

MINUTE ITEM

This Calendar Item No. C68 was approved as Minute Item No. 68 by the California State Lands Commission by a vote of 3 to 0 at its 9-17-01 meeting.

**CALENDAR ITEM
C68**

A 7
S 2

09/17/01
W 25116
D. Plummer
K. Olin
B. Stevenson
J. Rusconi

CONSIDER REQUEST FOR APPROVAL OF AMENDMENT TO MARE ISLAND PROPERTY SETTLEMENT AND EXCHANGE AGREEMENT BETWEEN THE CITY OF VALLEJO AND THE STATE LANDS COMMISSION AT MARE ISLAND; CITY OF VALLEJO, SOLANO COUNTY

BACKGROUND

The purpose of this calendar item is to seek authorization by the State Lands Commission of an amendment to the agreement to settle sovereign land title issues at Mare Island Naval Shipyard, within the city of Vallejo, Solano County. On June 27, 2000, the Commission approved a settlement and exchange agreement between the State of California ("State"), acting by and through the State Lands Commission ("Commission"), and the City of Vallejo ("City"). Through the recordation of the deeds and patents called for in the Agreement, the City will own certain lands at Mare Island free of state title and the public trust for commerce, navigation, and fisheries (the "public trust"), and the State will have clear and uncontested title to other lands at Mare Island as public trust lands. The area which is the subject of the Agreement shall be called the "Mare Island Settlement Area," and is shown on Exhibit A attached to this calendar item.

The Agreement remains unexecuted, is on file at the Sacramento offices of the Commission, and will be referred to in this calendar item as the "Agreement." The Agreement was approved in the context of particular problems stemming from closing military bases. Among these problems are complex federal land disposal procedures, the necessity of hazardous waste remediation on some parts of Mare Island, and delays in transfer out of the United States caused by the need to remediate. The Agreement sets up a process through which, over time and as remediation is completed, some land will come to the State subject to the public trust, while other land staying with the City will have the public trust terminated by patent from the State.

With the first patent out from the State, the existing Agreement calls for the State to receive a very significant parcel of land slated to become a public park. The parcel is on the hill at the south end of the Island, and is approximately 173 acres in size. It has

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sweeping vistas of the Napa River and San Francisco and San Pablo Bays. It will be an asset to all of the people of the State for years to come. The North Housing Site, a smaller parcel to the north important for habitat, will also be deeded to the State with its first patent.

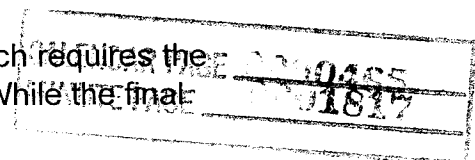
Under the Agreement as currently structured, both the Trust Termination Parcels and the Public Trust Parcels will be conveyed by the Navy to the City. The State will not clear title to nor allow the City to transfer any portion of a Trust Termination Parcel to third parties, until the Department of Toxic Substance Control ("DTSC") certifies that all assessment and remedial action has been completed on, and the State has received title to, the Public Trust Parcels. The City would now like the State to agree to allow transfer of Transfer and Disposal Parcel IV, including Trust Termination Parcel IV and Public Trust Parcel IV, to Lennar Mare Island (LLC), ("Lennar") the developer chosen by the reuse authority. The City also proposes that the State agree to allow Lennar to transfer portions of the Trust Termination Parcel to third parties prior to clean up of, and the State's receiving title to, Public Trust Parcel IV.

In addition, the City requests that the Agreement be amended to provide that the Commission will quitclaim its reversionary rights in three parcels, lying westerly of the Joy Survey Boundary line of 1923, and shown for reference purposes in Exhibit B, attached to this calendar item and incorporated as a part of it. The Navy will then deed the three parcels directly to the City. Any quitclaim by the State to the City would only be on a State receipt of the park and North Housing Site, if they have not already been received by the State.

The reason for the requested change in the Agreement to allow transfer to Lennar Mare Island is to take advantage of the benefits of early transfer. The timing for the completion of remediation is uncertain as the Navy retains all responsibility for the remediation. Early transfer of the property, and the remediation funds that will accompany it, would allow the City, through transfer of the property to Lennar, to begin clean up of the property. This would allow the State to receive the Public Trust Parcel IV at a much earlier date than if the Navy retains clean up responsibility. The transfer to Lennar, and from Lennar to third parties, would allow infrastructure and other development to proceed at the same time as clean up, lowering development costs.

Under the requested amendment to the Agreement, no transfer of the property from the City to Lennar would be allowed unless the City delivers satisfactory evidence to the Commission that:

-Lennar is a party to a consent agreement with DTSC which requires the assessment and remediation of Public Trust Parcel IV. While the final



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decision on timing of cleanup rests with DTSC, Lennar has agreed to request that DTSC allow remediation of Public Trust Parcel IV no later than the completion of remediation of Trust Termination Parcel IV.

