

MINUTE ITEM

This Calendar Item No. 28  
was approved as Minute Item  
No. 28 by the State Lands  
Commission by a vote of 2  
to 0 at its 4/26/79  
meeting.

CALENDAR ITEM

28.

4/79  
WP 5177  
Hadly  
PRC. 5177

AUTHORIZATION FOR EXECUTION OF A GENERAL PERMIT  
AND A SEPARATE AGREEMENT IN LIEU OF LITIGATION  
CONCERNING CERTAIN FACILITIES LOCATED IN THE BED  
OF LAKE TAHOE NEAR CARNELIAN BAY

The staff has for over 2 years been attempting to bring certain structures in the bed of Lake Tahoe near Carnelian Bay, belonging to Mr. Jerome Anolik under lease or permit. Those facilities both adjacent to Mr. Anolik's upland littoral parcel consist of a short pier and boat house lying close to the shore and a rock cribbing lying some distance (over 200 feet) from the shore line. While the pier and boat house are in an excellent state of repair, the rock cribbing violates certain provisions of the Tahoe Regional Planning Agency (TRPA) Shorezone Ordinance and has been declared a navigational hazard and nonconforming structure by TRPA, who has directed that it be removed. Mr. Anolik however, wishes to restore the structure to its original condition and has strenuously objected to its removal. He refused to grant his consent for its removal during the Commission's hazard removal program in the summer of 1978. Although TRPA has authority under its Shorezone Ordinance to remove the structure at its owner's expense, the agency has apparently not yet chosen to exercise such authority. The proposed agreement will in no way prevent TRPA from removing it in the future if they so choose.

The staff feels that some immediate action should be taken to remedy the situation and has considered the option of litigating to have the cribbing declared a nuisance and removed at its owner's expense. Authorization for such litigation was secured from the Commission in September of 1978 (Calendar Item #23). Subsequently, however, the staff has determined that such litigation may not be in the best interest of the State for the following reasons:

1. The cost of removal appears to be exorbitant, perhaps as high as \$30,000 according to a General Services estimate.
2. The key matters of concern i.e. danger to the public and possible liability can be remedied through other means i.e. making the owner responsible for proper hazard marking, indemnification and liability insurance coverage for the State.

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3. Litigation could be prolonged thereby delaying an effective remedy to an existing public hazard.
4. Any forced removal of the hazard should ideally be handled by local agencies (TRPA and Placer County) who have immediate responsibility for the health, safety and welfare of the local community and specific statutory remedies for abating public nuisances.

Mr. Anolik has cooperated with the staff in the preparation of a proposed settlement. The essence of the settlement would be (1) a standard lease for his existing pier and boat house which have not previously been under lease and for which the applicant does have a permit from TRPA, and (2) a separate agreement concerning the rock cribbing which will minimize the State liability exposure. Specific provisions of the General Permit, Recreational Use for Parcel "A" covering the pier and boat house are as follows:

1. Area - 0.037 acres.
2. Term - 20 years, from April 1, 1979.
3. Consideration - \$50 per annum.
4. Liability Insurance - \$500,000 combined single limit.

Specific provisions of the separate "Agreement in Lieu of Litigation" for Parcel "A-1" covering the rock cribbing are as follows:

1. The property owner will concede to complete ownership of and responsibility for the rock cribbing.
2. He will expressly indemnify the State and agree to name the State as an additionally insured on a policy of liability insurance with a combined single limit of \$500,000.

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3. He will agree to mark the structure according to Coast Guard and Department of Boating and Waterways hazard marking standards.
4. The State for the above mentioned consideration will refrain from suing the property owner in nuisance for removal of the rock cribbing at his expense.

The agreement makes clear that it is not binding on any other government agency or entity having concurrent jurisdiction (such as TRPA or Placer County), and that it in no way exempts the property owner from complying with the rules and regulations of such agencies or entities. Furthermore nothing in the agreement prevents TRPA from applying the specific enforcement remedy available to it in Section 16.20 of the TRPA Shorezone Ordinance, i.e. removal of the rock cribbing at the owner's expense with the cost of such removal becoming a lien on real property held by the owner. The agreement in addition does not preclude the State from suing to remove the cribbing at its own expense.

