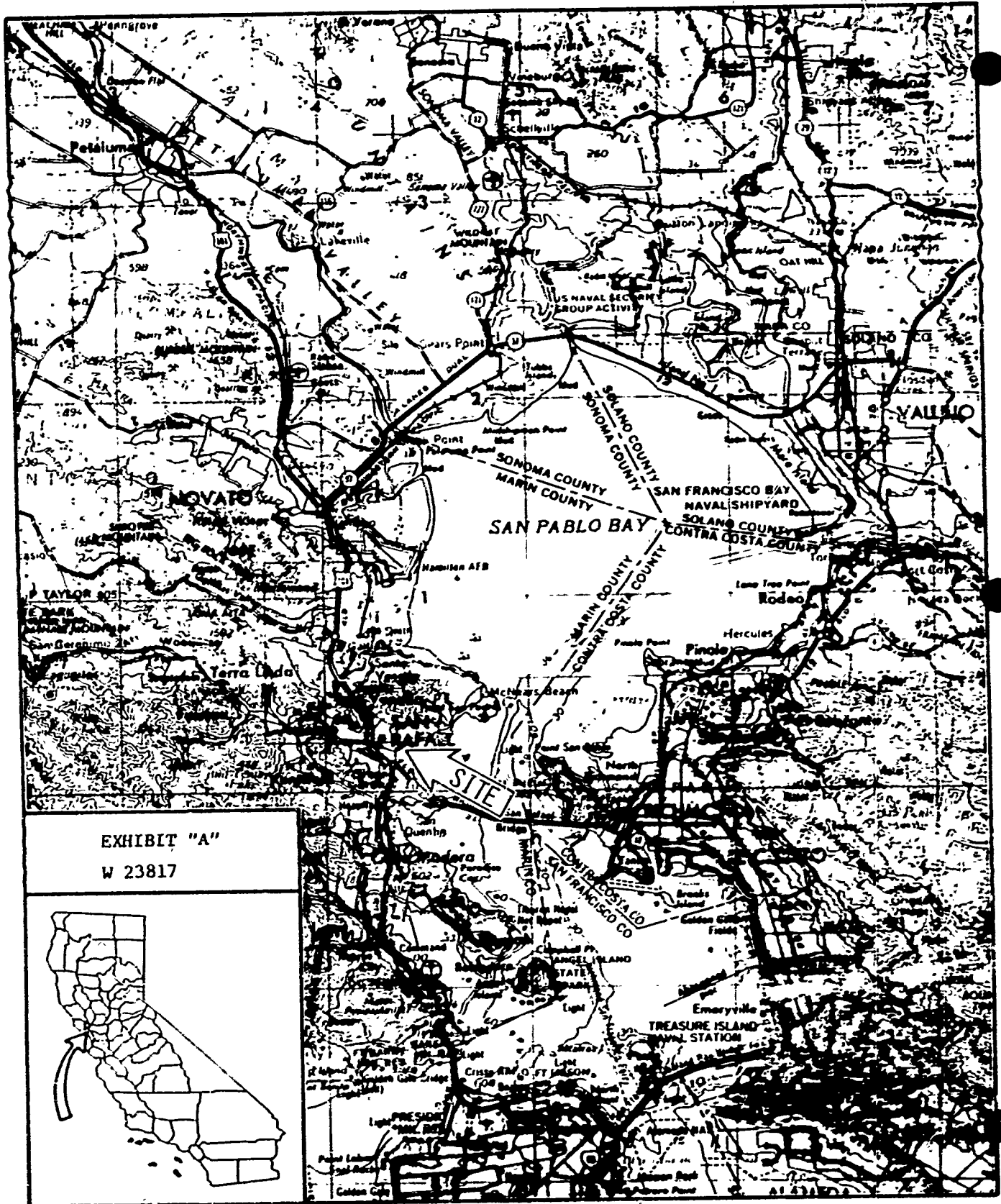


EXHIBIT "A"
W 23817



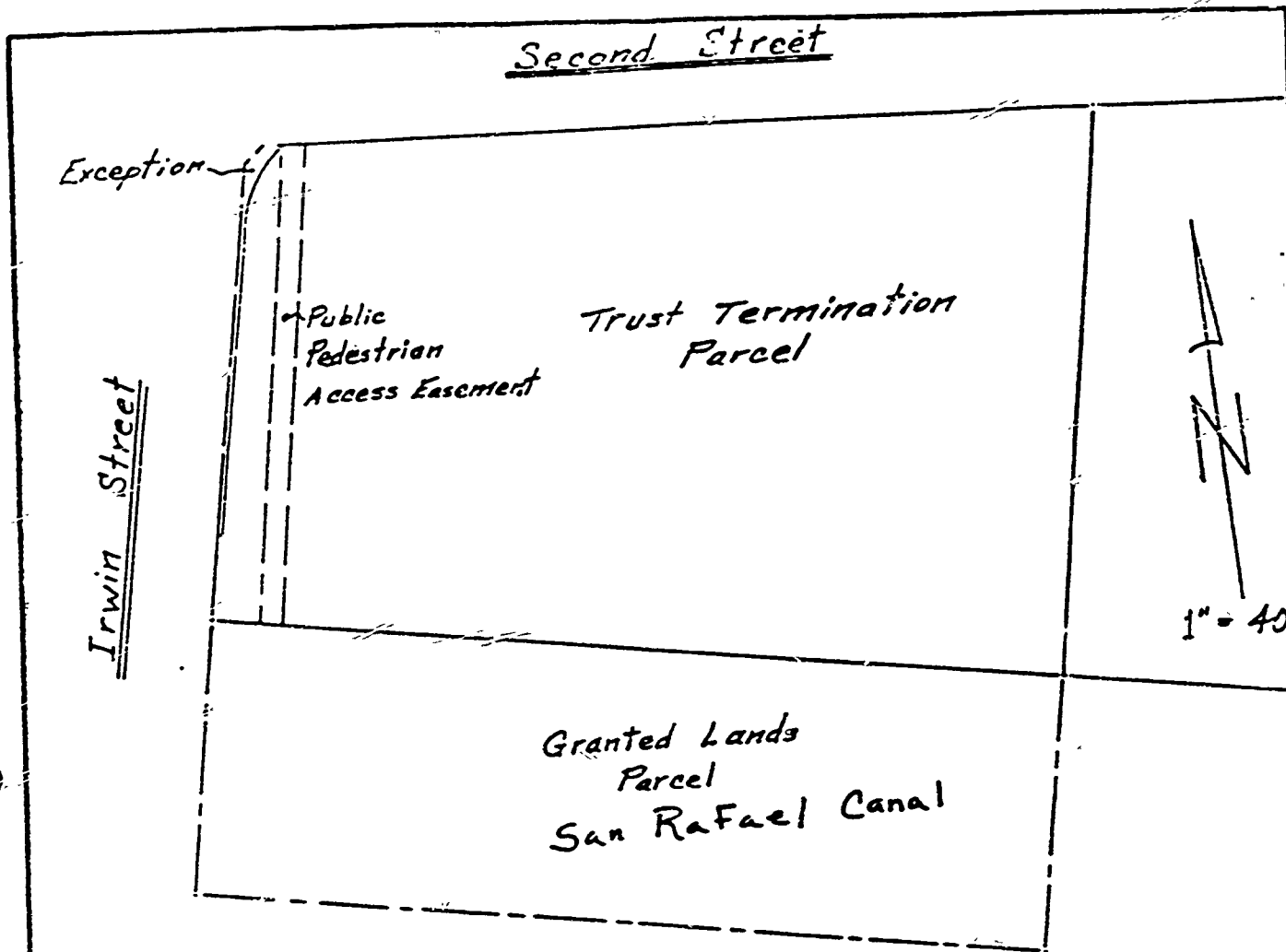


EXHIBIT "B"

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