

MINUTE ITEM
This Calendar item No. C34
was approved as Minute Item
No. 34 by the State Lands
Commission by a vote of 3
to 0 at its 10/28/96
meeting.

CALENDAR ITEM
C34

A 6
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10/28/96
AD284 W 24210
D. Plummer
L. Kiley

**CONSIDER APPROVAL OF A COMPROMISE TITLE SETTLEMENT
AGREEMENT BETWEEN THE STATE OF CALIFORNIA, ACTING BY AND
THROUGH THE CALIFORNIA STATE LANDS COMMISSION,
THE CITY OF SAN RAFAEL AND PACIFIC GAS AND ELECTRIC COMPANY,
REGARDING CERTAIN LANDS SITUATED WITHIN THE CITY OF SAN RAFAEL**

PARTY:

Pacific Gas and Electric Company
245 Market Street, Room 1027D-N10A
San Francisco, California 94177

Staff of the Commission has been requested by representatives of the Pacific Gas and Electric Company (PG&E) to determine the extent of State interest within a 12 acre parcel of land (SUBJECT PARCEL) located within the City of San Rafael. The SUBJECT PARCEL is shown for reference only on Exhibit "A" (which is attached and incorporated by reference as a part of this item).

Commission staff has conducted a study of the evidence of title to the SUBJECT PARCEL and has drawn a number of factual conclusions, including those summarized below:

1. A portion of the SUBJECT PARCEL was purportedly patented by the State to Timothy Mahon on November 12, 1868, as Survey No. 1, Swamp and Overflowed Lands, Marin County.
2. Within the perimeter description of Swamp and Overflowed Survey No. 1 were several substantial tidal sloughs that traversed the area.
3. Due to discrepancies in surveying the township line between Townships 1 and 2 North, Range 6 West, M.D.M., there exists an area within the SUBJECT PARCEL that appears to be unsold State owned land.

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4. By Chapter 83, Statutes of 1923, as amended, the State of California granted in trust to the City of San Rafael all tide and submerged lands, whether filled or unfilled, within the City's boundaries.

The staff is of the opinion that the title evidence and the applicable legal principles lead to the conclusion that a portion of the Subject Parcel remains subject to sovereign title interests held by the City of San Rafael subject to supervisory and reversionary interests of the State of California. The exact extent and nature of the State's interest is, however, subject to uncertainty and dispute.

PG&E contends that, in its last natural condition, the Subject Parcel was above the line of ordinary high tide. Further, PG&E contends that any portion of the Subject Parcel which may have been below the Ordinary High Water Mark was conveyed or was intended to be conveyed by Survey No. 1, Swamp and Overflowed Lands, Marin County. The position of PG&E 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 curative acts of the Legislature.

PG&E, 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 on file with the office of the California State Lands Commission. 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. The consideration provided in an agreement terminating the public trust interests is required to be approved by the State Lands Commission.

The basic terms of the Agreement are:

- A. The City, acting as trustee pursuant to Chapter 83, Statutes of 1923, as amended, shall quitclaim to PG&E any and all sovereign interests in the TRUST TERMINATION PARCEL it may hold by virtue of that statute, as amended.
- B. The State shall quitclaim to PG&E any and all of the State's rights by virtue of its sovereignty in the TRUST TERMINATION PARCEL reserved to the State by Chapter 83, Statutes of 1923, as amended.

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C. PG&E shall quitclaim to the City any interest it holds in the Granted Lands Parcel, said lands to be held by the City as tide and submerged lands subject to Chapter 83, Statutes of 1923, as amended, subject to the reversionary and supervisory interests of the State.

D. PG&E will make a contribution of the sum of \$91,000 to a land bank fund administered by the City of San Rafael for the acquisition of land in or along the present San Rafael Canal, which property shall take on the legal character of tide and submerged lands granted to the City of San Rafael pursuant to Chapter 83, Statutes of 1923, as amended.

The Staff of the Commission recommends the approval and execution of the proposed Agreement in substantially the form now on file in the Commission's offices.

AB 884:

N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 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: Public Resources Code Section 21080.11.

EXHIBITS:

- A. Location Map
- B. Site Map (for reference only)

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTION 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.

