

MINUTE ITEM
This Calendar Item No. C32
was approved as Minute Item
No. 32 by the State Lands
Commission by a vote of 2
to 0 at its 12-21-94
meeting.

MINUTE ITEM

32

A 6
S 3

12/21/94
W 23030 AD222
D. Plummer
B. Stevenson

Request for Approval of a Title Settlement Agreement
with the Catholic Youth Organization of the Archdiocese of
San Francisco affecting lands at St. Vincent's school in
Marin County.

Calendar Item C32 was approved and a motion was made and unanimously carried that requires wording of title settlement to include the public trust for commerce, navigation, fisheries, wildlife, and public recreational opportunities and, the staff is directed to work with all parties relating to any alteration in the flow of the creek.

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CALENDAR ITEM

C32

A 6
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12/21/94
W 23030
Plummer
Stevenson
AD 222

REQUEST FOR APPROVAL OF A TITLE SETTLEMENT AGREEMENT
WITH THE CATHOLIC YOUTH ORGANIZATION OF
THE ARCHDIOCESE OF SAN FRANCISCO
AFFECTING LANDS AT ST. VINCENT'S SCHOOL IN MARIN COUNTY

PARTY:

Catholic Youth Organization
of the Archdiocese of San Francisco,
a not-for-profit Corporation,
c/o Washburn, Briscoe and McCarthy
55 Francisco Street, Suite 600
San Francisco, California 94133

The office of the State Lands Commission has been in negotiations with representatives of the Catholic Youth Organization of the Archdiocese of San Francisco, a not-for-profit corporation, ("CYO") regarding land title issues concerning the property on which the St. Vincent's School is located. This property, located in Marin County and lying between Highway 101 and San Francisco Bay, is approximately 880 acres in size and ranges from active marshland on its waterward side, further inland to farmed diked marshland, and further inland to hilly uplands. The general location of this property is shown for reference on Exhibit A attached to this calendar item, which exhibit is incorporated as a part of this item by reference.

In analyzing this property, the staff of the Commission examined the historic title records, surveys, and depictions of the physical conditions of the parcel. This review showed that:

1. Almost all of the land west of the railroad tracks which bisect the property and on which the School is constructed lie within confirmed ranchos entitled Rancho San Pedro Santa Margarita Las Gallinas and Rancho San Jose.
2. Approximately 458 acres of land east of the railroad tracks lies within the perimeter description of Swamp and Overflowed Patents Nos. 5, 43, 80, 119, and 130, all of which were patented in the 1860's and 1870's. The descriptions of the patented areas included historic sloughs and rivulets which the staff believes

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were below the line of mean high tide and, in some cases, below the line of mean low tide. Such tide and submerged lands either did not pass with the swamp and overflowed lands sales or remain subject to a public trust easement.

3. Approximately 147 acres of land further east of the swamp and overflowed lands sales lies within Tideland Location Numbers 31 and 175. Although the fee to validly patented tidelands is owned by the CYO as successor to the original patentee, these lands remain subject to a public trust easement owned by the State. Also, portions historically below low water are subject to state title rights in fee.
4. Approximately 85 acres of land within today's active marsh was never included within any patent to a private party by the State and are unsold sovereign lands once within the open Bay.
5. With occupation of this area and its development for use by St. Vincent's School, the subject property was actively reclaimed by private persons. This was to bring the property into use for agriculture connected with the School, a use which continues on much of the lower areas of the property to this day.

The CYO's position is that none of the land is subject to sovereign fee ownership or to a public trust easement even if it were tidelands at the time of sale. The arguments made in support of these assertions are, in part, that areas sold as swamp and overflowed were actually of that character and that, therefore, no public trust interest can conceivably remain. Most important, the CYO argues that the filling of the marsh and open Bay surface to a height above the tides was a part of a gradual settling of sediments and growth of marsh vegetation. The CYO position is that, though the law of accretion, sovereign land title has shifted gradually eastward over time and that it remains only in a narrow tideland band in today's Bay. The arguments made are based, at least in part, upon the holding of the Third District Court of Appeals in the case of State of California ex. rel. State Lands Commission v. Superior Court of Sacramento County, a depublished opinion. That case is now on appeal to the California Supreme Court.

The possible future uses of this property have been studied and considered at length in recent years by the City of San Rafael and a committee which it formed. The culmination of this work is a document entitled St. Vincent's/Silveira Advisory Committee Draft General Plan Amendment Proposal which outlines particular uses for the property and which concentrates a plan for mixed-use development on the areas west of the tracks. Further implementation of this study was recently delayed by a decision of the San Rafael City Council not to commission an EIR which would be necessary for final Council action to put the plan for a mixed use development in place. To the extent feasible, the proposed title settlement is consistent with the findings and the policies of the plan developed by the Committee.