EXHIBITS:           A. and A-1. Land Descriptions.  
                      B. and B-1. Location Maps.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT AN EIR HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH REPORT IS NOT REQUIRED UNDER THE PROVISIONS OF P.R.C. 21085, 14 CAL. ADM. CODE 15100, ET SEQ., AND 2 CAL. ADM. CODE 2907.
2. FIND THAT GRANTING OF THE PERMIT WILL HAVE NO SIGNIFICANT EFFECT UPON ENVIRONMENTAL CHARACTERISTICS IDENTIFIED PURSUANT TO SECTION 6370.1, OF THE P.R.C.
3. APPROVE THE PERMIT AND AGREEMENT IN LIEU OF LITIGATION PROPOSED HEREIN AND FIND THAT SUCH ACTIONS ARE IN THE BEST INTEREST OF THE STATE.

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4. AUTHORIZE THE ISSUANCE TO JEROME ANOLIK OF A 20-YEAR GENERAL PERMIT - RECREATIONAL - COMMENCING ON APRIL 1, 1979 FOR CONSIDERATION OF ANNUAL RENT IN THE AMOUNT OF \$50, WITH THE STATE RESERVING THE RIGHT TO FIX A DIFFERENT RENTAL ON EACH FIFTH ANNIVERSARY OF THE PERMIT; AND WITH A PROVISION FOR PUBLIC LIABILITY INSURANCE WITH A COMBINED SINGLE LIMIT OF \$500,00; FOR MAINTENANCE OF RECREATIONAL BOATING AND DWELLING FACILITIES ON THE LAND DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN.
  
5. AUTHORIZE THE STAFF TO EXECUTE A SETTLEMENT AGREEMENT IN LIEU OF LITIGATION CONCERNING THE DERELICT ROCK CRIBBING ON THE LAND DESCRIBED IN EXHIBIT "A-1" IN ACCORDANCE WITH THE TERMS OF THE PROPOSED AGREEMENT IN LIEU OF LITIGATION ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION WHICH AGREEMENT REQUIRES THE PROPERTY OWNER TO INDEMNIFY AND INSURE THE STATE AGAINST LIABILITY AND TO INSTALL AND MAINTAIN STANDARD HAZARD MARKERS IN RETURN FOR THE STATE'S FOREGOING A NUISANCE ACTION FOR REMOVAL OF THE CRIBBING AT ITS OWNER'S EXPENSE, WITH THE EXPRESS UNDERSTANDING THAT SUCH AGREEMENT IN NO WAY PREVENTS (a) TRPA OR PLACER COUNTY FROM REMOVING THE ROCK CRIBBING PURSUANT TO THEIR EXISTING AUTHORITY, OR (b) THE COMMISSION FROM SUING TO REMOVE THE FACILITY AT STATE EXPENSE.

EXHIBIT "A"

LAND DESCRIPTION

WP 5177

A parcel of submerged land in Lake Tahoe, Carnelian Bay, Placer County, California, described as follows:

COMMENCING at the southwest corner of Lot 18, Block B, as shown upon that map entitled "Carnelian Bay on Lake Tahoe" filed January 6, 1908, in Book "C-1" of Maps, page 14, Placer County Records Office, thence along the west line of said Lot 18, South 50 feet, thence parallel with the south line of said Lot 18, East 140 feet to the TRUE POINT OF BEGINNING, thence the following nine courses:

1. South 14 feet;
2. East 103 feet;
3. North 27 feet;
4. West 3 feet;
5. North 29 feet;
6. West 53 feet;
7. South 28 feet;
8. West 47 feet;
9. South 14 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of Lake Tahoe.

END OF DESCRIPTION

Prepared

*W. H. Kunnecke*

Checked

*Gary A. McGowan*

Reviewed

*Ray [Signature]*

Date

3/1/79

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EXHIBIT "A-1"

LAND DESCRIPTION

WP 5177

A parcel of submerged land in Lake Tahoe, Carnelian Bay, Placer County, California, described as follows:

COMMENCING at the southwest corner of Lot 18, Block B as shown upon that map entitled "Carnelian Bay on Lake Tahoe" filed January 6, 1908, in Book "C-1" of Maps, page 14, Placer County Recorder's Office, thence along the west line of said Lot 18, South 50 feet, thence parallel with the south line of said Lot 18, East 243 feet to the TRUE POINT OF BEGINNING, thence the following seven courses:

1. South 19 feet;
2. East 134 feet;
3. North 70 feet;
4. West 40 feet;
5. South 32 feet;
6. West 94 feet;
7. South 19 feet to the POINT OF BEGINNING.

