

Staff Report 83

PARTIES:

California State Lands Commission (Commission)

City of Vallejo (City)

PROPOSED ACTION:

Consider an amendment to the 2002 [Mare Island Property Settlement and Exchange Agreement](#) to facilitate the transfer of the Mare Island Cemetery from the City to the United States Department of Veteran Affairs and to establish a framework to fully implement the Settlement Agreement.

BACKGROUND:

In 2002, the Commission, City, and Lennar Mare Island, LLC (Lennar) entered into the Mare Island Property Settlement and Exchange Agreement (Settlement Agreement). The purpose of the Settlement Agreement is “to settle issues regarding sovereign public trust land title within the Mare Island Naval Shipyard and, through a land exchange, to establish undisputed sovereign land title in certain described lands at Mare Island and terminate actual and state-asserted sovereign land title in other described areas.” To accomplish this purpose, the Parties agreed to a series of land transactions that would confirm certain parcels as sovereign land reserved for Public Trust uses (Public Trust Parcels) and that would clear other parcels of State claims, making them available for private development (Trust Termination Parcels). These land transactions would result in an exchange in which some lands that were not (or may not have been) historic sovereign lands would become sovereign and some lands that were (or may have been) historic sovereign lands would become available for non-trust use.

Few of the land transactions contemplated in the Settlement Agreement have taken place over the intervening 20 years because of events outside the Parties’ control and because of the City’s reticence to fulfill its obligations under the Settlement Agreement and state law. The Commission and City now wish to amend the Settlement Agreement to allow for a transfer of the historic Mare Island

Cemetery (Cemetery) to the United States Department of Veterans Affairs, which will then operate, maintain, and rehabilitate the Cemetery to the benefit of those laid to rest in the Cemetery and for the people of California, and to commit the Commission and City to create a framework to fulfill the original intent of the Settlement Agreement.

MARE ISLAND

Mare Island is an approximately 5,000-acre landmass within the City of Vallejo bounded on the west by San Pablo Bay, on the east by the Napa River, and on the south by the Carquinez Strait. Mare Island today consists of the original island and significant areas of human-created filled land. The United States purchased the private upland island in 1853, and in [1854](#) and [1897](#), the State granted state property to the United States, including swamp and overflowed land and tide and submerged sovereign Public Trust interests, for military purposes.

The United States established the Mare Island Naval Shipyard in 1854 as the first U.S. Navy base on the Pacific Coast. The Shipyard was a significant contributor to U.S. military readiness, building and servicing surface and submarine vessels through the 19th and 20th Centuries. The Mare Island Historic District was added to the National Register of Historic Places in 1975 and expanded in 1997. The Cemetery, established in 1858, is a contributing resource to the Historic District. The Cemetery is the oldest Navy cemetery on the Pacific Coast and contains both military and civilian graves. The Cemetery was closed to general interment in the 1920s.

SHIPYARD CLOSURE AND REUSE PLANNING

In 1996, the United States closed the Shipyard as an active military facility. The Navy had designed and used the Shipyard to meet its military needs of ship repair and construction. Much of Mare Island would require substantial environmental remediation before the lands could be suited to civilian use. The City was designated the “local reuse authority” pursuant to federal Defense Base Closure and Realignment law.

The State, through the Commission, asserted claims of sovereign and reversionary interest to portions of Mare Island. These claims resulted in a years’ long negotiation leading to the Settlement Agreement, in which the Commission and the City mutually agreed to apportion Mare Island into Public Trust and Trust Termination Parcels. The Settlement Agreement encompasses Mare Island, an adjacent land parcel known as the North Housing Site, and adjacent waterways. All these lands are subject to the Settlement Agreement’s terms until fulfilled.

The United States determined, pursuant to its own understanding of state and federal law, that it would grant most of the east half of Mare Island to the City and most of the west half of Mare Island to the State, all following remediation by the Navy. The United States is not a party to the Settlement Agreement.

