

MINUTE ITEM

This Calendar Item No. 24
 was approved as Minute Item
 No. 24 by the State Lands
 Commission by a vote of 3
 to 0 at its 4-7-81
 meeting.

CALENDAR ITEM

24

AMENDMENT TO TITLE SETTLEMENT AGREEMENT (BLA 150)

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 PRC 5443
 PRC 5455

PERTINENT BACKGROUND:

On April 28, 1976, the Commission entered into a Compromise Title Settlement Agreement (BLA 150) with Novato Center, a Limited Partnership, referred to herein as Novato Center. In the Agreement the State, in its sovereign capacity, received fee title to 278 acres of land, described in the Agreement, and (depicted on the attached Plat of Settlement Parcels and referred to therein as Parcels B and C) subject to the public trust, to be owned by the State as land of the legal character of tidelands and submerged lands in exchange for clearing the title to 127 acres in Novato Center (also depicted on the attached Plat of Settlement Parcels, and referred to therein as Parcel A). The land is located in the Novato Creek flood plain north of State Highway Route 37. The agreement was self-executing with respect to the conveyances. It was recorded February 28, 1977, in 3159/445, Marin County Records. A description of Parcel C is attached hereto.

As a part of the Agreement, Novato Center reserved an easement to extract up to 500,000 cubic yards of fill material from Parcel B, at a royalty of \$0.10 per cubic yard. The fill material was to be used to raise the elevation of the Novato Center parcel for construction of a regional shopping center. The resulting pond to be created by the extraction would serve as a holding pond for flood control for water purity and for other environmental concerns; was not to exceed 37 acres; and its size and shape were to be according to the plans and specifications of the State.

As contemplated at the time of the Agreement, the Commission later issued a 66-year permit

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CALENDAR ITEM NO. 24 (CONTD)

(PRC No. 5455.9) of Parcels B and C, to the Department of Fish and Game, for wildlife management and/or public recreation, and/or other like purposes consistent with the public trust. The Department of Fish and Game assumed the responsibility for the plans and specifications of the pond. The preliminary plans and specifications were completed by Novato Center and were approved by the Department of Fish and Game on February 4, 1981. It appeared unnecessary to complete the plans and specifications prior to completion of the permit process.

The Novato Center parcel included wetlands and the contemplated shopping center required a permit from the Corps of Engineers under Public Notice 10138-33R (January 27, 1978). A final Corps E.I.S. was completed in November 1980. In addition to the E.I.S. consideration of on-site mitigation measures, the Department of Fish and Game requested that Novato Center restore Parcel C to salt marsh wetlands as an ecological preserve for water purity and for wildlife values.

While the Department of Fish and Game does not object to the shopping center permit, the United States Fish and Wildlife Service does not consider the pond and the restoration work on the State parcels as adequate mitigation for the shopping center project and continues to object to the shopping center. The permit application remains pending before the Corps of Engineers with a final decision expected in the near future.

The reserved extraction easement was for a five-year period, which, at the time of the Agreement, was expected to constitute sufficient time for the State to prepare its plans for the pond; to enable Novato Center to pursue its Shopping Center permit requirements; and to remove the fill material.

However, the permit process has not been completed; and the permits have not been granted. As a result, Novato Center has been unable to extract any of the fill

CALENDAR ITEM NO. 24 (CONTD)

material as contemplated by the Agreement. The five-year easement period will expire on April 27, 1981, and Novato Center has requested a five-year extension.

PROPOSED AMENDMENT:

The following proposal is acceptable to Novato Center and is recommended by staff:

1. A five year extension of the pond extraction easement with an increase in the royalty payment for the fill material from \$0.10 per cubic yard to \$0.15 per cubic yard.
2. Restoration, at the expense of Novato Center, of the remainder of Parcel C to its historic salt marsh condition according to the requirements of the Department of Fish and Game, prior to completion of construction of the shopping center.

The staffs recommendation that the proposal be accepted is based on the following grounds:

1. It was the intent of the original Agreement that Novato Center should have sufficient time to obtain its permit to extract the material.
2. It was then anticipated that the five year time period would provide sufficient time for the permits to be issued and the extraction to be completed.
3. Novato Center has been prevented from completing the extraction due to the lack of completion of the permit process.
4. The permit process has taken longer than originally anticipated by reason of good faith but protracted efforts to resolve the complications resulting from the environmental impacts of the shopping center.
5. In addition, primarily because of the permit process delays, preliminary

CALENDAR ITEM NO. 24 (CONTD)

plans for the pond were not completed and approved until recently.