- Lennar posts a \$2 million dollar bond or line of credit to assure its performance of the assessment and remediation of Public Trust Parcel IV. The bond will be paid to the State upon a material, uncured default of the consent agreement with DTSC after a one year cure period.
- In the event that remediation and transfer of the Public Trust Parcel IV has not occurred within 1 year, Lennar will provide a deeded alternative public access to and along the Napa River shoreline.
- Lennar has waived any claims and defenses, such as estoppel, waiver, and laches, to the State's assertion of sovereign land claims to the property conveyed to it by the City, based upon actions taken by Lennar to improve the property while subject to the State's claims.

Under the requested amendment, no transfer of any property from Lennar to third parties would be allowed unless:

- Lennar has received the second installment of remediation funds from the Navy.
- Lennar retains all responsibility for remediation under the consent agreement with DTSC for any property conveyed to third parties.
- the third party transferee has waived any claims and defenses, such as estoppel, waiver, and laches, to the State's sovereign lands claims based upon actions taken by the transferee to improve the property while subject to the State's title.

Also included in the amendment is a provision allowing the State to accept title to Public Trust Parcel IV at any time, if it chooses.

The second requested amendment, to allow the State quitclaim of the land shown in Exhibit B, only advances in time a relinquishment of state title already agreed to in the present Agreement. Under the amendment, the State will still receive the park and North Housing Site when the first deed from the State is recorded:

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The staff, with advice and assistance from the Office of the Attorney General, has evaluated the State's current position under the present Agreement versus its position under the Agreement if amended as requested by the City. While, under the amendment, the Commission is assuming some limited risk that the clean up of Public Trust Parcel IV may not go as planned and that it may have to look to the Navy for ultimate remediation of Public Trust Parcel IV, the risk is small. And the benefit to the public of having Public Trust Parcel IV in State hands and put to public trust uses years earlier that had been originally anticipated makes the risk worth bearing.

STATUTORY AND OTHER REFERENCES:

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

AB 884: 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 the CEQA as a statutorily exempt project. The project is exempt because it involves settlements of title and boundary problems and leases in connection with those settlements.

Authority: Public Resources Code 21080.11

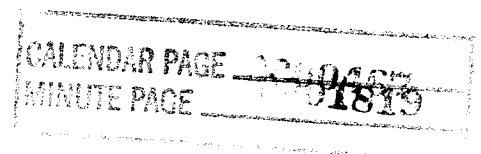
EXHIBITS:

- A. Site Map of the Mare Island Settlement Area and the North Housing Site.
- B. Site Map of Quitclaim Parcels.

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 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS, AND LEASES IN CONNECTION THEREWITH.



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- 2 AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE AND TO DELIVER INTO ESCROW FOR RECORDATION IN THE OFFICE OF THE COUNTY RECORDER OF SOLANO COUNTY, THE SUBJECT TITLE SETTLEMENT AGREEMENT, AS AMENDED HERE, AND ITS PATENTS IN FORMS SUBSTANTIALLY SIMILAR TO THOSE NOW ON FILE WITH THE OFFICE OF THE STATE LANDS COMMISSION; AND TO ACCEPT TITLE IN A PORTION OF PUBLIC TRUST PARCEL VII AND THE NORTH HOUSING SITE, AND TO ISSUE FUTURE PATENTS AND TO RECEIVE AND ACCEPT FUTURE DEEDS, ALL AS PROVIDED IN THE SETTLEMENT AGREEMENT, AS AMENDED, AND ESCROW INSTRUCTIONS TO BE PREPARED PURSUANT TO IT.

