

MINUTE ITEM

This Calendar Item No. 17
was approved as Minute Item
No. 17 by the State Lands
Commission by a vote of 3
to 0 at its 7/22/82
meeting.

CALENDAR ITEM

17

7/22/82
W 22492
Grimmett
R. Ludlow
BLA 224

BOUNDARY LINE AGREEMENT
BLA No. 224

Staff of the State Lands Commission have negotiated a compromise settlement of the ordinary high water mark boundary with Marshland Development Company, Inc. (Marshland) as the boundary of State-owned sovereign tide or submerged lands in the bed of Guadalupe Slough and/or Guadalupe River, and an adjacent upland parcel at Alviso in the City of San Jose, Santa Clara County.

The proposed boundary and respective quitclaims for the parcels, to be confirmed in State sovereign and proprietary ownership, are more particularly described in Exhibits "A" through "C" of the Boundary Agreement substantially in the form on file in the office of the State Lands Commission.

Title studies show the following facts:

1. Marshland Development Company, Inc. claims, as the successor in interest to the heirs of J. D. Hoppe, patentees of the Rancho Ulistac, a patent for the rancho being dated October 12, 1868, and recorded in the office of the County Recorder of Santa Clara County, in Book A of Patents on page 189.

A 25

S 11

2. The upland parcel was within the perimeter description of the Federal Survey of the Rancho Ulistac, per plat approved August 29, 1866 by the United States Surveyor General's Office.
3. Guadalupe Slough and Guadalupe River, below the ordinary high water mark, was and remains a navigable tidal waterway.
4. Review of historic maps indicates no evidence of any historic tidelands within the uplands adjacent to the slough.

There is a bona fide and good faith dispute between the State and the private party as to the boundary of private and State ownerships.

The State contends that it acquired title to the tidelands and submerged lands within the slough by reason of its sovereignty, and that it has been and remains the owner thereof.

The proposed agreement will contain mutual quitclaims by the State to Marshland Development Company, Inc. of the upland parcel, and Marshland Development Company Inc., to the State of any interest in Guadalupe Slough and Guadalupe River, and a 25-foot easement for public access along and landward of the ordinary high-water mark connected to a public street or way by a relocatable public easement.

The quitclaim by the State does not include any lands below the present mean high tideline.

The Marshland property is the former Bay Shell Company land. Both Marshland and Bay Shell Company are under a San Francisco Bay Conservation and Development Commission (BCDC) Cease and Desist Order (CCD 5-79) for the removal of illegal rubble fill placed on San Francisco Bay wetlands in Guadalupe Slough. Marshland has removed a portion of this fill to the satisfaction of BCDC.

A significant amount of illegal rubble fill was also placed on State tide and submerged land in Guadalupe Slough and, as a landowner, the State Lands Commission is potentially subject to a BCDC order to remove this fill as noted in the BCDC Minutes for its meeting of July 17, 1980, on pages 10 and 11. The location of this fill is along the northwesterly boundary of the Marshland parcel.

Staff of the Commission are of the opinion that it is in the best interest of the State to have this rubble fill removed from the State's tide and submerged land. (In the above-mentioned BCDC Minutes, Commissioner Golden noted that State Lands was investigating and would have the fill removed.)

Pursuant to the BCDC Cease and Desist Order, and as a condition for obtaining a BCDC permit, Marshland has agreed to remove the fill from the State's sovereign land at no cost to the State.

Marshland has also agreed to grade the existing embankments along Guadalupe Slough to conform with the grades and slopes shown on Exhibit "B" and to cap all the rubble fill slopes (most of which are on State land) with one foot of clean earth for re-vegetation purposes. As the early re-vegetation will enhance the public view of the area, it is proposed that Marshland be allowed to remove the necessary clean earth at no charge from Guadalupe Slough, which is silted up at this location, provided that approval of other public agencies having jurisdiction is obtained.

The Agreement also provides that a General Lease, in accordance with the Commission's rules and regulations will be issued to Marshland for Marshland's existing facilities located in Guadalupe Slough and River, subject to the approval of other public agencies as required.

The staff believes it is in the best interests of the State to enter into the proposed agreement, pursuant to the provisions of Div. 6 of the P.R.C., with particular reference to Section 6357, to define the extent, nature, location, and area of public and private titles and boundary by a compromise settlement in order to avoid the costs and uncertainties of litigation.

AB 884: N/A.

EXHIBITS: A. Site Map.
B. Parcel Map.

IT IS THEREFORE RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THIS AGREEMENT IS A SETTLEMENT OF A TITLE DISPUTE IN LIEU OF LITIGATION AND THE PROVISIONS OF CEQA ARE INAPPLICABLE.