6. The delay has not been attributable to a lack of diligence on the part of Novato Center. The Commission staff did not participate directly in the permit process. Its involvement arose only as a result of the need for an extension of the term of the extraction easement.
7. The improvement is for the enhancement of the environment and the public trust needs for the State's parcel, and is supported by the State Wetlands Policy, and it will constitute a general statewide public benefit.
8. Novato Center intends to accomplish the marsh restoration contemporaneously with construction of the shopping center at a substantial reduction in cost by reason of the availability of earth moving equipment. Should the State be required to construct the improvements at its expense without benefit of the present proposal, the project would require substantial State expenditures.
9. Based on the compromise nature of the original Agreement; the improvements to be added to the State's parcel, as a result of the present action; and the unanticipated delays, the staff believes the royalty rate of \$0.15 per cubic yard for the extension is reasonable and should be accepted.
10. The Department of Fish and Game, as lessee, consents to the proposed amendment.

Parcel C has been leased by the State until August 31, 1981, for agricultural purposes. The work of restoration will not commence prior to the termination date of the lease. Novato Center will take subject to additional agricultural leases until adequate notice to the State by Novato Center of the scheduling of the restoration work.

CALENDAR ITEM NO. 24 (CONTD)

- EXHIBITS:
- A. Plat of Settlement Parcels.
 - B. Land Description - Parcel C.
 - C1. Summary for EIR.
 - C2. Summary for EIS.

IT IS RECOMMENDED THAT THE COMMISSION:

1. APPROVE THE AMENDMENT TO THE SETTLEMENT AND LAND EXCHANGE AGREEMENT (BLA 150) IN SUBSTANTIALLY THE SAME FORM AS THE COPY ON FILE WITH THE COMMISSION. SAID AMENDMENT WILL EXTEND THE TIME LIMIT UNTIL APRIL 27, 1986 TO COMPLETE THE EXCAVATION OF 500,000 CUBIC YARDS OF FILL MATERIAL AUTHORIZED UNDER THE ORIGINAL AGREEMENT IN CONSIDERATION OF A ROYALTY OF \$0.15 PER CUBIC YARD AND WILL REQUIRE THE CONSTRUCTION OF A MARSH RESTORATION FACILITY ON PARCELS B AND C DEPICTED ON THE PLAT OF SETTLEMENT PARCELS ATTACHED HERETO.
2. DETERMINE THAT A FINAL ENVIRONMENTAL STATEMENT HAS BEEN PREPARED AND CERTIFIED FOR THIS PROJECT BY THE UNITED STATES ARMY, SAN FRANCISCO DISTRICT, CORPS OF ENGINEERS, AND THAT A FINAL EIR WAS PREPARED AND CERTIFIED BY THE CITY OF NOVATO, ON MARCH 9, 1979.
3. CERTIFY THAT THE INFORMATION CONTAINED IN THE EIR AND EIS HAS BEEN REVIEWED AND CONSIDERED AND THE COMMISSION FINDS THAT THE EIS SUBSTANTIALLY COMPLIES WITH C.E.Q.A.
4. DETERMINE THAT THE ADDITIONAL IMPROVEMENTS PROPOSED BY THE AMENDMENT WILL NOT HAVE A SIGNIFICANT ADVERSE EFFECT ON THE ENVIRONMENT.
5. AUTHORIZE THE STAFF OF THE STATE LANDS COMMISSION AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE TRANSACTION DESCRIBED ABOVE, INCLUDING BUT NOT LIMITED TO APPEARANCES IN ANY LEGAL PROCEEDINGS BROUGHT CONCERNING THE ABOVE TRANSACTION.

