

MINUTE ITEM

This Calendar Item No. 24
 was approved as Minute Item
 No. 24 by the State Lands
 Commission by a vote of 2
0 at its 18-16-80
 meeting.

CALENDAR ITEM

24

12/80
 RW 21567.7
 Scott
 Collins
 PRC 5938

UNITED STATES DEPARTMENT OF THE INTERIOR
 FISH AND WILDLIFE SERVICE

Tijuana Estuary at present is essentially in an undeveloped condition, and subject to the natural evolution of a tidal estuary system. Portions of the estuary system are contained in an area which is being acquired by the United States Department of the Interior, Fish and Wildlife Service for a wildlife refuge. The acquisition process of Fish and Wildlife Service required that the sovereign interests of the State be clarified and excluded from the upland fee parcels being acquired from private parties (Helix Corporation).

The background of this matter should first be summarized. The Fish and Wildlife Service has negotiated an agreement to purchase the private interests (i.e., fee title) of Helix Corporation (President, Mr. T. G. Lambron) in areas surrounding the Tijuana Estuary. Fish and Wildlife recognizes that, in order to finalize the purchase an agreement should also be reached with the State of California, who is the owner, as trustee, of the tide and submerged lands within the purchase area. Fish and Wildlife is aware that the State, on behalf of the People, believes that certain other portions of the purchase area may be subject to public access, street and recreation easements arising by virtue of implied dedication under the case of Gion v. City of Santa Cruz (1970) 2 Cal.3d 29. This claim is based upon the implied dedication investigations of the Department of General Services and the Attorney General's Office which were instituted at the time the State was considering condemnation of Helix' interests in order to expand Border Field State Park.

To appraise the value of the Helix interest, it was necessary for the State to estimate the extent of its ownership in the purchase area. Pursuant to the request of Fish and Wildlife's appraiser, Roger Whitacre, earlier this year, staff of the State Lands Commission estimated this interest to be approximately 102 acres. Mr. Whitacre also discussed the extent of the State's implied dedication claims with the Attorney General's Office. Apparently, both the State's sovereign and implied dedication claims were accounted for in his final appraisal report.

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Staff of the Commission and the Attorney General's Office have conducted a study of the area and have prepared maps of the mean high water line based on tidal gauging observations (performed by NOS over a one-year period) within the estuary and contour surveys by staff and Federal Government of the mean high water line of the estuary. An agreement establishing State sovereign ownership to the area below the MHWL in this area will be entered into by the private parties, Fish and Wildlife Service and the State as part of the escrow process of the pending sale of the upland. This agreement will not permanently fix the boundary between the private uplands and the State sovereign lands. This is because the estuary system remains in a natural state with the MHWL subject to change by accretion or erosion.

The proposed agreement, a complete copy of which is on file in the principal office of the Commission, would take the following form and contain the following elements:

1. There would be 3 main parties to the agreement, namely, the State, the federal government and Helix.
2. The agreement as to boundary location and title would actually be between the State and Helix; of course, such agreement would not be effective until close of escrow at which time Helix would be paid by Fish and Wildlife the agreed value of its upland interest.
3. The agreement would define the boundary between the State's sovereign interests and uplands in the purchase area as the "mean high water line". The present location of this boundary would be shown on a detailed map as follows:
 - a. The 91.2-acre tideland area in the southerly portion of the estuary would be clearly defined by a mean high water line; and
 - b. The 10.8-acre tideland area of the northerly portion of the estuary system included within the mean high water line and connected to the main estuary system.
4. It would be understood that since the estuary remains substantially in a state of nature, the boundaries as shown on the map described in paragraph 3, above, would be subject to change by reason of future erosion or accretion.
5. This agreement would only be for purposes of settling the State's sovereign land claims in the estuary; any

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interests the State or public may have in public access, street and recreational easements express or implied over the upland property would not be affected. In other words, the federal government would be purchasing Helix's property subject to such interests, if any. There will be an understanding that the beaches and strand, between the estuary and ocean, which have been historically used by the public, will remain open for public use subject to reasonable control by the Fish and Wildlife Service.

6. The agreement would also include a Permit Agreement between Fish and Wildlife and the State under which the tide and submerged lands would be leased, on a long term basis, to the federal government at no rental in consideration of the public benefit. This would be with the understanding that such lease would terminate if the proposed use, i.e., a natural wildlife refuge, of the area is changed in the future.

In accordance with paragraph 6 above, a Public Agency Permit for a period of 66 years would be issued to the United States Department of the Interior, Fish and Wildlife Service covering the area of State sovereign land located within the proposed wildlife refuge. This long term permit will allow for the preservation of this natural area and the existing habitat of several rare and endangered waterfowl species, i.e., Clapper Rail and Least Tern. The long term preservation of the rapidly disappearing coastal wetlands is a major concern of the State as expressed in the State Coastal Act and is of great Statewide public benefit. The consideration for such permit would be the public use and benefit. The permit would provide for continued use by the public of the beach and strand area between the Pacific Ocean and the estuary which had been established by the public through historic use. The permit would also provide for termination if the use of the upland and estuary by Fish and Wildlife Service should change from a wildlife preserve to some other use. This project is situated on State land identified as possessing significant environmental values pursuant to PRC 6370.1, and is classified in a use category, Class A, which authorizes Restricted Use.