END OF DESCRIPTION

Prepared *K. D. Kunnecke* Checked *Garry A. Waldon*  
Reviewed *R. J. [Signature]* Date *3/8/79*

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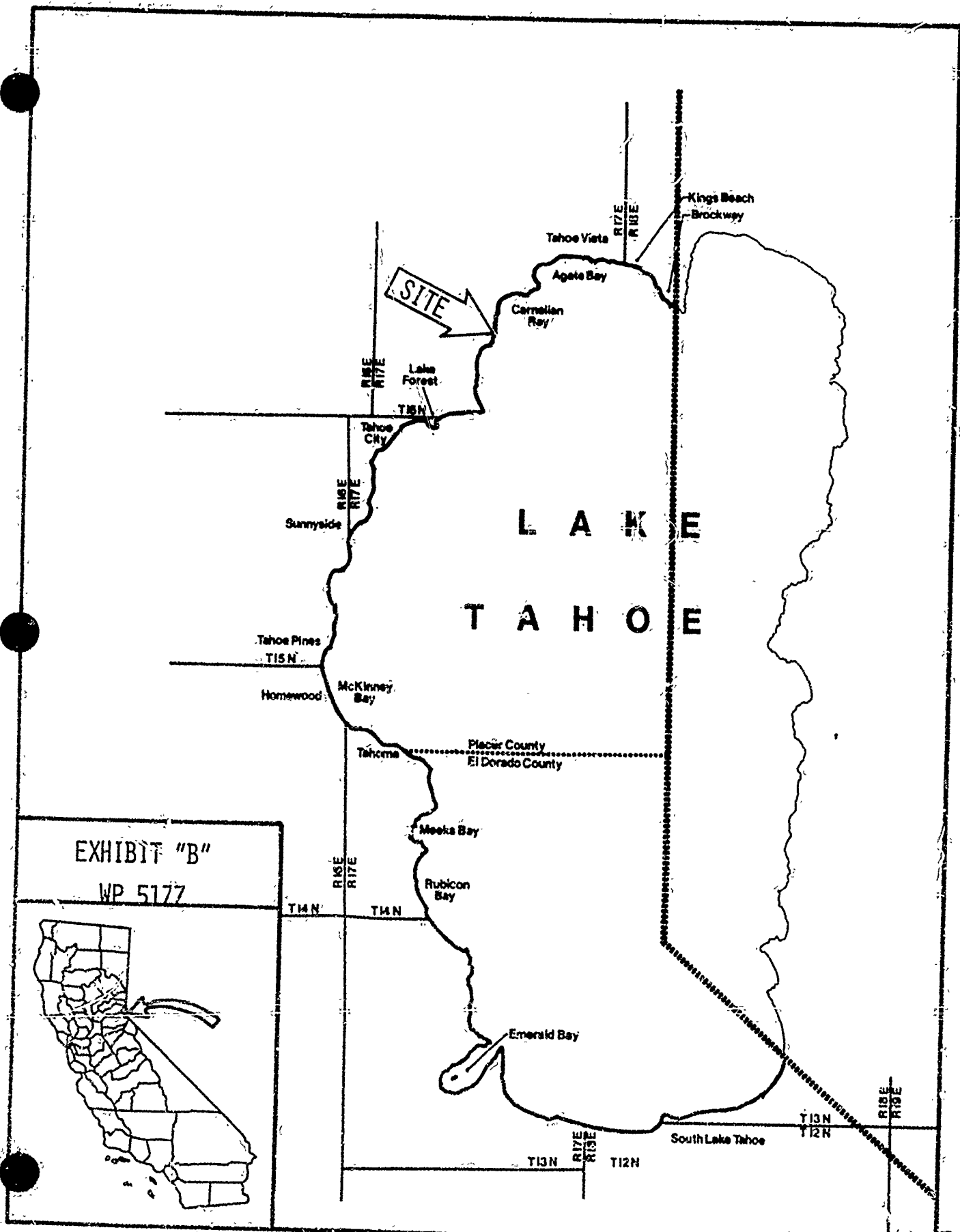