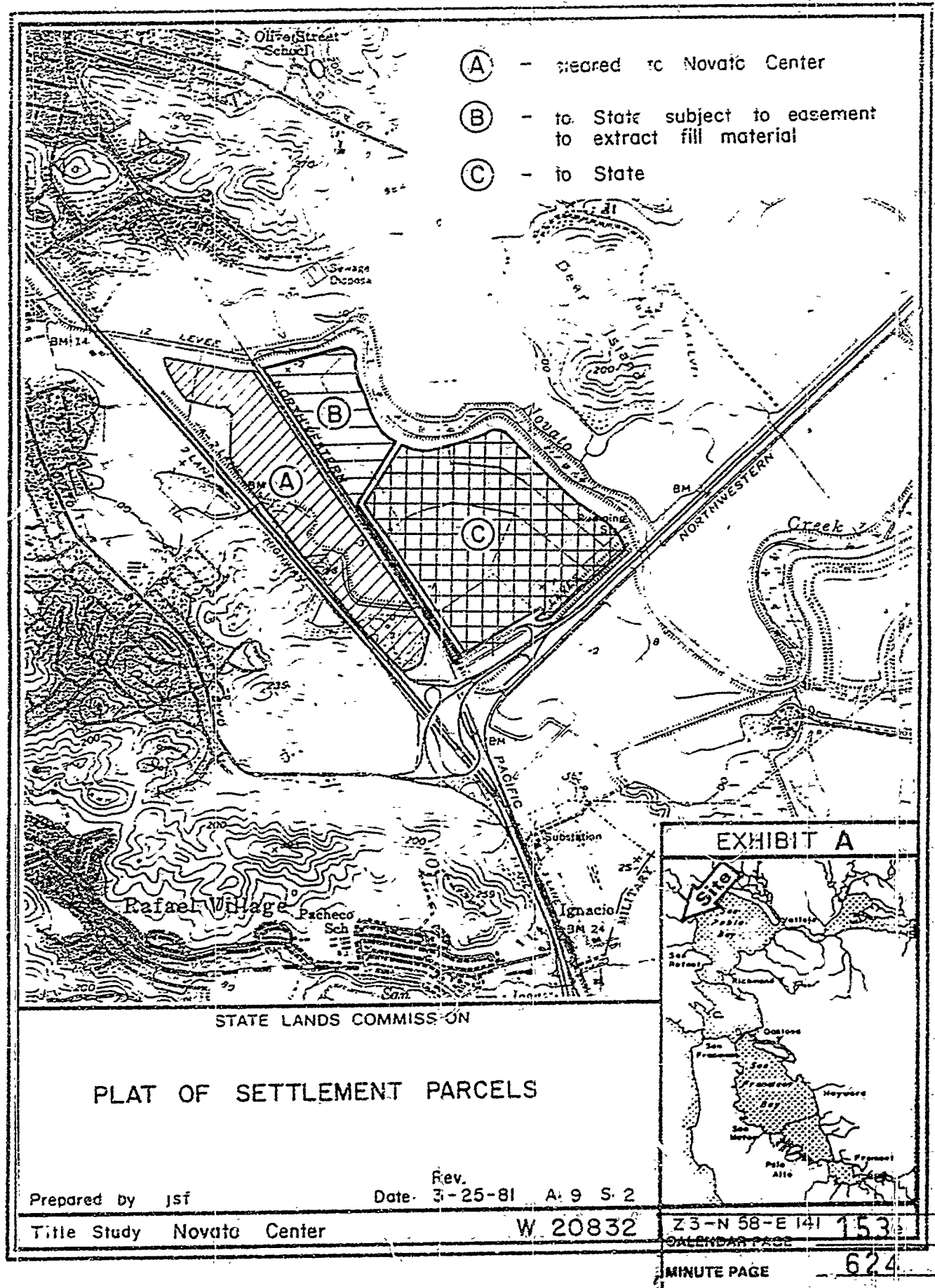


EXHIBIT "B"

LAND DESCRIPTION
(Parcel C)

W 20832

All that certain Real Property situate in the City of Novato, County of Marin, State of California, as described in Exhibit B of that certain Land Exchange and Boundary Settlement Agreement dated April 28, 1976, by and between Novato Center, a limited partnership, and the State of California, recorded February 28, 1977 in Book 3159 of Official Records, at page 445, Marin County Records.

EXCEPTING THEREFROM any portion of the above described property which lies westerly and northerly of the parcel of land described in the Deed to Pacific Gas and Electric Company, a corporation, recorded March 11, 1955, in Book 927 of Official Records, at page 411, Marin County Records.