Most recently, the parties have been in active negotiations since spring 1993. The conclusion of those negotiations is a settlement for the consideration of the Commission. Broadly stated, the elements of the settlement are as follows:

1. The areas within the land which was included within the Ranchos will be confirmed to the CYO as land which is not subject to sovereign title interests. These lands, together with those described in the next paragraph, are denominated the TRUST TERMINATION PARCEL in the Agreement and are shown as such on Exhibit B attached to this item.
2. Lands within the swamp and overflowed patents will be confirmed in the CYO free of the public trust, including the historic sloughs and rivulets. In exchange for these historic but now-filled waterways, the CYO will convey to the State an 8 acre parcel along the existing Miller Creek to be taken as public trust land (referred to as the EXCHANGE PARCEL in the Agreement and shown on Exhibit B to this item). The CYO (and any successor to it) will have the right and obligation to maintain levees within the EXCHANGE PARCEL in a manner consistent with local requirements and any applicable state or federal laws or regulations. Also, the School will deed its fee in certain patented tidelands within the present active marsh as part of the overall MARSH PARCEL.
3. The CYO will recognize a public trust easement held by

the State in approximately 66 acres of land shown on Exhibit B. The State will agree, for a period of 49 years, that agricultural and occasional temporary social uses of this property (such as for a harvest festival) are not inconsistent with public trust needs. Grading and filling for these uses and not requiring a local permit also are not inconsistent with public trust needs. This property is referred to as the PUBLIC TRUST EASEMENT PARCEL in the Agreement.

4. The CYO will deed lands in the active marsh waterward of the last levee to the State in fee as sovereign lands. This land is referred to in the Agreement as the MARSH PARCEL and is shown for reference on Exhibit B to this item. The CYO will reserve and the State will recognize the extension of two easements through the marsh to the Bay to be appurtenant to the TRUST TERMINATION PARCEL. These easements, referred to in the Agreement as the MARSH ACCESS EASEMENTS, are shown for reference on Exhibit B to this item. Physically, they are extensions of easements the CYO retained when it sold adjoining land to the Las Gallinas Valley Sanitary District for use for its spray fields. However, they will be more limited in use. These easements, one at each end of the marsh, are for existing and future drainage and utilities. Any construction or expansion of facilities for these purposes may occur (within the confines of the MARSH ACCESS EASEMENTS) if the Commission finds that the expansion or construction will be achieved by the least harmful means. The easements will also be for road or pedestrian access, but may not be used or improved for either of these purposes unless the State issues a lease of the Bay surface for development such as for a marina. This latter aspect of the easements will not interfere with the right of the State to lease the MARSH PARCEL to a public entity for habitat conservation subject to the MARSH ACCESS EASEMENTS. The State will also recognize extensions of these easements in the administration of the PUBLIC TRUST EASEMENT PARCEL.

The staff has evaluated the proposed settlement both from policy and from land value standpoints. The staff has concluded that

the settlement is in the best interests of the State because it confirms in the State the majority of the title interests which it has asserted in land sold as tidelands and land within the historic Bay surface which was never sold. Also, the settlement consolidates sovereign land title claims within historic but now-filled sloughs and rivulets into useable land within the EXCHANGE PARCEL and a portion of the MARSH PARCEL.

EXHIBITS:

- A. Location Map
- B. Site Map

AB 844:

N/A

OTHER PERTINENT INFORMATION:

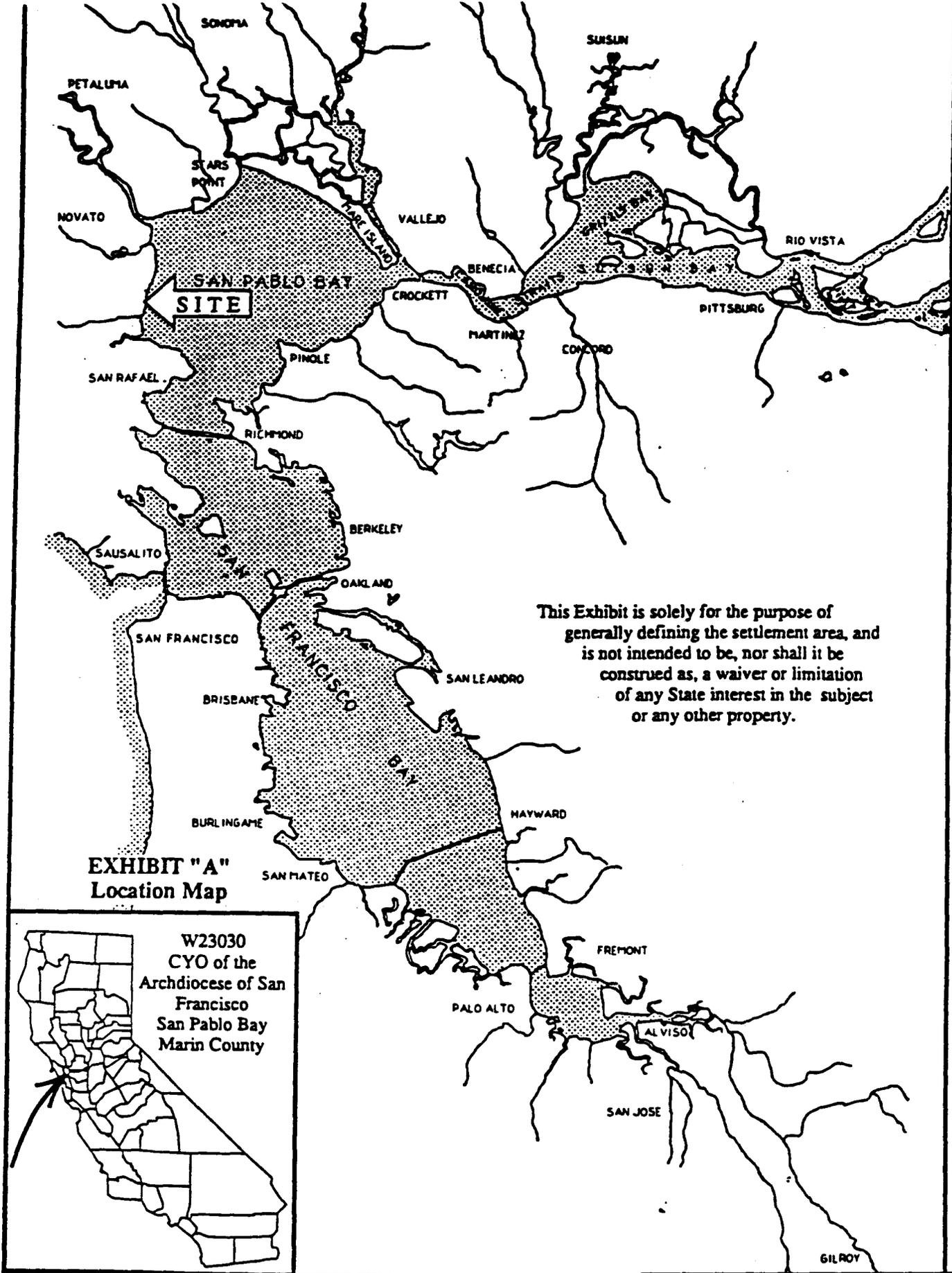
Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirement of the CEQA as a statutorily exempt project. The project is exempt because it involves the settlement of title and boundary problems.

Authority: P.R.C. Section 21080.11

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. AUTHORIZE THE EXECUTIVE OFFICER OR HIS 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 AND THE DEEDS CALLED FOR IN IT IN A FORM SUBSTANTIALLY SIMILAR TO THOSE NOW ON FILE WITH THE OFFICE OF THE STATE LANDS COMMISSION; AND TO ACCEPT TITLE INTERESTS IN THE MARSH PARCEL, THE PUBLIC TRUST EASEMENT PARCEL, AND THE EXCHANGE PARCEL.
3. FIND, UPON RECORDATION OF THE TITLE SETTLEMENT AGREEMENT, THAT:

- A. THE TRUST TERMINATION PARCEL HAS BEEN FILLED AND RECLAIMED AND IS NO LONGER SUBJECT TO THE TIDES;
- B. SOVEREIGN INTERESTS WITHIN THE TRUST TERMINATION PARCEL ARE NOT NECESSARY OR USEFUL FOR COMMERCE, NAVIGATION, OR FISHERIES AND THAT THESE INTERESTS ARE BETTER SERVED BY CONSOLIDATION INTO THE EXCHANGE PARCEL AND A PORTION OF THE MARSH PARCEL;
- C. THE SOVEREIGN INTERESTS WITHIN THE TRUST TERMINATION PARCEL COMPRISE ONLY A SMALL PART OF THE LAND LYING ALONG THE BAY IN THIS AREA;
- D. THE PUBLIC TRUST FOR COMMERCE, NAVIGATION, AND FISHERIES IS TERMINATED IN THE TRUST TERMINATION PARCEL;
- E. THE LAND TO BE CONFIRMED IN THE STATE IN THE EXCHANGE PARCEL AND A PORTION OF THE MARSH PARCEL ARE OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF SOVEREIGN INTERESTS IN THE TRUST TERMINATION PARCEL;
- F. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS HE/THEY DEEM NECESSARY OR APPROPRIATE TO EFFECTUATE THIS AGREEMENT INCLUDING REPRESENTATION OF THE COMMISSION IN ANY LEGAL ACTION TO DETERMINE THE VALIDITY OF THIS AGREEMENT.