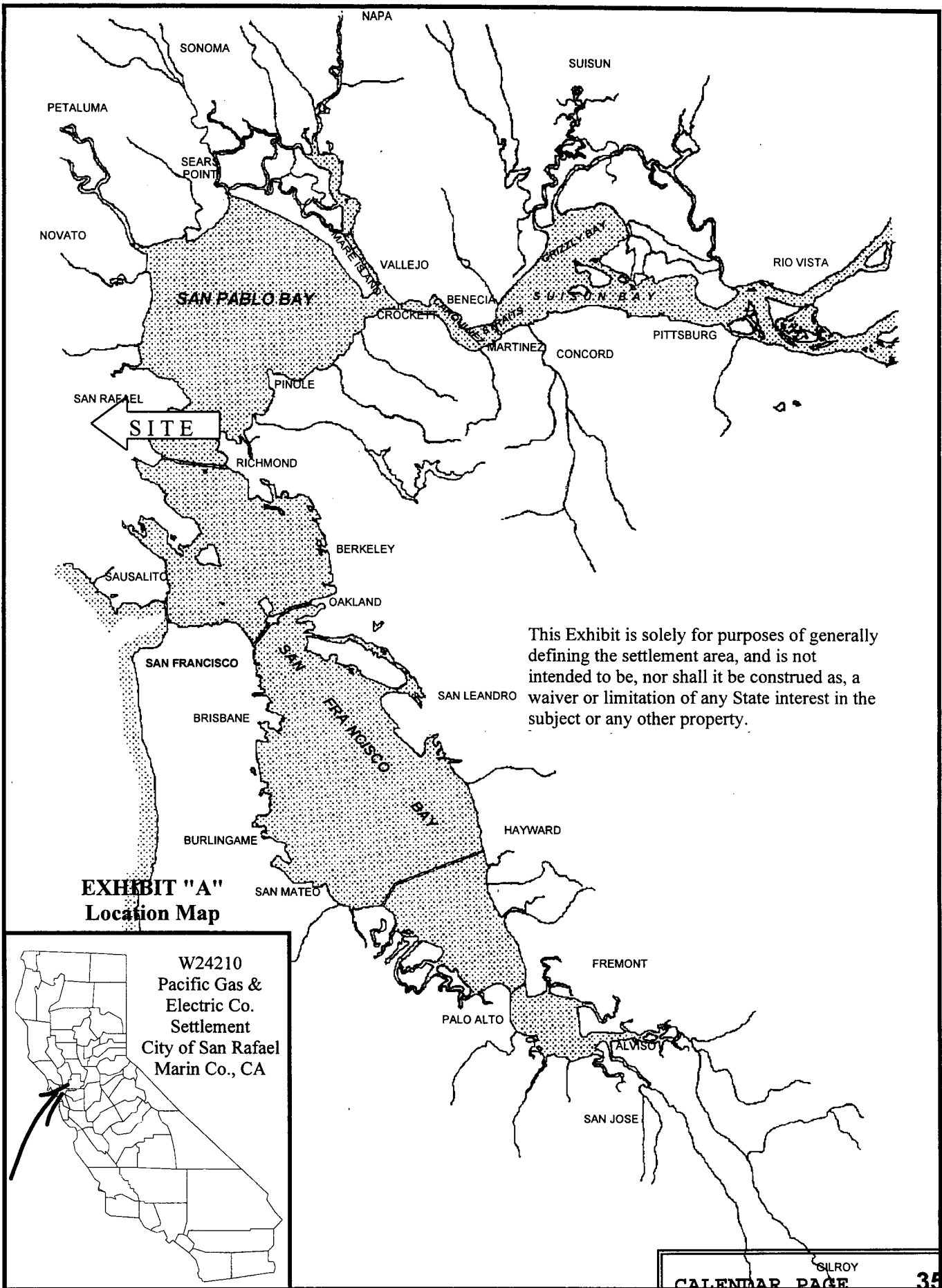
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2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE AND TO DELIVER INTO ESCROW FOR RECORDATION IN THE OFFICE OF THE COUNTY RECORDER OF MARIN COUNTY, THE SUBJECT TITLE SETTLEMENT AGREEMENT IN A FORM SUBSTANTIALLY SIMILAR TO THAT NOW ON FILE WITH THE OFFICE OF THE CALIFORNIA STATE LANDS COMMISSION; TOGETHER WITH ALL OTHER SUPPORTING DOCUMENTS NECESSARY TO EFFECTUATE THE AGREEMENT.
3. APPROVE THE EXECUTION OF THIS AGREEMENT BY THE CITY OF SAN RAFAEL AND THE QUITCLAIMING TO PG&E 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 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 REAL PROPERTY TO BE RECEIVED BY THE CITY AND STATE IS 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

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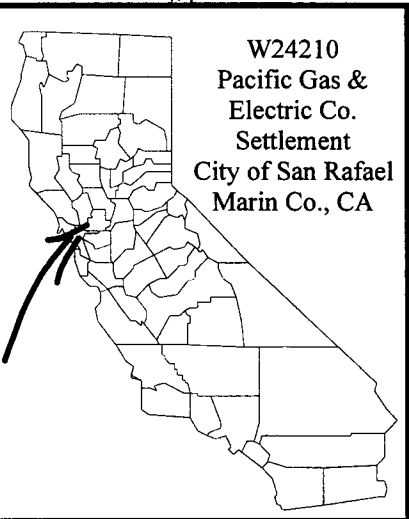
CITY OF SAN RAFAEL AND THE STAFF OF THE STATE LANDS COMMISSION. THE FUND SHALL BE USED FOR THE PURCHASE OF LAND WHICH WILL TAKE ON THE LEGAL CHARACTER OF TIDE AND SUBMERGED LANDS GRANTED TO THE CITY OF SAN RAFAEL.

6. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY OR APPROPRIATE TO EFFECTUATE THIS AGREEMENT INCLUDING REPRESENTATION OF THE COMMISSION IN ANY LEGAL ACTION TO DETERMINE THE LEGALITY OF THIS AGREEMENT.



This Exhibit is solely for purposes 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



SUBJECT PARCEL

TRUST TERMINATION
PARCELS

PG&E
PARCEL TWO

PG&E
PARCEL ONE

LINDARO STREET

LINCOLN
AVE.

ANDERSEN DRIVE EXTENSION PROJECT

APPROXIMATE LOCATION

OF SLURRY

GRANTED LANDS
PARCEL



EXHIBIT "B"
Site Map

