

MINUTE ITEM

This Calendar Item No. C47
was approved as Minute Item
No. 47 by the State Lands
Commission by a vote of 3
to 0 at its 3/1/95
meeting.

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C47

A 6
S 3

03/01/95
W 24558 AD 227
Plummer
Stevenson

REQUEST FOR AUTHORIZATION TO SETTLE TITLE
TO APPROXIMATELY 2.3 ACRES OF LAND
IN THE CITY OF SAN RAFAEL, MARIN COUNTY,
IN EXCHANGE FOR A \$75,000 CONTRIBUTION
TO THE LAND BANK FOR THE CITY OF SAN RAFAEL

APPLICANT:

Herbert A. Crocker and Company (a California Corporation)
William H. McDevitt
c/o John Briscoe
Washburn, Briscoe, and McCarthy
55 Francisco Street, Suite 600
San Francisco, California 94133

Staff of the Commission has been contacted by Herbert A. Crocker and William H. McDevitt (referred to here as "private parties") regarding title to a 2.33 acre parcel of land in the City of San Rafael, County of Marin, of which they are now record owners. The subject parcel is shown for reference only on Exhibits "A" and "B" which are attached to this Calendar Item and are incorporated by reference as parts of it.

The Staff of the Commission has completed analysis of the title to the subject parcel which has shown that:

1. In its natural state, a portion of the subject parcel lay within San Rafael Creek, a natural waterbody which has been realigned to form today's San Rafael Canal;
2. In its last natural condition, San Rafael Creek at the site of the subject parcel was sovereign fee lands below the line of ordinary high tide;
3. Several swamp and overflowed land sales were made of land in the proximity of the subject parcel, including Swamp and Overflowed Patent Nos. 18, 28, and 39 for Marin County;
4. In 1870 George Allardt surveyed the San Rafael Canal within San Rafael Creek on behalf of the Board of Tide Land Commissioners. Allardt also surveyed and numbered

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lots adjoining the San Rafael Canal. These lots are depicted on Board of Tide Land Commissioners map dated May 10, 1871, and entitled Map No. 2, 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 Allardt's San Rafael Canal, effectively reserving the Canal in public ownership;
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, including the State's ownership of the reserved San Rafael Canal;
7. A substantial part of the subject 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 parties that, in its last natural condition, the subject parcel was above the line of ordinary high tide. Further, the private parties contend that any of the subject parcel which may have been below high tide was conveyed by Swamp and Overflowed Patent Nos. 18, 28, or 39 for Marin County or by the Board of Tide Land Commissioners sale. The position of the private parties is that, if any public trust interests existed in the subject parcel, they have been extinguished by the filling of the property, payment of taxes, and land title curative acts of the Legislature.

The private parties, the City of San Rafael, and the staff have reached a settlement of this dispute which has been memorialized in a title settlement agreement which is now on file in the offices of the State Lands Commission (referred to here as "the Agreement"). The Agreement 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 the Agreement for the termination the public trust interests is required to be approved by the State Lands Commission.

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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 presently dry part of the subject parcel to the private parties. This dry parcel is referred to in the Agreement as the TRUST TERMINATION PARCEL and is shown for reference on Exhibit "B";
2. The private parties will grant a public access easement to provide access along the present San Rafael Canal. This access easement will be held by the City of San Rafael as granted land subject to the State's reversionary and supervisory rights. This parcel is shown as the PEDESTRIAN ACCESS EASEMENT on Exhibit "B"; and
3. The private parties will contribute \$75,000 to a land bank fund account created by joint instructions from the City and the State. Funds will be released from the account only upon the joint instruction of the City and the State for the purchase of land in the City of San Rafael which is useful for public trust purposes. Any property so purchased will be held as granted lands pursuant to Chapter 83 of the Statutes of 1923, as amended.

