

MINUTE ITEM

This Calendar Item No. 13
was approved as Minute Item
No. 13 by the State Lands
Commission by a vote of 2
to 0 at its 2-28-80
meeting.

MINUTE ITEM

2/28/80
(Petersen)
Grimes/Rump

13. AUTHORIZATION FOR SETTLEMENT OF STATE OF CALIFORNIA,
ACTING BY AND THROUGH THE STATE LANDS COMMISSION AND THE
CITY OF RICHMOND V. RICHMOND SANITARY SERVICE, ET AL., CONTRA
COSTA SUPERIOR COURT NO. 160686.

Mr. Robert C. Hight, Chief Counsel, explained the transaction to the Commission. He pointed out that the Richmond Sanitary District has not signed the agreement. He explained they are in agreement in principal; however, minor nonsubstantive changes may be made. Ms. Pat Petersen, Deputy Attorney General, reiterated Mr. Hight's comments and stated the approval of the agreement would be in the best interests of the State.

Jay Sanders, representing the Richmond Sanitary District, appeared and advised the Commission that they were in favor of the staff's recommendation.

Upon motion duly made and carried, the resolution as presented in Calendar Item 13 attached was approved by a vote of 2-0.

Attachment:
Calendar Item 13.

A 11
S 7

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CALENDAR ITEM

13.

2/80
W 5414
(Peterson)
Grimes/Rump
PRC 5802.9

AUTHORIZATION FOR SETTLEMENT OF
STATE OF CALIFORNIA, ACTING BY AND
THROUGH THE STATE LANDS COMMISSION
AND THE CITY OF RICHMOND v. RICHMOND
SANITARY SERVICE, ET AL., CONTRA
COSTA SUPERIOR COURT NO. 160686

In 1976, the above referenced action was filed by the State Lands Commission to quiet title to certain Board of Tide Land Commissioners' lots which the State contended had not been validly sold into private ownership. These lots had been sold at auction to M.J. Scanlan in 1873. The terms of sale provided for payment of one-fourth of the purchase price at the date of sale and equal annual installments of the remaining principal plus interest for the next three years. There is no record of the final installment of \$5.82 principal plus interest having been paid. Defendant Richmond Sanitary Service contends that its predecessors tendered final payment which was refused and that the State constructively delivered the deed. The State alleges that title to the property never passed to Scanlan or his successors in interest. By mesne conveyances, the interest, if any, of Scanlan and his successors in the property was acquired by Richmond Sanitary Service. Richmond Sanitary Service has consolidated these lots with other Board of Tide Land Commissioners' lots for use as a dump site. Richmond Sanitary Service contends that it has filled with sanitary landfill a substantial portion of the property pursuant to governmental permits. Based on the above, the allegation that the State has previously acknowledged its title and the allegation that it and its predecessors in title have paid taxes on the property, Richmond Sanitary Service alleges that the State is estopped from claiming ownership.

The litigation also involves title issues similar to the litigation now before the California Supreme Court in City of Berkeley, et al. v. Superior Court, California Supreme Court No. SF23686. The State is alleging alternatively that if some form of valid title to the tide lots did pass, the lots are burdened with a public trust easement for purposes of commerce, navigation and fisheries. Although all the dump site tide lots are not included in this litigation,

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the State contends that all are burdened with such a public trust easement.

In 1979, the complaint in this action was amended to join the City of Richmond as plaintiff. All but one of the Scanlan lots were located within the 1913 legislative grant to the city. (Stats. 1913, ch. 317, p. 605)

Settlement of this litigation by entering into a Compromise Settlement Agreement and Stipulation for Entry of Judgment is proposed. The Office of the Attorney General, in consultation with the staff, has concluded that a reasonable settlement of the litigation would be accomplished by resolution of the title questions for all the tide lots which are part of the dump site. As part of the settlement, the State's complaint in this action would be amended to include all the Board of Tide Land Commissioners' lots within the dump site and the lots which the State will receive in the settlement exchange. Pursuant to the terms of the legislative grant to the City of Richmond, the City will reconvey to the State the controverted tide lots granted to it in order that the State may conclude the settlement with the Richmond Sanitary Service. In exchange for the State's relinquishment of its title claims to the tide lots in the dump site, the State will receive other public trust lands equal or greater in value than the State's claims. An EIR is not required for an exchange for the purpose of settling a title dispute. The compromise settlement agreement and stipulation for entry of judgment would authorize entry of judgment providing as follows:

- 1) Richmond Sanitary Service has fee title in the filled and diked and partially filled Board of Tide Land Commissioners lots illustrated in Exhibit A;
- 2) Certain parcels within the City illustrated in Exhibit B are burdened with the easement for public trust purposes of commerce, navigation, fisheries, recreation, etc., described in People v. California Fish Co. (1913) 166 Cal.576 and Marks v. Whitney (1971) 6 Cal.3d 251, which trust interest in these parcels in the City is to be administered by the City pursuant to a 49-year Public Agency Permit consistent with the terms and conditions contained in Statutes of 1913, chapter 317, and pursuant to agreement the State Lands Commission will not exercise for a period of 49 years any rights it may have to exercise the public trust in a manner

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inconsistent with the use of these lots for mariculture or a marina and related uses;

- 3) The State has fee title in certain water-covered parcels illustrated in Exhibit C comprising approximately 153 acres contiguous to the dump site;
- 4) Richmond Sanitary Service will provide lands amounting to a value of \$100,000 which are suitable for public trust purposes as part of the exchange.

The proposed compromise settlement agreement and stipulation for entry of judgment is on file in the Sacramento office of the Commission. The staff and the Office of the Attorney General concur that execution of the agreement is in the best interests of the Commission and the public. The settlement will consolidate State titles in a manner which will be beneficial to the environment and ecology. The proposed exchange is for the purpose of settling a title dispute and Richmond Sanitary Service remains subject to all lawful requirements of public agencies for permits, use or otherwise, independent of this agreement.

EXHIBITS: A. Exhibit Plat of Dump Site.
 B. Exhibit Plat of Public Trust Parcels.
 C. Exhibit Plat of Exchange Parcels.

IT IS RECOMMENDED THAT THE COMMISSION:

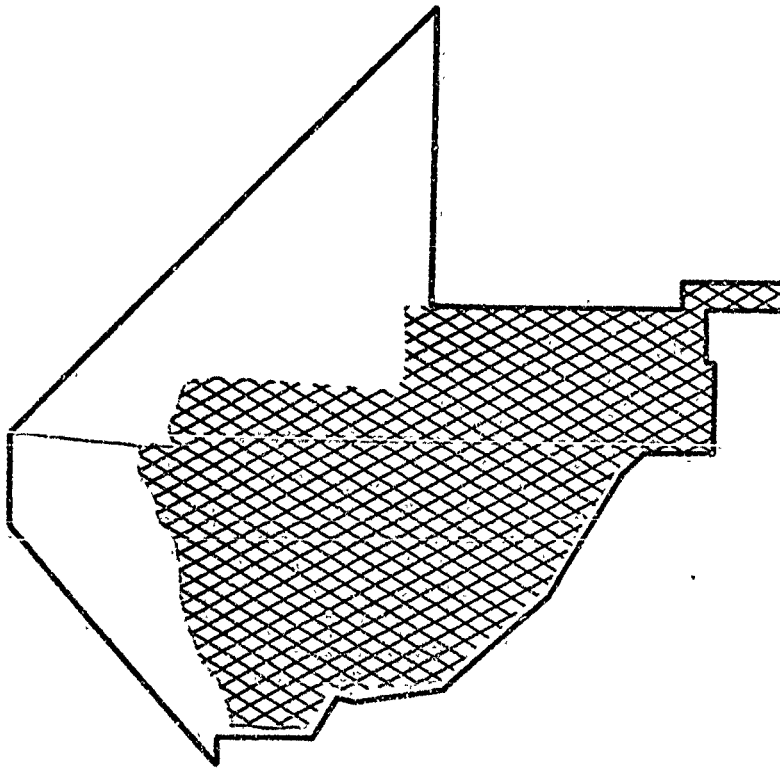
1. APPROVE THE EXCHANGE AS PROPOSED AND AUTHORIZE THE EXECUTIVE OFFICER AND THE OFFICE OF THE ATTORNEY GENERAL, IN SETTLEMENT OF STATE OF CALIFORNIA, ACTING BY AND THROUGH THE STATE LANDS COMMISSION, AND THE CITY OF RICHMOND v. RICHMOND SANITARY SERVICE, ET AL., CONTRA COSTA COUNTY SUPERIOR COURT NO. 160686, TO EXECUTE THE COMPROMISE SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF JUDGMENT ON FILE IN THE OFFICE OF THE COMMISSION, AND WHICH IS INCORPORATED HEREIN BY REFERENCE.
2. FIND THAT THE EXCHANGE OF LANDS, INTERESTS IN LANDS AND RIGHTS SET FORTH IN THE AGREEMENT AND STIPULATION REFERRED TO IN PARAGRAPH 1 ABOVE, ARE IN THE BEST INTERESTS OF THE STATE FOR AID IN RECLAMATION; THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING IN THE WATERS INVOLVED; AND THAT THE STATE WILL RECEIVE LANDS AND INTERESTS IN LANDS EQUAL TO OR GREATER IN VALUE THAN ANY LANDS OR INTERESTS IN LANDS RELINQUISHED BY THE STATE PURSUANT TO SAID COMPROMISE SETTLEMENT AGREEMENT AND STIPULATION.

