

MINUTE ITEM
This Calendar Item No. 33
was approved as Minute Item
No. 33 by the State Lands
Commission by a vote of 3
to 0 at its 3/23/89
meeting.

CALENDAR ITEM

33

A 20

S 11

03/23/89

G 14-04

AD 94

Plummer

APPROVAL OF EXCHANGE OF LANDS BY
CITY OF SAN MATEO, SAN MATEO COUNTY
PURSUANT TO CHAPTER 1099 OF THE STATUTES OF 1976

PARTY: Henry Earl Mitvalsky, Jr., et al
c/o Robert S. Reed and Associates
1000 Shoreline Drive
San Mateo, California 94404

A title dispute exists between the State, in its sovereign capacity, the City of San Mateo, as grantee ("City"), and Henry Earl Mitvalsky, Jr., et al ("Mitvalsky"), concerning ownership of approximately 0.411 acre (approximately 19,550 square feet) of real property located in the City of San Mateo, San Mateo County. The real property is referred to as the Settlement Parcel, and is depicted on Exhibit "A" and Exhibit "B".

City, by Chapter 536 of the Statutes of 1915, as amended, was granted all right, title, and interest of the State in and to all the salt marsh, tidelands and submerged lands within the City, in trust for harbor purposes, subject to certain terms, conditions, and reservations.

Mitvalsky is the current record owner of the Settlement Parcel as successor-in-interest to a State patent which characterized the land as swamp and overflowed.

Mitvalsky contends that the State patent conveyed all right, title, and interest of the State within the Settlement Parcel without any reservations to the State, express or implied, and that he now holds title to the property, free and clear of any State right, title, or interest.

The staffs of the State Lands Commission and the City of San Mateo have conducted a study of the evidence of title to the Settlement Parcel and have drawn a number of factual conclusions, including those summarized below:

(REVISED 04/06/89)

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1. The Settlement Parcel includes filled and reclaimed historic wetlands which formerly consisted of marsh and sloughs.
2. A small portion (approximately 400 square feet) of the Settlement Parcel was in its last natural state covered, at least in part, by the ordinary tides of San Francisco Bay, the precise extent of coverage being subject to dispute.
3. The Settlement Parcel, in whole or in part, is within lands granted by the Legislature to the City pursuant to Chapter 536 of the Statutes of 1915, as amended.

The staffs are of the opinion that the title evidence and the applicable legal principles lead to the conclusion that the State, in its sovereign capacity, and its grantee, the City of San Mateo, are the owners of some public trust right, title, or interest in the Settlement Parcel. The exact extent and nature of the State's and City's interest is, however, subject to uncertainty and dispute.

The Settlement Parcel has been filled and reclaimed, is no longer covered by the waters of San Francisco Bay, and has been approved by the City for residential use. Surrounding properties are currently in residential use. That portion of the Settlement Parcel which in its last natural condition was subject to the tides of the Bay, is no longer adjacent to the waters of the Bay. Mitvalsky has offered to resolve the title dispute by an exchange of lands in compromise settlement of the legal and evidentiary issues.

The City of San Mateo, pursuant to the authority granted under Chapter 1099 of the Statutes of 1976, and subject to approval by the State Lands Commission, has the power to exchange lands of equal or greater value, whether filled or unfilled, provided that:

1. The exchange is in the best interests of the State for enumerated public trust purposes, and
2. That no substantial interference with trust uses and purposes would ensue.

Any land acquired pursuant to such an exchange shall have the same status as to administration, control, and disposition as the lands for which it was exchanged.

CALENDAR ITEM NO. 33 (CONT'D)

Chapter 1099 provides further that upon a Commission finding that the lands to be given up in the exchange have been improved, filled, and reclaimed and are no longer available, useful, or susceptible of use for public trust purposes, such lands shall be free from the public trust.

The City of San Mateo, through Resolution No. 27 passed by the City Council on March 6, 1989, a copy of which is attached as Exhibit "C", has approved a proposed Settlement Agreement to settle titles by exchange and has submitted the exchange proposal to the State Lands Commission for approval pursuant to Chapter 1099, Stats. 1976.

The proposed Settlement Agreement provides for the relinquishment of any sovereign right, title, and interest in the Settlement Parcel held by the City in exchange for a parcel which will be added to City-owned lands adjacent to Marina Lagoon ("Exchange Parcel"), as shown on Exhibit "B". The City proposes to use the Exchange Parcel to relocate their water control structure which will result in reduced maintenance and construction costs.