During negotiations, the City and its developer, Lennar, requested an “early transfer” of a significant portion of eastern Mare Island from the United States. This parcel is known as the Eastern Early Transfer Parcel (EETP). An “early transfer” means that the parcel had not completed environmental remediation and that the local agency had agreed to share responsibility for remediation. The EETP included the early transfer of property to Lennar including Public Trust Parcel IV and also Trust Termination Parcels slated for residential development. Public Trust Parcel IV includes the maritime industrial shoreline and are the only significant revenue producing Public Trust lands at Mare Island. The transfer would in theory allow the City and Lennar, rather than the Navy, to build infrastructure and other development at the same time as environmental clean-up, lowering development costs for the City and Lennar.

At about the same time, the City also requested early transfer of the Western Early Transfer Parcel (WETP). Because this parcel was on the west side of the Island, the United States would transfer it only to the State. The WETP would include the “active dredge ponds,” intended to be leased to the City for dredge disposal, and a large marshland, mudflat, and tidelands parcel.

The Commission authorized the Settlement Agreement in 2000 ([Item 36, June 27, 2000](#)). The City and Lennar, however, requested amendments, delaying execution of the Settlement Agreement. Negotiations continued, resulting in two significant changes. First, Lennar became a party to the Settlement Agreement to enable it to control a portion of the EETP immediately, and second, the Commission agreed to an early quitclaim of its interest in what were known as the “Gap Lands.” The Gap Lands were trust termination lands desired for immediate development by the City and Lennar. The Commission authorized these amendments in 2001 ([Item 68, September 17, 2001](#)).

THE SETTLEMENT AGREEMENT AND INITIAL TRANSFERS

Most broadly, the Settlement Agreement designated which lands (including submerged lands) within the settlement area would be confirmed as Public Trust lands in the legal character of tide and submerged lands and which would be confirmed as free of state interest, available for non-trust or private development. The Settlement Agreement divided the settlement area into numbered parcels, many of which contained both a Public Trust Parcel and Trust Termination Parcel. When a numbered parcel had been environmentally remediated, as confirmed by

the California Department of Toxic Substances Control, then the Commission and the City would engage in the deeded transactions laid out in the Settlement Agreement. A Trust Termination Parcel would not be cleared of claims until its matching Public Trust Parcel came into state ownership. This was meant to ensure that public lands transferred at the same rate as potentially private lands.

According to the Settlement Agreement, most Public Trust Parcels would be owned by the State and leased to the City for specified Public Trust uses. The State also expected to lease the marshland and mudflat parcel on the west side of the Island to the U.S. Fish and Wildlife Service, and the State would hold and directly manage certain other parcels, such as the submerged lands in Mare Island Strait. The Cemetery is within Public Trust Parcel VIIIb, intended to be leased to the City and operated as a regional park together with Public Trust Parcel VIIa.

The Settlement Agreement contains provisions designed to protect the State's and public's interest in the public lands. For instance, the deed for the "Gap Lands" would be held in escrow until the City transferred two other parcels to the State. And the City would not convey Trust Termination Parcels until the State had cleared its claims.

The Settlement Agreement became effective on March 26, 2002, when it was recorded in the Official Records of Solano County. The Commission and the City entered into the first land transactions pursuant to the Settlement Agreement on the same date, including:

- The City conveyed Public Trust Parcel VIIa to the State, which leased it back to the City through a Public Agency Lease. The City agreed to open Public Trust Parcel VIIa as a public park by March 2005.
- The Public Agency Lease prescribed agreed uses for each of the Public Trust Parcels. It was expected that Public Trust Parcels would be added to the Lease as they were transferred to the State.
- The deed for the "Gap Lands" was also recorded, despite the State not receiving the North Housing Site as required by the Settlement Agreement.
- The City immediately or soon thereafter conveyed the EETP and Gap Lands to Lennar, despite the State not clearing its claims to the Trust Termination Parcels within the EETP.

The State accepted early transfer of the WETP in September 2002, on the basis that responsibility for the completion of remediation and ongoing obligations of operations and maintenance must lie with an entity other than the State. The Commission, the City, and other parties entered into several ancillary agreements intended to shield the State from liability and to meet federal requirements. Most pertinent, the City accepted responsibility to perform or cause to be performed

remaining environmental remediation and operations and maintenance on the remediation using federal funds. The Commission and the City then added the "active dredge ponds" from the WETP to the Public Agency Lease.