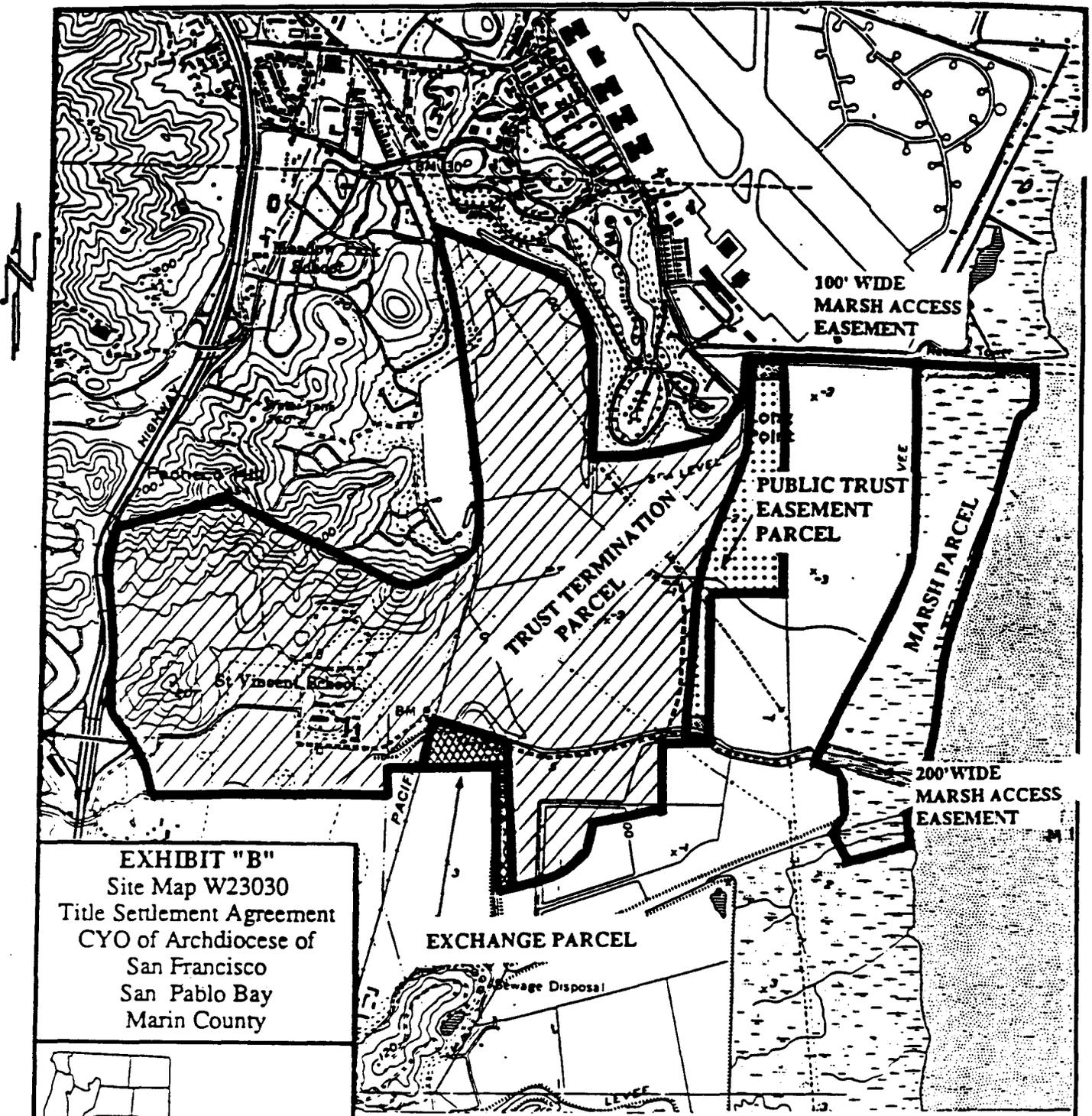


EXHIBIT "B"
 Site Map W23030
 Title Settlement Agreement
 CYO of Archdiocese of
 San Francisco
 San Pablo Bay
 Marin County



NOTE:
 THIS EXHIBIT IS SOLELY FOR THE PURPOSE OF GENERALLY
 DEFINING THE SETTLEMENT AREA, AND IS NOT INTENDED TO
 BE, NOR SHALL IT BE CONSTRUED AS, A WAIVER OR
 LIMITATION OF ANY STATE INTEREST IN THE SUBJECT OR ANY
 OTHER PROPERTY.