Staff of the State Lands Commission has appraised the Settlement Parcel and Exchange Parcel, evaluated the law and evidence bearing on the title dispute, and is of the opinion that the value of the Exchange Parcel to be received by the City is equal to or greater than the value of the City's and State's sovereign interest to be given up in the Settlement Parcel.

AB 884: N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 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: P.R.C. 21080.11.

EXHIBITS:

- A. Site Map.
- B. Exchange Parcel Plat.
- C. City Resolution.

CALENDAR ITEM NO. 33 (CONT'D)

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. FIND THAT THE AGREEMENT IS IN THE BEST INTEREST OF THE STATE FOR THE IMPROVEMENT OF COMMERCE, NAVIGATION, AND FISHERIES; 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, PURSUANT TO THE PUBLIC TRUST.
3. FIND THAT THE EXCHANGE PARCEL RECEIVED BY THE CITY IS OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF THE INTERESTS IN THE SETTLEMENT PARCEL BEING RELINQUISHED BY THE CITY.
4. THE SETTLEMENT PARCEL 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 OTHER RECOGNIZED PUBLIC TRUST PURPOSES, AND IS NO LONGER IN FACT TIDELAND OR SUBMERGED LAND AND THAT, UPON THE EFFECTIVE DATE OF THE SETTLEMENT AGREEMENT PROPOSED HEREIN, THE SETTLEMENT PARCEL SHALL BE FREE FROM THE PUBLIC TRUST.
5. FIND THAT THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS WITHIN THE SETTLEMENT PARCEL.
6. FIND THAT THE PROPOSED SETTLEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED.
7. FIND THAT THE SETTLEMENT AGREEMENT, IN LIEU OF THE COSTS, DELAYS, AND UNCERTAINTIES OF TITLE LITIGATION, IS CONSISTENT WITH AND AUTHORIZED BY THE REQUIREMENTS OF LAW.
8. APPROVE THE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE BY THE CITY OF SAN MATEO PURSUANT TO CHAPTER 1099, STATS. 1976.
9. 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 AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE SETTLEMENT AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE SETTLEMENT AGREEMENT.