EXHIBIT "B"  
WP 5177

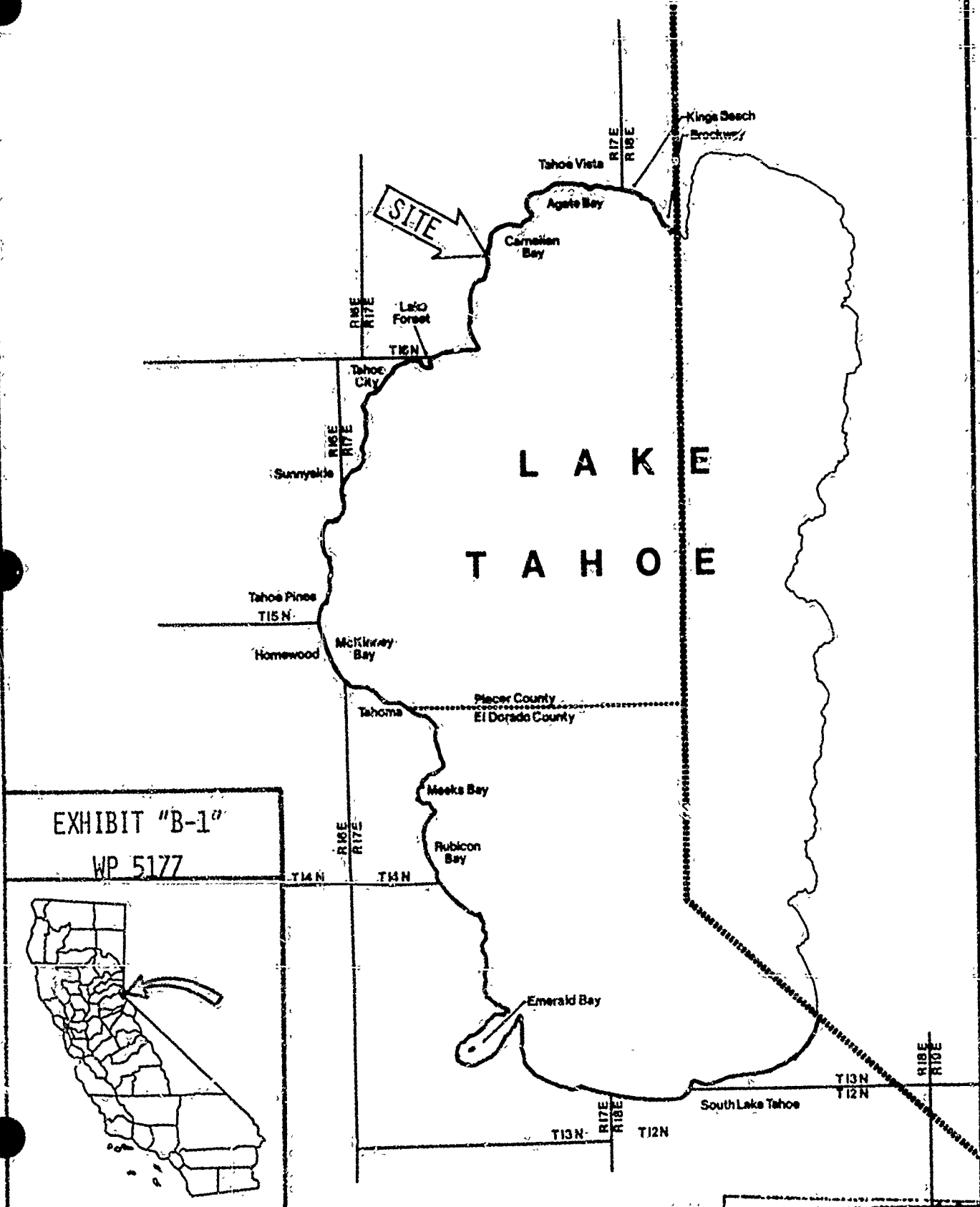
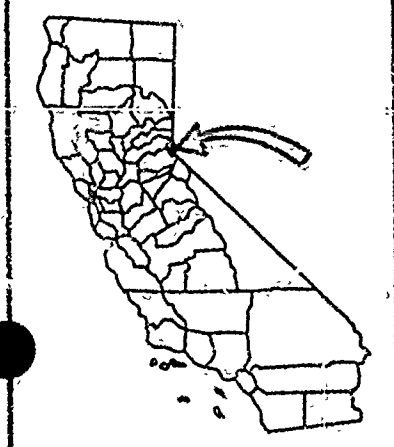


# L A K E T A H O E



SITE

EXHIBIT "B-1"  
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