It has been required in the prior three settlements of similar properties along the San Rafael Canal that the private parties in those settlements quitclaim to the State and City their interests in all areas subject to tidal action today in the present realigned San Rafael Canal. At the request of the City of San Rafael, that is not an element of this Agreement although the settlement statute here (Chapter 1742, Statutes of 1971), at a minimum, encourages the State and City to take title to presently water-covered areas. The reason for the City request is that a recent bioassay test of sediments from the present San Rafael Canal has shown elevated levels of particular substances (including benzopyrene and fluorene) at sites in the San Rafael Canal near the subject property, although the specific danger from these substances if handled correctly is not known. As a part of this settlement, the Agreement will provide that water-covered areas are to be open to the public for temporary berthing and that no expansion of facilities into the water will occur without State and City approvals.

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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 staff of the Commission has completed an appraisal and legal analysis of this matter and has concluded that the value of remaining sovereign interests in the subject parcel is equal to or less than the interests in land to be conveyed by the Agreement and the contribution of \$75,000 to a land bank fund administered by the City of San Rafael. The Agreement will preserve public access through the property along the present waterway and will link up with existing access in an adjoining City park on one side and similar access gained through a prior settlement of title on the other side. 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. 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 the settlement of title and boundary problems.

Authority: P.R.C. 21080.11.

EXHIBITS:

- A. Location Map
- B. Site Map

IT IS RECOMMENDED THAT THE COMMISSION:

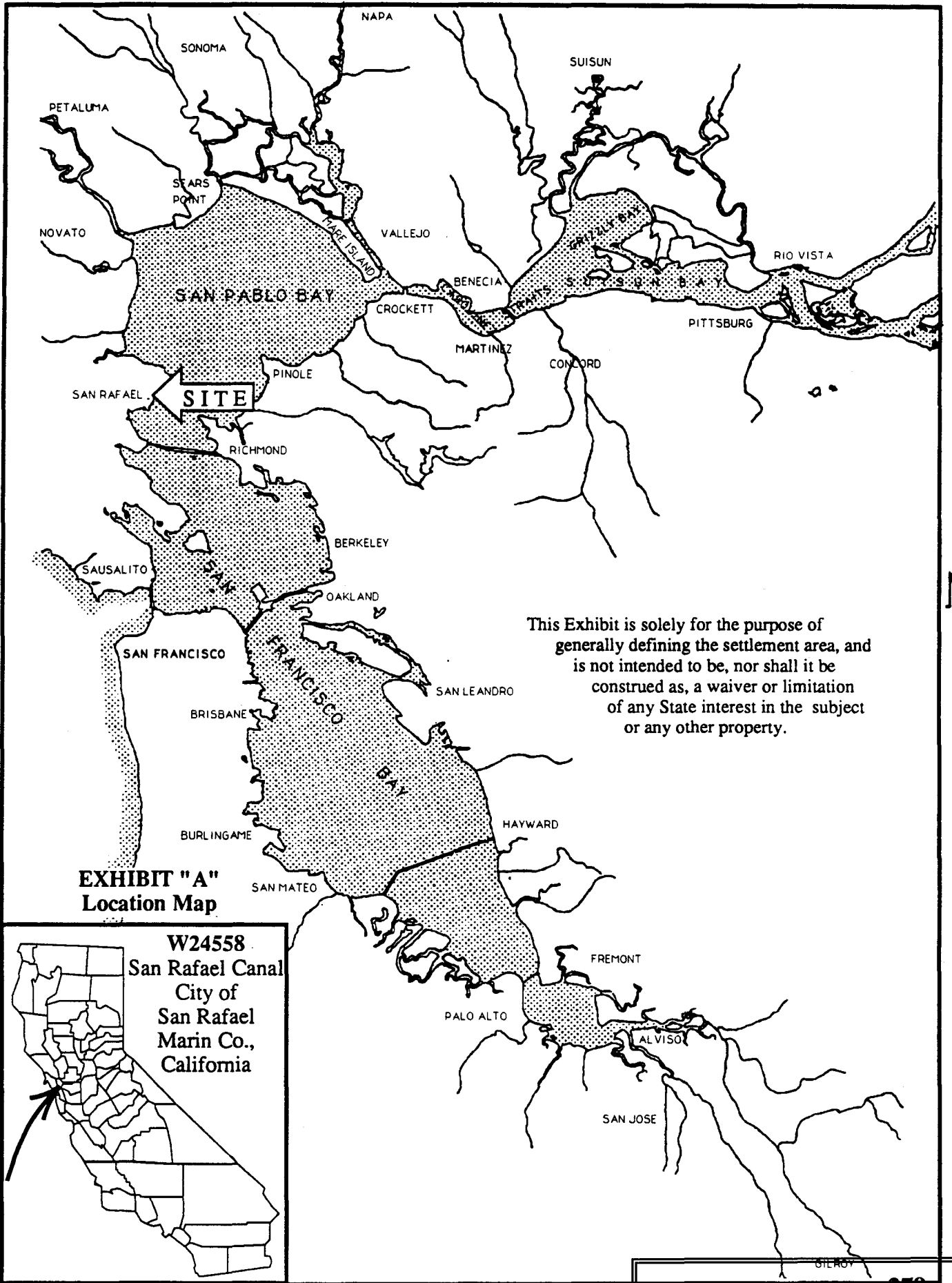
1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE AND TO DELIVER INTO ESCROW FOR RECORDATION IN THE OFFICE OF THE COUNTY RECORDER OF MARIN COUNTY, THE SUBJECT TITLE SETTLEMENT AGREEMENT IN A FORM SUBSTANTIALLY SIMILAR TO THAT NOW ON FILE WITH THE OFFICE OF THE STATE LANDS COMMISSION.