The Settlement Agreement was confirmed as valid and binding by a Solano County Superior Court judgment dated December 17, 2002.

CHAPTER 588, STATUTES OF 2004

The 2002 Public Agency Lease anticipated a legislative grant of some or all of the Public Trust Parcels to the City. The City would then own and control the Public Trust Parcels according to the Public Trust and terms of the legislative grant. The legislature enacted such a grant in [Chapter 588, Statutes of 2004](#) (SB 1481, Chesbro).

A stated intent of Chapter 588 was to convey to the City all of the state's sovereign interest within the present boundaries of the City and to provide for the City's management and control of those lands. All of the Mare Island settlement area lay within City boundaries in 2005. Chapter 588 incorporated the Settlement Agreement and the uses prescribed in the Public Agency Lease into state law. Chapter 588's grant applied to all sovereign interests of the state within the settlement area, except for lands currently leased to the U.S. Fish and Wildlife Service and other federal or state agencies. No state lands within the settlement area were leased to the U.S. Fish and Wildlife Service in 2004 or 2005.

In the years following Chapter 588's enactment, the United States continued to remediate and transfer to City parcels subject to the Settlement Agreement. But no action was requested from the Commission because both the City and Commission understood that Chapter 588's grant superseded the Settlement Agreement's requirements for deed transactions. The City was already fee owner and trustee of all Public Trust Parcels that had transferred from the United States to the City or State, and no action was needed from the Commission or State to affirm title.

One additional deeded transaction has occurred since 2002, related to the Sanitary Sewage Treatment Plant Outfall. The United States had withheld this small parcel from the WETP because it was too significantly impacted by environmental concerns for early transfer. By 2011, the Treatment Plant Outfall had been appropriately remediated. The Commission accepted transfer from the United States, and then conveyed the parcel to the City, in trust, pursuant to Chapter 588 ([Item 117, June 23, 2011](#)).

During the long period from 2004 to the present, the only substantial revenue generating parcel, Public Trust Parcel IV, has remained controlled by Lennar or their successor, the Nimitz Group, LLC. Commission staff do not know whether any

revenue from this public land has accrued to the City and been reserved for Public Trust uses, as required by Chapter 588, the State Constitution, and the common law Public Trust Doctrine. A nonprofit association operated the park on Public Trust Parcel VIIa on a volunteer basis for several years without permission from City. The Cemetery, under the City's management and jurisdiction, was untended and vandalized.

RECENT EVENTS

City staff and Commission staff have fairly significant differences in their interpretations of the impact and meaning of the Chapter 588 legislative grant and aspects of the Settlement Agreement. The differences necessitate a first step toward finding a resolution. As such, staff proposes a yearlong working group to develop a framework that may provide a path toward resolution of the outstanding issues around both Chapter 588 and the Settlement Agreement.

Staff notes that one of the most critical duties of a trustee is to identify and preserve trust property for the benefit of the people of California. Staff contends that the City has not always met its duty. For example, in May 2022, the City negotiated an agreement with Nimitz that is inconsistent with the Settlement Agreement and Chapter 588, in that the City committed to immediately transfer lands received from the United States without first clearing title through the Settlement or affirming City ownership and control of Public Trust Parcels. The Cemetery is another example. The City did not operate or maintain the Cemetery (through the use of Trust funds) and this historic resource fell into disrepair over the past 20 years, until a public outcry created the impetus for the current amendment and transfer of the property to the Veterans Affairs.

When Commission staff learned that the City was considering a possible transfer of the Cemetery in 2018, it advised the City that transfer to a federal agency was inconsistent with the Settlement Agreement and Chapter 588. But Commission staff agreed to assist the City with the transfer, if that became the most feasible way to ensure the protection, rehabilitation, and operation of the Cemetery.