END OF DESCRIPTION

THIS DESCRIPTION PREPARED BY TITLE SETTLEMENTS UNIT AND REVIEWED BY
TECHNICAL SERVICES UNIT, ROY MINNICK, SUPERVISOR.

EIR Summary

The following is a summary of an environmental impact report (draft) by the City of Novato for the Novato Regional Shopping Center, published in March 1979.

1. Project Description. The proposed fill of approximately 396,000 cubic yards would be placed on about 56 acres of the property; it includes 12 acres of agricultural land on which some fill has been placed, and about 3 acres of a seasonal brackish marsh. The fill material would be obtained from the excavation area which would then become a 37-acre lake. The regional shopping center will consist of an enclosed mall with four major stores. Shops, a bank, savings and loan, restaurant and theatre will also be included. The entire shopping center, with the exception of the four major stores (two levels each), will be one level. The project will be heavily landscaped.
2. Environmental Impacts. Differing subsurface characteristics could cause settlement problems; carbon monoxide levels would increase by 20-25% over no-project levels; large flood flows could occur across the site should the culverts be obstructed by debris; the remnants of Lynwood Slough and the present realigned Lynwood Slough would be destroyed; new aquatic habitat would be created; approximately 1900 permanent jobs would be generated; land use would be changed at the site from open space to commercial use; additional demand for energy and city services.
3. Mitigation Measures. Prudent engineering design; culvert wing walls and debris screens to minimize obstruction; restoration of tidal marshland; various energy conservation measures during construction and operation; reduce volume of runoff water by maintaining open space and constructing detention and storage basins.
4. Alternatives. No project; development in accordance with City plans; alternative site location (downtown Novato, Hamilton AFB).
5. Unavoidable Adverse Effects. Potential exposure of structures to hazards associated with construction on bay mud; increased quantity and decreased quality of storm runoff; loss of diversity of wildlife habitat on-site; increased demands for energy and services; increased traffic and pollution; economic impacts on downtown Novato commercial area.
6. Short Term Vs. Long Term. Construction of the shopping center constitutes a long-term (30-50 years) commitment of the land to one specific use. The proposed development would conform to local and regional land use plans, yet would result in long-term adverse effects.

(Added, 4/3/81)

CALENDAR PAGE	153 g
MINUTE PAGE	626

EIS SUMMARY

The following is a summary of a final environmental impact statement for Novato Center Permit Application by the U.S. Army Engineer District, San Francisco, California, published in November 1980.

1. Description of Action. The applicant, Novato Center, Inc., proposes to fill 35 acres of historic wetland and 4 acres of existing brackish marsh, determined to be important wetlands. The 39 acres proposed to be filled and an adjacent portion of the applicant's property are proposed as the site for a 69-acre regional shopping center. Approximately 4.9 acres of the existing marsh on the applicant's property would be retained and an additional 6.8 acres of historic marsh would be excavated on an adjacent property owned by the State of California to provide a portion of the needed fill material. A lake would be created on the borrow site to be managed by the State for wildlife.
2. Environmental Impacts. Net gain of 2.8 acres of wetland habitat; reduction of floodplain; slightly increased flooding hazard for adjacent lands; potential seismic and settlement hazards; decreased quality of runoff; increased volume of runoff; decreased air quality; improved water quality in the marsh; increased traffic volumes; change in land use from open space to commercial use; increased demand for city services; increased revenue for the city of Novato; alteration of views from surrounding areas; provision of a regional shopping center; increased employment; dedication of 12 acres of wetland to a public agency to be preserved as a marsh.
3. Alternatives Considered. No project, reduced project, development in accordance with City Zoning, alternate project site at Hamilton Air Force Base.
4. Mitigation. Drainage system construction to protect against 100-year flood overflow from Novato Creek; lake and quality of discharge to Novato Creek to meet Regional Water Quality Control Board standards; incorporation of water feature emphasizes open space.
5. Unavoidable Adverse Impacts. Potential structure damage associated with construction on Bay Mud; increased frequency and stage of flooding off-site; increased quantity and decreased quality of storm runoff; increased traffic pollutants and congestion; increased demands for community services; economic impact on downtown Novato commercial area; increased water and energy consumption; increased wastewater treatment.
6. Short Term Vs. Long Term. Creation of a marsh; loss of upland habitat, decreasing biological productivity; development in the flood plain, decreasing ponding capacity and increasing the flood hazard off site.