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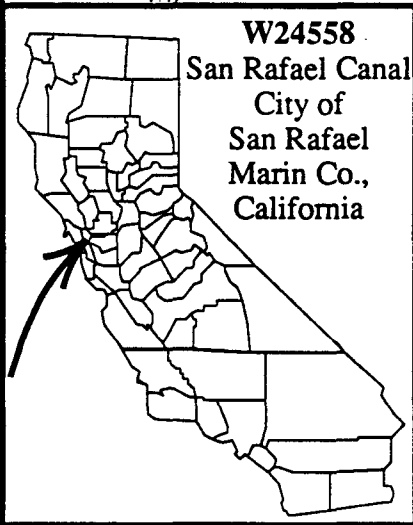
3. APPROVE THE EXECUTION OF THIS AGREEMENT BY THE CITY OF SAN RAFAEL AND THE QUITCLAIMING TO HERBERT A. CROCKER AND COMPANY (A CALIFORNIA CORPORATION), AND WILLIAM H. McDEVITT OF ALL RIGHT, TITLE, AND INTEREST HELD BY THE CITY BY CHAPTER 83, STATUTES OF 1923, AS AMENDED, IN LAND IN THE AGREEMENT REFERRED TO AS THE TRUST TERMINATION PARCEL.
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 THE COMBINATION OF CASH AND INTERESTS IN REAL PROPERTY EQUALS AN AMOUNT EQUAL TO 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 OF HIS DESIGNEE AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS DEEMED NECESSARY OR APPROPRIATE TO EFFECTUATE THIS AGREEMENT INCLUDING REPRESENTATION OF THE COMMISSION IN ANY LEGAL ACTION TO DETERMINE THE LEGALITY OF THIS AGREEMENT.

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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.

EXHIBIT "A"
Location Map



**6' PEDESTRIAN
ACCESS EASEMENT**

TRUST TERMINATION PARCEL

PRELIMINARY
OF EXISTING
ASSISTORS
SAN RAFAEL
FOR MARIAN
1941-1942

SAN RAFAEL CANAL
(SEE OFFICE MAP)

DOMINIC RESTAURANT BUILDING



EXHIBIT "B"
SITE MAP
W24558
San Rafael Canal
City of San Rafael
Marin Co., California