CALENDAR ITEM NO. 17 (CONTD)

2. FIND THAT THE PROPOSED BOUNDARY AGREEMENT, SUBSTANTIALLY IN THE FORM WHICH IS ON FILE WITH THE STATE LANDS COMMISSION, IS IN THE BEST INTERESTS OF THE STATE; AUTHORIZE THE EXECUTION AND RECORDATION OF SAID AGREEMENT AND CONVEYANCES PURSUANT THERETO; AND ACCEPT THE CONVEYANCES TO THE STATE AS PROVIDED THEREIN.
3. AUTHORIZE THE STAFF OF THE STATE LANDS COMMISSION AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY, INCLUDING LITIGATION, IN ORDER TO IMPLEMENT AND GIVE EFFECT TO THIS AGREEMENT.

CALENDAR - B 122
2037

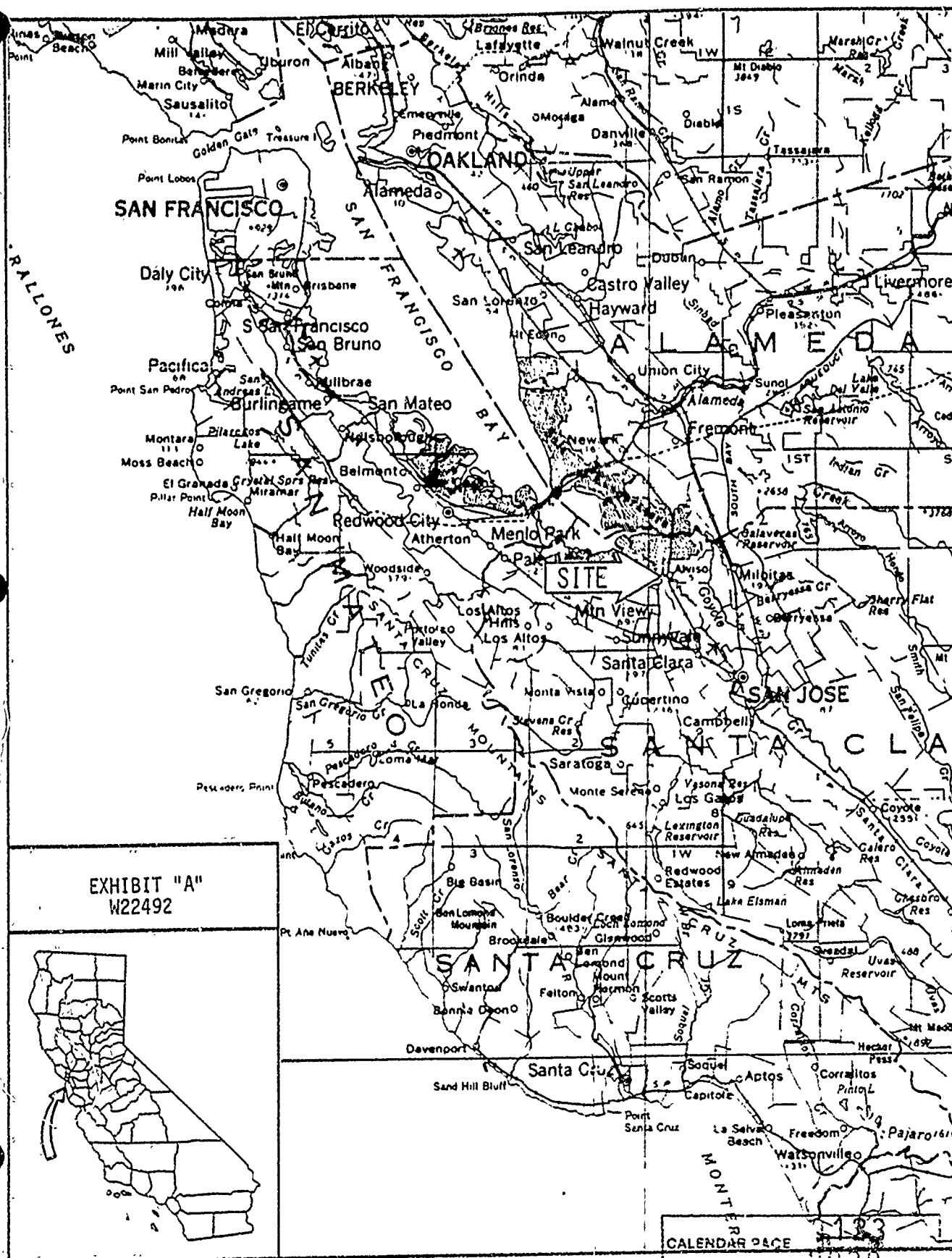


EXHIBIT "A"
W22492

CALENDAR PAGE

MINUTE PAGE

2038

W 22492

EXHIBIT "B"