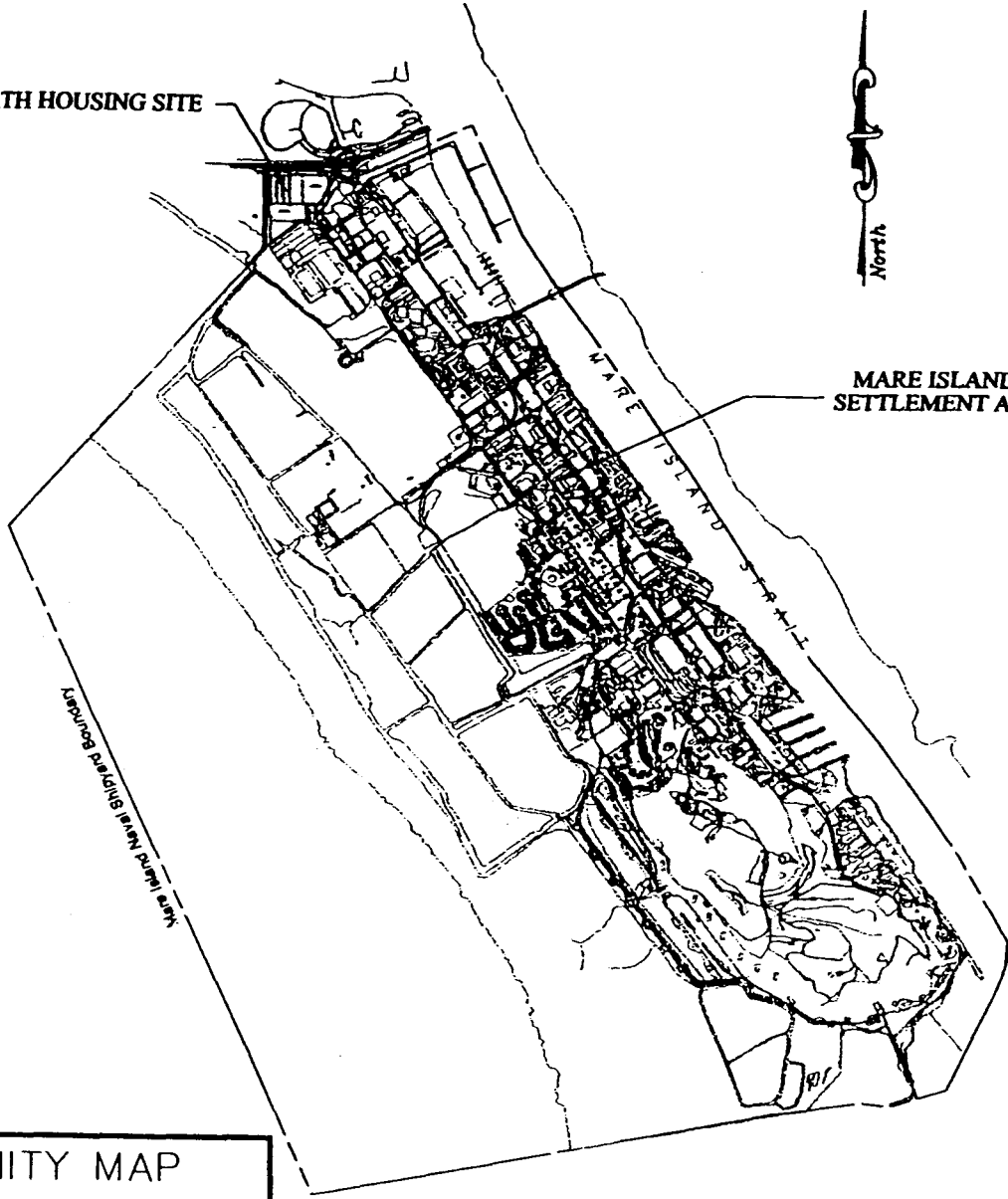
- 3 FIND, UPON RECORDATION OF A PATENT FOR EACH OF THE TRUST TERMINATION PARCELS, THAT THE FINDINGS SET FORTH IN CALENDAR ITEM C36 OF ITS JUNE 27, 2000, MEETING ARE TRUE AND CORRECT.

- 4 AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION AND/OR THE OFFICE OF 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 TITLE SETTLEMENT AGREEMENT, AS AMENDED; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL OR ADMINISTRATIVE PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT, AS AMENDED.