Representative Michael Thompson pursued legislation to allow the United States Department of Veterans Affairs to enter into an agreement with the City whereby the City would transfer the Cemetery to the Department and the Department would maintain the Cemetery as a historic resource open to the public. The bill became law in 2021 when it was included in the Fiscal Year 2021 National Defense Authorization Act. (Pub.L. No. 116-238 (Jan. 1, 2021).)

The City and Commission now propose an Amendment to the Settlement Agreement. The proposed Amendment would have two main effects. First, the

Amendment would facilitate the United States taking ownership of the Cemetery for proper care. This requires several steps to comply with state law: 1) Various exhibits to the Settlement Agreement that define the transfer parcels must be amended; 2) because the Parcel is already owned by City subject to the Public Trust, the City must quitclaim its interest in the Cemetery Parcel to the State; 3) the State must then patent the Parcel back to City, releasing any state sovereign interest. After these conveyances, the City can transfer the Cemetery to the Department of Veterans Affairs with title clear of state interest. [Commission, City, and Veterans Affairs staffs are negotiating the precise boundaries and land description of the Cemetery Parcel.](#) The City also proposes to lease, as trustee under Chapter 588, to the Department of Veterans Affairs, adjacent parcels for a parking lot and visitor amenities. To accomplish this, the City agreed to accept a patent for Public Trust Parcel VIIa, a confirming step that is technically unnecessary when the City already owns and manages Public Trust Parcel VIIa pursuant to Chapter 588.

Second, the Amendment would commit Commission and City staff to negotiate in good faith to develop a framework to address the issues impacting the full implementation of the Settlement Agreement and Chapter 588. To do so, staffs would create an implementation framework within one year of the Amendment date. The framework would address listed topics, such as the meaning, intent, and legal effect of Chapter 588 and the Settlement Agreement. For transparency, Commission staff would report back in public with informational or action items as needed over the year. This provision contains no penalty for noncompliance. Commission staff wish to renew their efforts to fulfill the Settlement Agreement, in hopes of achieving the public benefits negotiated so many years ago.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code section 6307 and Chapter 588, Statutes of 2004

PUBLIC TRUST AND STATE'S BEST INTERESTS:

The proposed Amendment would allow the City to convey to the Department of Veterans Affairs fee title to the cemetery. The Cemetery is a vital piece of our nation's, and state's, history, and funding from the federal government would restore the neglected site. The VA would also assume long-term operations and maintenance. Commission staff have always maintained that the Cemetery should be opened to the public as a historic resource and maintained in a respectful manner. Transfer to the VA makes that outcome more likely.

Unfortunately, however, the Cemetery transfer would divest the state of several acres of Public Trust land, which was central to the Settlement Agreements balancing of interests. The Settlement Agreement and any Amendment must comply with state law, including that an exchange of lands must result in equal or greater land value coming into the trust. In this unique instance, with federal deadlines looming and a neglected historic resource, Commission staff recommends that this legal issue be worked on over the next year in negotiations. Staff will evaluate the impact of the transfer out of the trust and how to ensure that the Settlement Agreement conditions are met and the public's interests are properly protected.

The Cemetery is an upland parcel, distant from the shoreline. The Cemetery is not suitable for traditional Public Trust uses. The Department of Veterans Affairs will restore and maintain the Cemetery for public use as a historic resource within the broader shoreline park.

The commitment to mutually negotiate a framework to fully implement the Settlement Agreement and Chapter 588 can help resolve issues and ensure that public lands are properly identified and managed for the benefit of the public.

CONCLUSION:

For all the reasons stated above, staff believes that the proposed Amendment to the Settlement Agreement is in the best interests of the State and will not substantially impair Public Trust purposes or needs.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the Amendment is a discretionary action by the Commission. Each time the Commission approves or rejects a transfer of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" and "Committing to Collaborative Leadership" Strategic Focus Areas of the Commission's 2021–2025 Strategic Plan.
3. **Amendment to Mare Island Property Settlement and Exchange Agreement:** Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a statutorily exempt project. The project is exempt because it involves settlement of title and boundary disputes.

Authority: Public Resources Code section 21080.11.