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3. ACCEPT THE RECONVEYANCE OF TIDE LOTS INVOLVED IN THE ABOVE-ENTITLED SUIT FROM THE CITY OF RICHMOND.
4. ACCEPT AND AUTHORIZE THE RECORDATION OF A GRANT DEED TO THE STATE OF CALIFORNIA OF THE WATER PARCELS DEPICTED IN EXHIBIT C.
5. ACCEPT A QUITCLAIM FROM RICHMOND SANITARY SERVICE FOR ANY INTEREST IT MAY HAVE IN THE TIDE LOTS DEPICTED IN EXHIBIT B AND AUTHORIZE EXECUTION AND DELIVERY TO RICHMOND SANITARY SERVICE OF A PATENT FOR AN UNDERLYING FEE TITLE INTEREST SUBJECT TO THE PUBLIC TRUST FOR THE TIDE LOTS DEPICTED ON EXHIBIT B.
6. FIND AND DECLARE THAT UPON THE DELIVERY OF THE STATE PATENT AND RECORDATION IN CONTRA COSTA COUNTY THE REAL PROPERTY DEPICTED IN EXHIBIT A AND DESCRIBED IN THE PATENT.
 - a. HAS BEEN CUT OFF FROM NAVIGABLE WATERS, IMPROVED AND RECLAIMED BY PRIVATE PARTIES OR THEIR PREDECESSORS IN INTEREST;
 - b. HAS BEEN SEVERED FROM THE PUBLIC CHANNELS AND WATERWAYS, AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING, AND IS NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS, AND THEREFORE SHALL BE FREED FROM THE PUBLIC TRUST.
7. AUTHORIZE ISSUANCE OF A 49-YEAR PUBLIC AGENCY PERMIT FOR PUBLIC TRUST USES CONSISTENT WITH STATUTES OF 1913, CHAPTER 317, TO THE CITY OF RICHMOND FOR THE LANDS DEPICTED ON EXHIBIT B WITHIN THE CITY LIMITS. ALSO AUTHORIZE STAFF TO PURSUE A LEGISLATIVE GRANT TO THE CITY OF RICHMOND OF THE PUBLIC TRUST INTEREST IN THE TIDE LOTS WITHIN THE CITY OF RICHMOND SHOWN ON EXHIBIT B.
8. AUTHORIZE THE EXECUTIVE OFFICER OF THE COMMISSION TO SELECT \$100,000 WORTH OF LANDS SUITABLE FOR PUBLIC TRUST PURPOSES TO BE ACQUIRED BY THE STATE FROM RICHMOND SANITARY SERVICE IN THE EXCHANGE.
9. FIND THAT BECAUSE THIS TRANSACTION IS IN SETTLEMENT OF A TITLE DISPUTE THE PROVISIONS OF CEQA ARE INAPPLICABLE.
10. AUTHORIZE THE EXECUTIVE OFFICER AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE ABOVE TRANSACTION, INCLUDING BUT NOT LIMITED TO THE EXECUTION OF ALL DOCUMENTS, ESCROW IN-