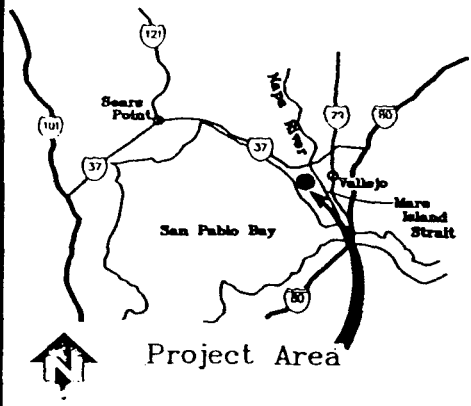
EXHIBIT A

NORTH HOUSING SITE

MARE ISLAND SETTLEMENT AREA



VICINITY MAP



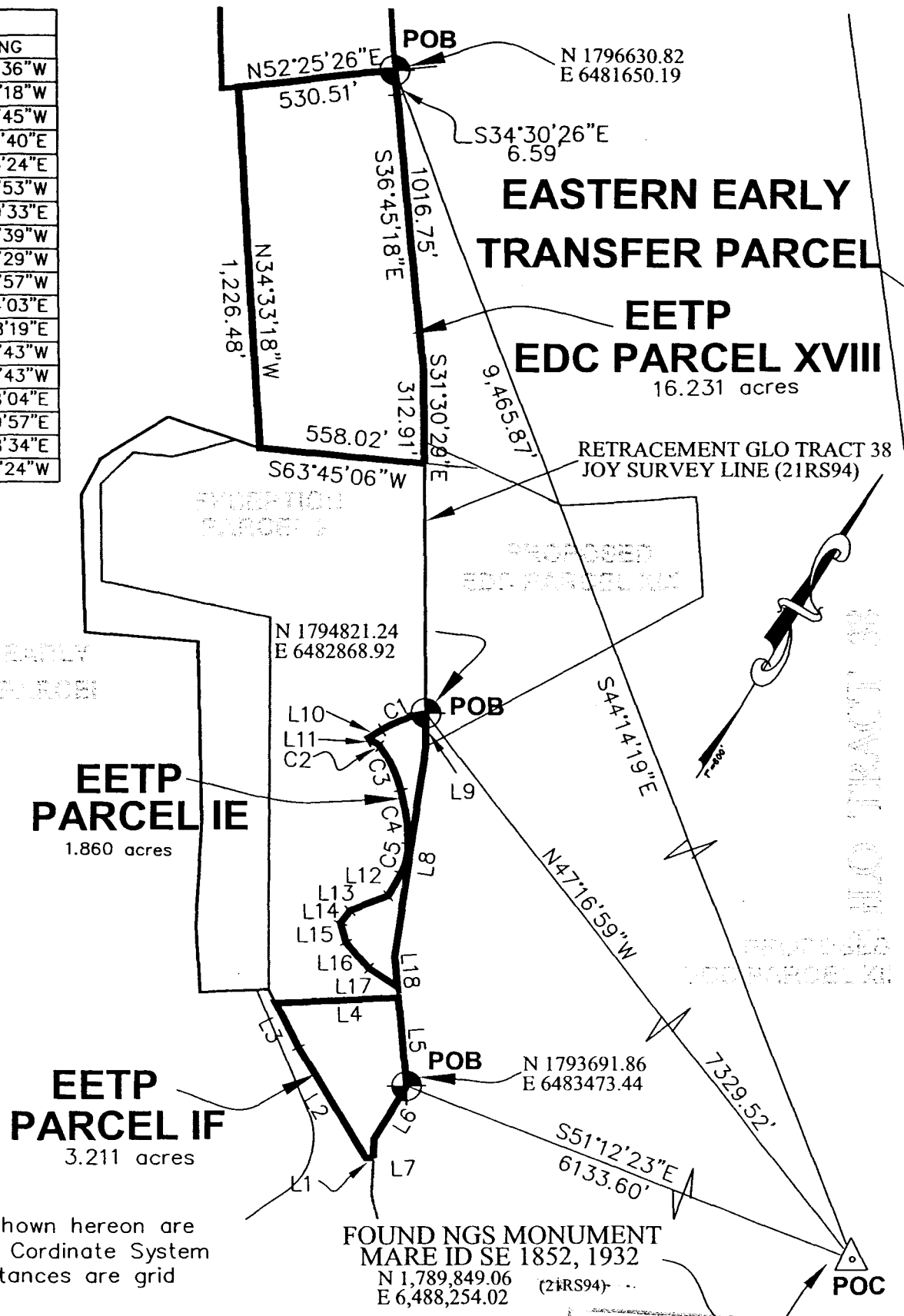
MARE ISLAND SETTLEMENT AREA AND NORTH HOUSING AREA

Mare Island, City of Vallejo
Solano County, California

W25116

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LINE TABLE		
LINE	LENGTH	BEARING
L1	24.71	S58°33'36"W
L2	440.70	N62°19'18"W
L3	169.42	N58°02'45"W
L4	416.53	N55°57'40"E
L5	304.24	S36°15'24"E
L6	211.28	S00°13'53"W
L7	65.73	S28°00'33"E
L8	732.89	N22°45'39"W
L9	113.62	N31°30'29"W
L10	52.81	S26°25'57"W
L11	15.82	S63°34'03"E
L12	89.82	S02°28'19"E
L13	139.74	S37°17'43"W
L14	53.79	S07°09'43"W
L15	69.61	S47°28'04"E
L16	118.11	S71°59'57"E
L17	114.75	S88°08'34"E
L18	100.62	N36°15'24"W



NOTE :
Basis of Bearings shown hereon are based on California Coordinate System 83, Zone 2. All distances are grid and in feet.

EXHIBIT B

WO 25116

*Site Map
Quitclaim Parcels
Mare Island - Vallejo CA*

**CALIFORNIA STATE
LANDS COMMISSION**