4. **Existing Historic Mare Island Cemetery:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

EXHIBIT:

- A. Draft Diagram of Cemetery Parcel

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Amendment to Mare Island Property Settlement and Exchange Agreement: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080.11, settlement of title and boundary disputes.

Existing Historic Mare Island Cemetery: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the Amendment will not substantially interfere with Public Trust rights, uses, or purposes and is in the best interests of the state.

AUTHORIZATION:

1. Find that, with respect to the Mare Island Title Settlement and Exchange Agreement following the proposed Amendment to Mare Island Property Settlement and Exchange Agreement, which findings shall be effective upon recordation of the proposed Amendment and other transaction documents:

- a. The Cemetery Trust Termination Parcel has been improved, filled, and reclaimed; has been excluded from public navigation channels; is not available, useful, or susceptible of being used for commerce, navigation, and fisheries; is not in fact tidelands and submerged lands; and is free from the Public Trust for commerce, navigation, and fisheries.
 - b. The Cemetery Trust Termination Parcel is a relatively small portion of the sovereign lands granted to the City.
 - c. The Public Trust Parcels to be acquired through the Settlement Agreement, as amended, will provide a significant benefit to the Public Trust.
2. Direct staff to research conditions and facts at the time of the Settlement Agreement, in particular the relative, weighted value of non-sovereign interests to be received in the Public Trust Parcels and the value of sovereign interests to be released in the Trust Termination Parcels; and if staff finds there to be a value deficit caused by the proposed Amendment, to seek to recoup at least that value through other Amendments to the Settlement Agreement or by other means.
3. Approve and authorize the execution, acknowledgment, and recordation of the Amendment to Mare Island Property Settlement and Exchange Agreement, in substantially the form of the copy on file with the Commission, and the acceptance, execution, acknowledgment, and recordation of all associated deeds on behalf of the Commission.
4. Authorize and direct Commission staff and the California Attorney General to take all necessary or appropriate actions on behalf of the Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the Agreement; and to appear on behalf of the Commission in any legal proceedings relating the subject matter of the Amendment.