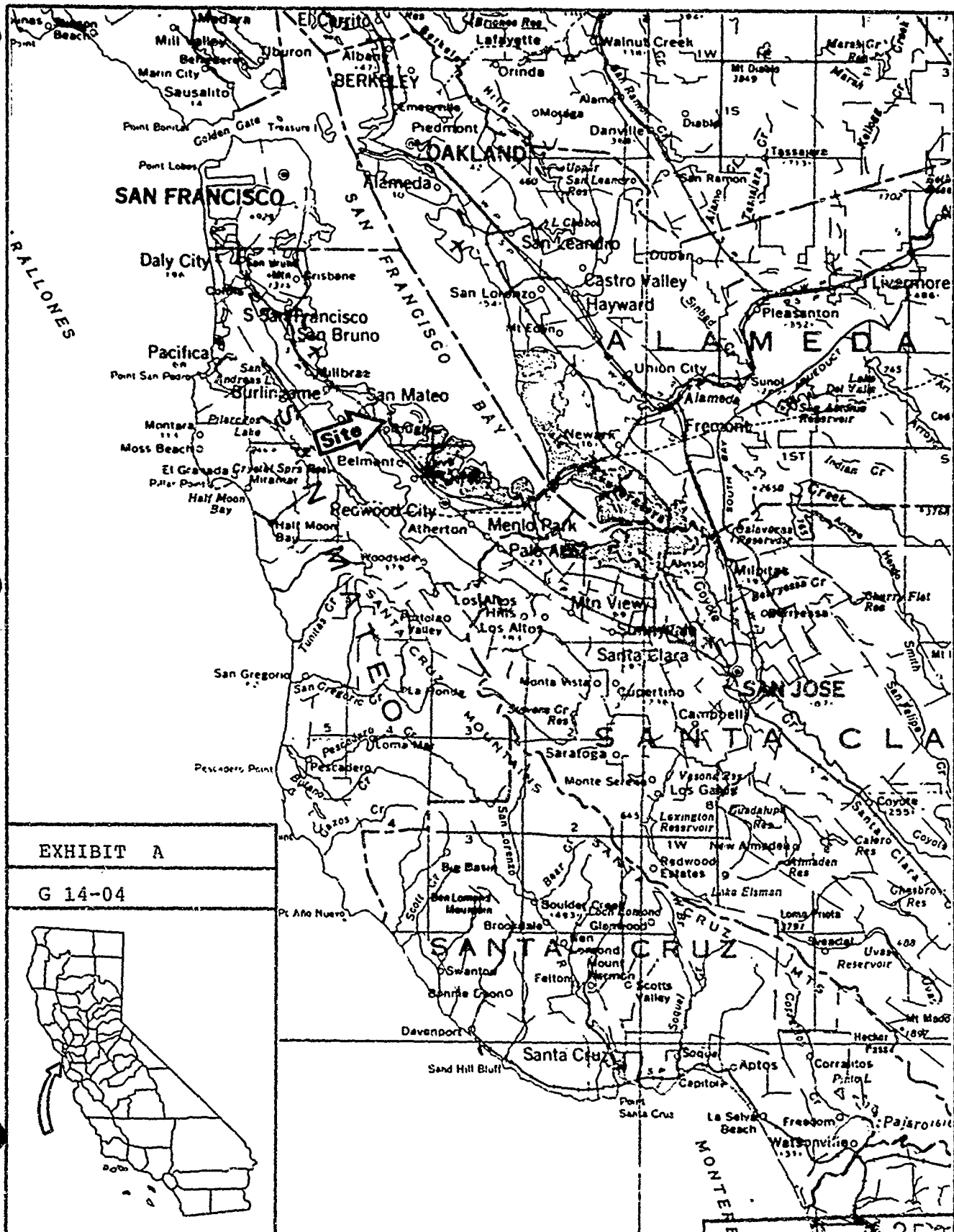


EXHIBIT A

G 14-04

MARINA LAGOON

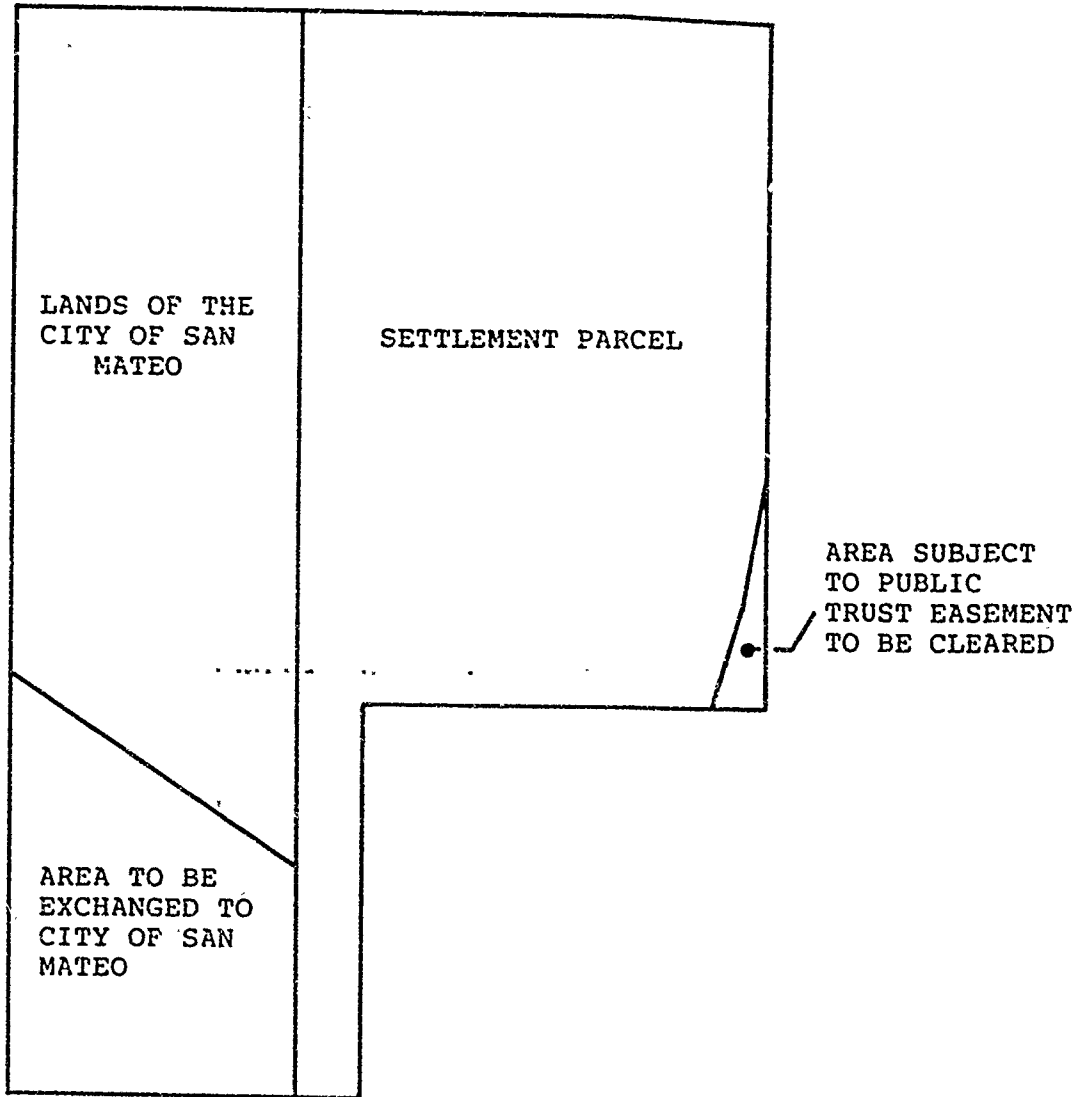


EXHIBIT B

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RESOLUTION NO. 27 (1989)APPROVING A SETTLEMENT OF INTERESTS IN THE PARCELS
FOR THE MITVALSKY SUBDIVISION AND
RECOMMENDING SETTLEMENT TO THE STATE LANDS COMMISSION

RESOLVED, by the Council of the City of San Mateo, California,
that:

WHEREAS, by Chapter 1099, Statutes 1976, the State Legislation granted certain marsh, tide, and submerged lands to the City of San Mateo in trust; and

WHEREAS, the proposed Mitvalsky subdivision, a residential subdivision, includes real property which, while disputed by Mitvalsky, appears to be within those lands granted pursuant to Chapter 1099; and

WHEREAS, this City Council has previously reviewed the evidence presented in the public hearing for the subdivision, including that indicating the benefit accruing to the City if it obtains the lands proposed to be granted to City by Mitvalsky; and

WHEREAS, the City of San Mateo is authorized by Chapter 1099, subject to approval of the State Lands Commission, to settle boundary and other title disputes;

NOW, THEREFORE, IT IS HEREBY DETERMINED, that:

1. The City of San Mateo approves, and recommends to the State Lands Commission that it approve, a settlement of the disputed area of lands within the Mitvalsky subdivision as follows:

a. Mitvalsky will take fee title to the lands designated on Exhibit "A" which are disputed ("C" 355 sq. ft.).

b. Mitvalsky will grant to the City of San Mateo the lands designated as "Lands to be Granted to City of San Mateo (6176 sq. ft.) on Exhibit "A".

c. City will grant to Mitvalsky the lands designated as "Lands to be Added to Mitvalsky Property in Exchange (3563 sq. ft.) on Exhibit "A".

2. The City of San Mateo finds that the lands granted to the City are of greater square footage and of greater monetary value than those granted to Mitvalsky, including the disputed lands.

EXHIBIT C

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ORIGINAL

3. The City of San Mateo finds that the disputed lands are not useable for trust purposes and further that no substantial interference with trust uses and purposes will ensue.

4. The City of San Mateo finds that the exchange of lands and settlement of disputes are in the public interest.

[Handwritten Signature]
Mayor

ATTEST:

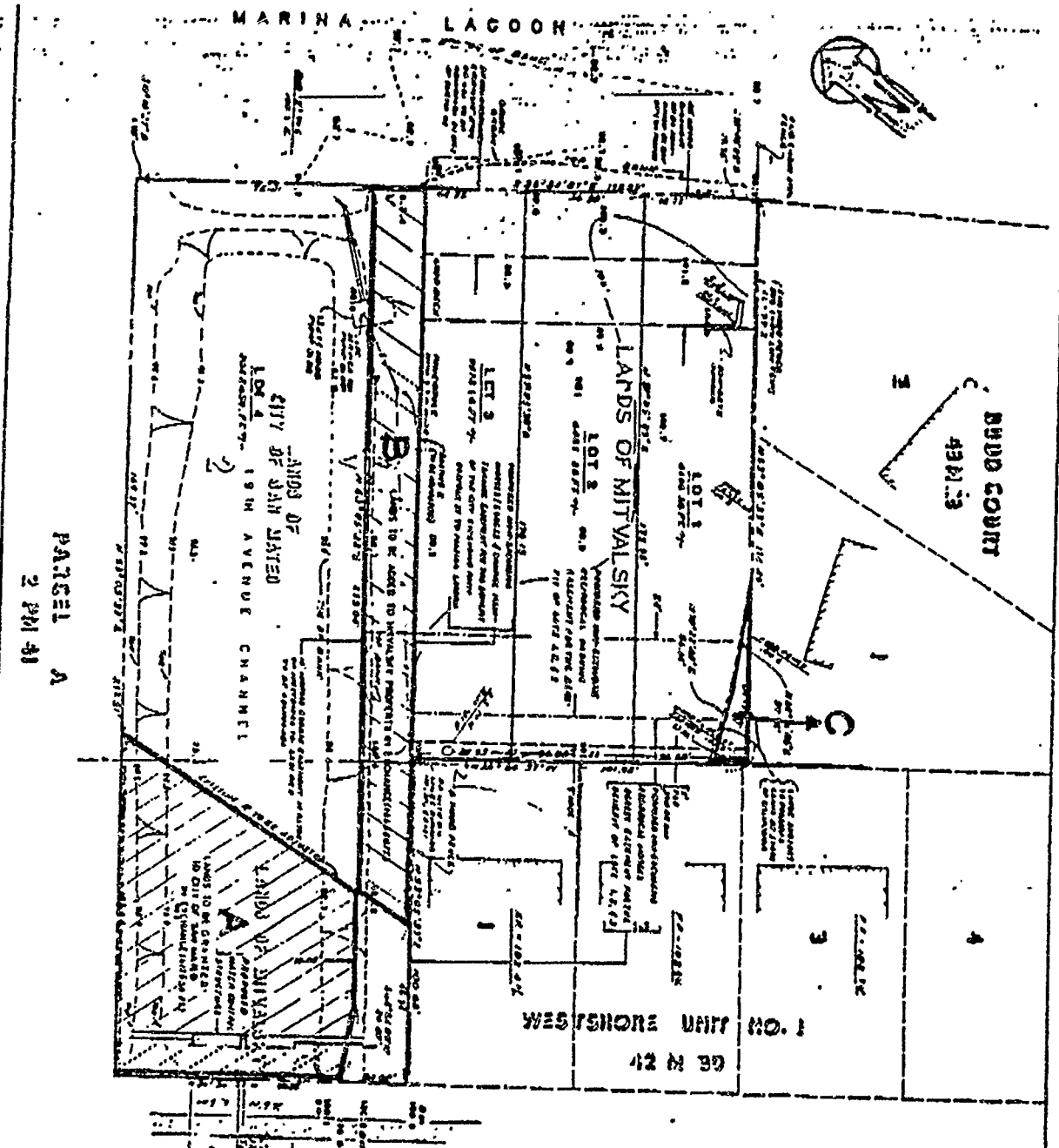
Louis Christen
City Clerk

2987G

ORDERING PRICE	255
ISSUE PRICE	1050

0-1146

MARINA LAGOON



PARCEL A
2 PM 51

WESTSHORE UNIT NO. 1
42 N 30

NORFOLK STREET
(80 WIDE)

LEGEND

- 12 1/2' WIDE
- 15' WIDE
- 18' WIDE
- 21' WIDE
- 24' WIDE
- 27' WIDE
- 30' WIDE
- 33' WIDE
- 36' WIDE
- 39' WIDE
- 42' WIDE
- 45' WIDE
- 48' WIDE
- 51' WIDE
- 54' WIDE
- 57' WIDE
- 60' WIDE
- 63' WIDE
- 66' WIDE
- 69' WIDE
- 72' WIDE
- 75' WIDE
- 78' WIDE
- 81' WIDE
- 84' WIDE
- 87' WIDE
- 90' WIDE
- 93' WIDE
- 96' WIDE
- 99' WIDE
- 102' WIDE
- 105' WIDE
- 108' WIDE
- 111' WIDE
- 114' WIDE
- 117' WIDE
- 120' WIDE

EXHIBIT A

APPLICANT: WESTSHORE UNIT NO. 1
 ENGINEER: [Name]
 CITY OF SAN JUAN

Sheet No. 103	Scale 1" = 100'	Project No. 103
City of San Juan	City of San Juan	City of San Juan
City of San Juan	City of San Juan	City of San Juan

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* * *

Resolution adopted by the City Council of
the City of San Mateo, California, at a
regular meeting held on March 6, 1989,
by the following vote of the Council
members:

AYES: Council Members POWELL, MACK
RHOADS, BAKER and GUMBINGER

NOES: NONE

ABSENT: NONE

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IN. STATE PAGE	1052