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STRUCTIONS, MAPS AND PLATS, THE AMENDMENT OF THE COMPLAINT
IN THE LITIGATION TO INCLUDE STATE TITLE CLAIMS OVER
ALL BOARD OF TIDE LAND COMMISSIONERS' LOTS IN THE DUMP
SITE AND TIDE LOTS WHICH THE STATE WILL RECEIVE IN
THE EXCHANGE AND ANY APPEARANCES IN ANY LEGAL PROCEEDINGS
NECESSARY OR REQUIRED TO ACCOMPLISH THE TERMS AND PROVISIONS
OF THE ABOVE TRANSACTION.



LANDS TO RICHMOND SANITARY SERVICE,
TITLE CLEARED. 293.5 Ac. (Area by Planimeter)

STATE LANDS DIVISION

PLAT OF DUMP SITE

Prepared by: jsf Date: 2-25-80

Title Study: RICHMOND SANITARY SERVICE

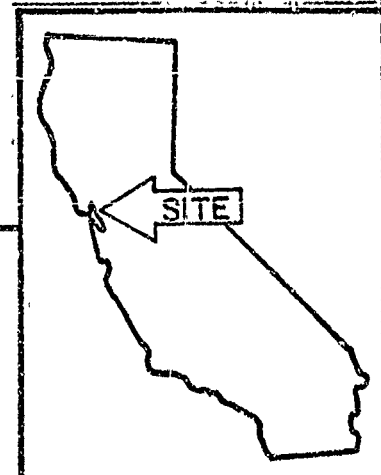


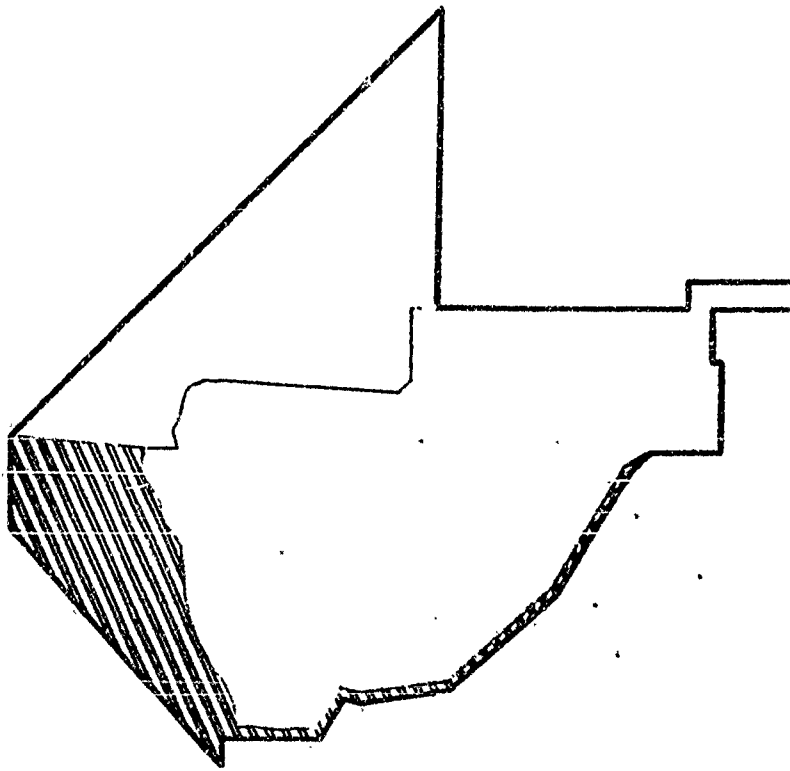
EXHIBIT A

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CALENDAR PAGE