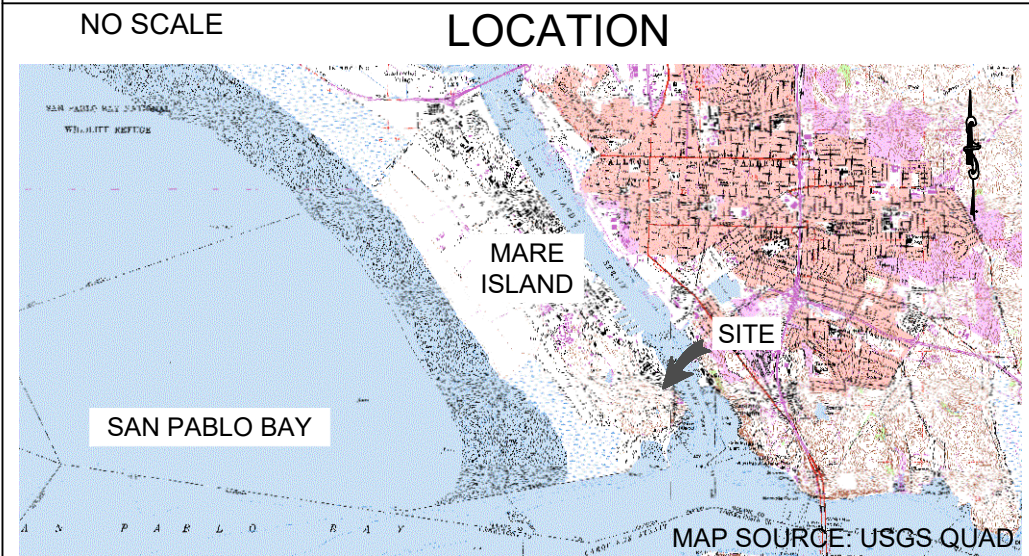
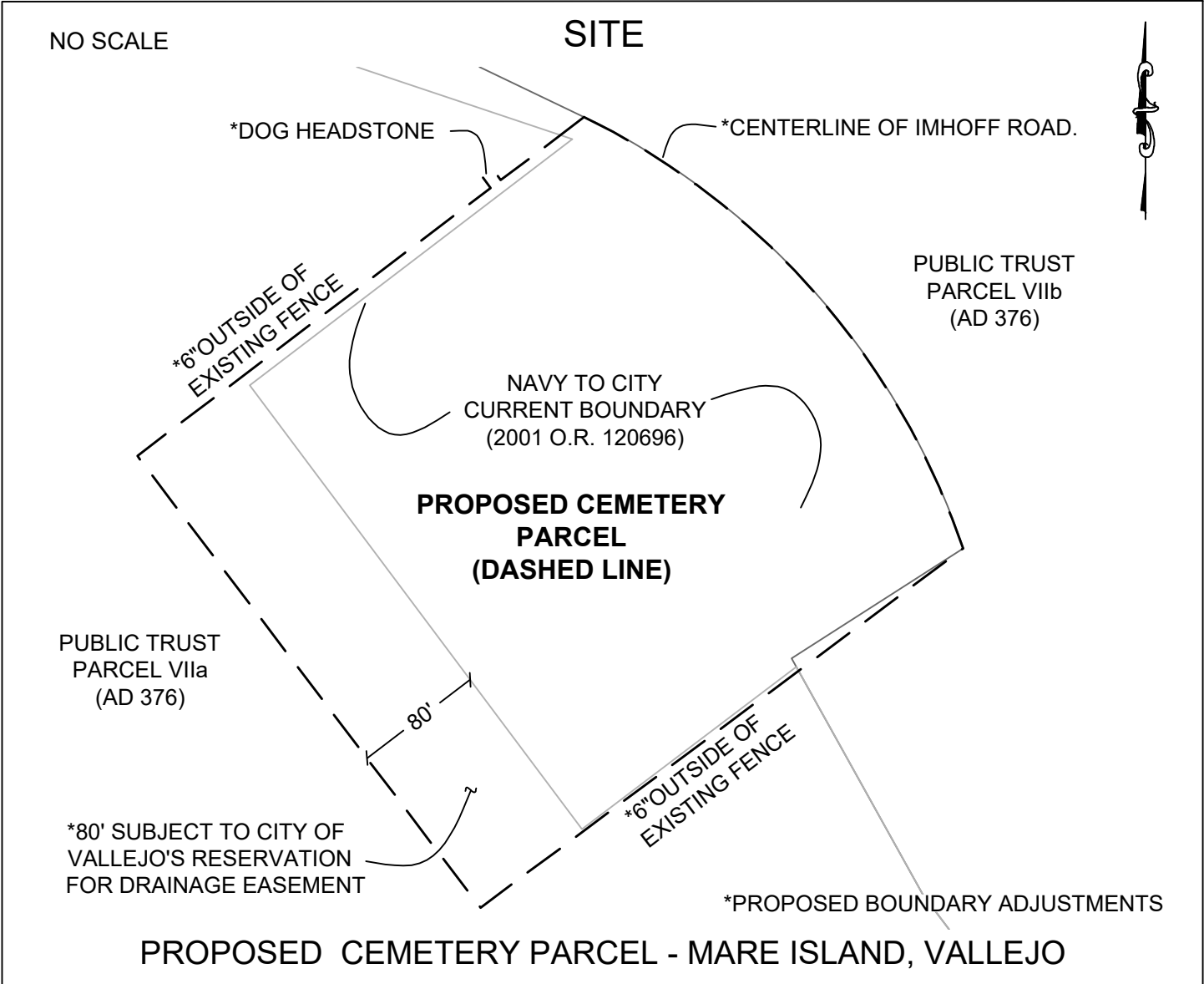


EXHIBIT A

AD 376
MARE ISLAND PROPERTY
SETTLEMENT AND EXCHANGE
AGREEMENT
SOLANO COUNTY



THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE LEASE PREMISES, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY THE LESSEE OR OTHER PARTIES 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.