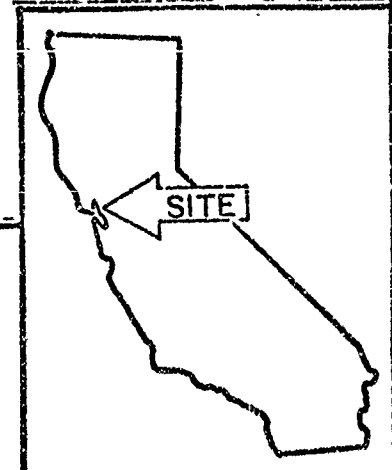
(Added, 2/25/80)

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PUBLIC TRUST TO STATE
73.2 Ac. (Area by Planimeter)



STATE LANDS DIVISION

PLAT OF PUBLIC TRUST PARCELS

Prepared by: jsf Date: 2-25-80

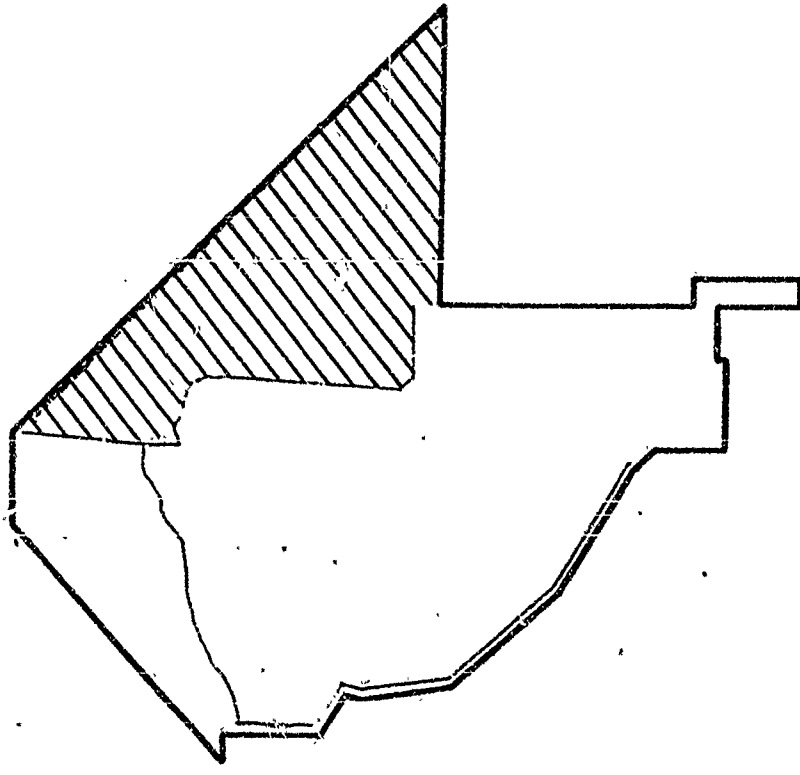
EXHIBIT B

Title Study: RICHMOND SANITARY SERVICE

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(Added, 2/25/80)
(Revised 2/27/80) MINUTE PAGE

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RICHMOND SANITARY SERVICE DEED TO STATE
153.2 Ac. (Area by Planimeter)

STATE LANDS DIVISION

PLAT OF EXCHANGE PARCELS

Prepared by: jsf Date: 2-25-80

Title Study: RICHMOND SANITARY SERVICE

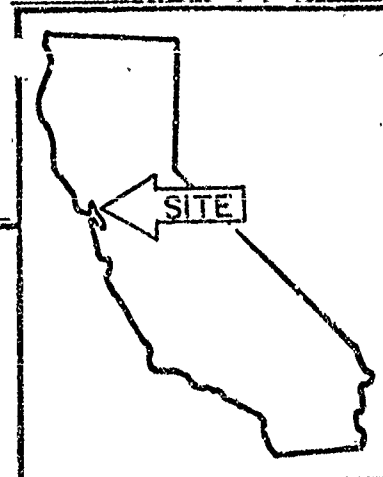


EXHIBIT C

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(Added, 2/25/80)