Staff review indicates that there will be no significant effect upon the identified environmental values.

EXHIBITS: A-1, A-2, A-3. Estuary Location.
 B. Location Map.

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IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ESTABLISHMENT OF THE STATE'S SOVEREIGN OWNERSHIP IN TIJUANA ESTUARY IS A SETTLEMENT IN LIEU OF LITIGATION, THEREFORE CEQA DOES NOT APPLY.
2. AUTHORIZE THE EXECUTION OF AN AGREEMENT ESTABLISHING THE STATE'S SOVEREIGN OWNERSHIP IN TIJUANA ESTUARY ESSENTIALLY IN THE FORM OF THE AGREEMENT ON FILE IN THE OFFICES OF THE COMMISSION.
3. DETERMINE THAT AN ENVIRONMENTAL DOCUMENT HAS NOT BEEN PREPARED FOR THE ISSUANCE OF A PUBLIC AGENCY PERMIT FOR WILDLIFE PRESERVATION AS SUCH DOCUMENT IS NOT REQUIRED UNDER THE PROVISIONS OF PRC 21084, 14 CAL. ADM. CODE 15100 ET SEQ AND 2 CAL. ADM. CODE 2907. CLASS 7: ACTIONS BY REGULATORY AGENCIES FOR PROTECTION OF NATURAL RESOURCES.
4. DETERMINE THAT THE ISSUANCE OF A PUBLIC AGENCY PERMIT FOR WILDLIFE PRESERVATION IS EXEMPT FROM THE REQUIREMENTS OF ARTICLE 6.5 OF TITLE 2, OF THE CAL. ADM. CODE BECAUSE IT IS NOT A DEVELOPMENT WITHIN THE MEANING OF SECTION 2503, OF TITLE 2, OF THE CAL. ADM. CODE AND SECTION 30105 OF THE P.R.C.
5. FIND THAT THE GRANTING OF THE PERMIT WILL HAVE NO SIGNIFICANT EFFECT UPON ENVIRONMENTAL CHARACTERISTICS IDENTIFIED PURSUANT TO SECTION 6370.1, OF THE PRC IN THAT THE PERMIT IS FOR THE PURPOSE OF PROTECTING AND PRESERVING THE EXISTING WILDLIFE HABITAT.
6. FIND THAT THE GRANTING OF THIS 66-YEAR PERMIT IS IN THE BEST INTEREST OF THE STATE IN THAT IT PRESERVES THE NATURAL CHARACTER OF THE REFUGE AREA FOR THE GREATEST ALLOWABLE TIME PERIOD.
7. AUTHORIZE ISSUANCE TO THE UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICES OF A 66-YEAR PUBLIC AGENCY PERMIT EFFECTIVE FROM CLOSE OF ESCROW OF THE FEDERAL ACQUISITION OF THE UPLAND INTEREST FROM HELIX CORPORATION; IN CONSIDERATION OF THE PUBLIC USE AND BENEFIT; WITH THE STATE RESERVING THE RIGHT TO SET A MONETARY RENTAL IF PERMITTEE SHOULD EARN A MONETARY INCOME FROM THE PERMITTED PREMISES IN EXCESS OF ACTUAL OPERATION COSTS OR IF SUCH INCOME IS NOT REQUIRED TO BE DEPOSITED IN A SPECIAL FUND ACCOUNT PURSUANT TO FEDERAL LAW; PROVIDED FURTHER THAT 1) SHOULD PERMITTEE USE THE AREA FOR OTHER THAN A WILDLIFE REFUGE, THE PERMIT WILL TERMINATE, 2) THE PUBLIC'S RIGHTS OF ACCESS TO AND USE OF THE BEACH AND STRAND AREA BETWEEN THE PACIFIC OCEAN AND THE ESTUARY SHALL BE MAINTAINED,

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AND 3) HUNTING ON THE PERMITTED AREA CAN NOT BE PROHIBITED WITHOUT THE CONSENT OF THE CALIFORNIA DEPARTMENT OF FISH AND GAME; FOR THE CREATION AND MAINTENANCE OF A WILDLIFE REFUGE ON THE LANDS AS SHOWN ON THE MAPS ATTACHED AS EXHIBIT "A-1, A-2, AND A-3" HERETO AND BY REFERENCE MADE A PART HEREOF.

8. AUTHORIZE STAFF OF THE COMMISSION AND THE ATTORNEY GENERAL'S OFFICE TO TAKE ALL STEPS NECESSARY IN ORDER TO COMPLETE AND IMPLEMENT THIS TRANSACTION, WITHIN THE FINDINGS AND AUTHORIZATIONS OF THE COMMISSION.

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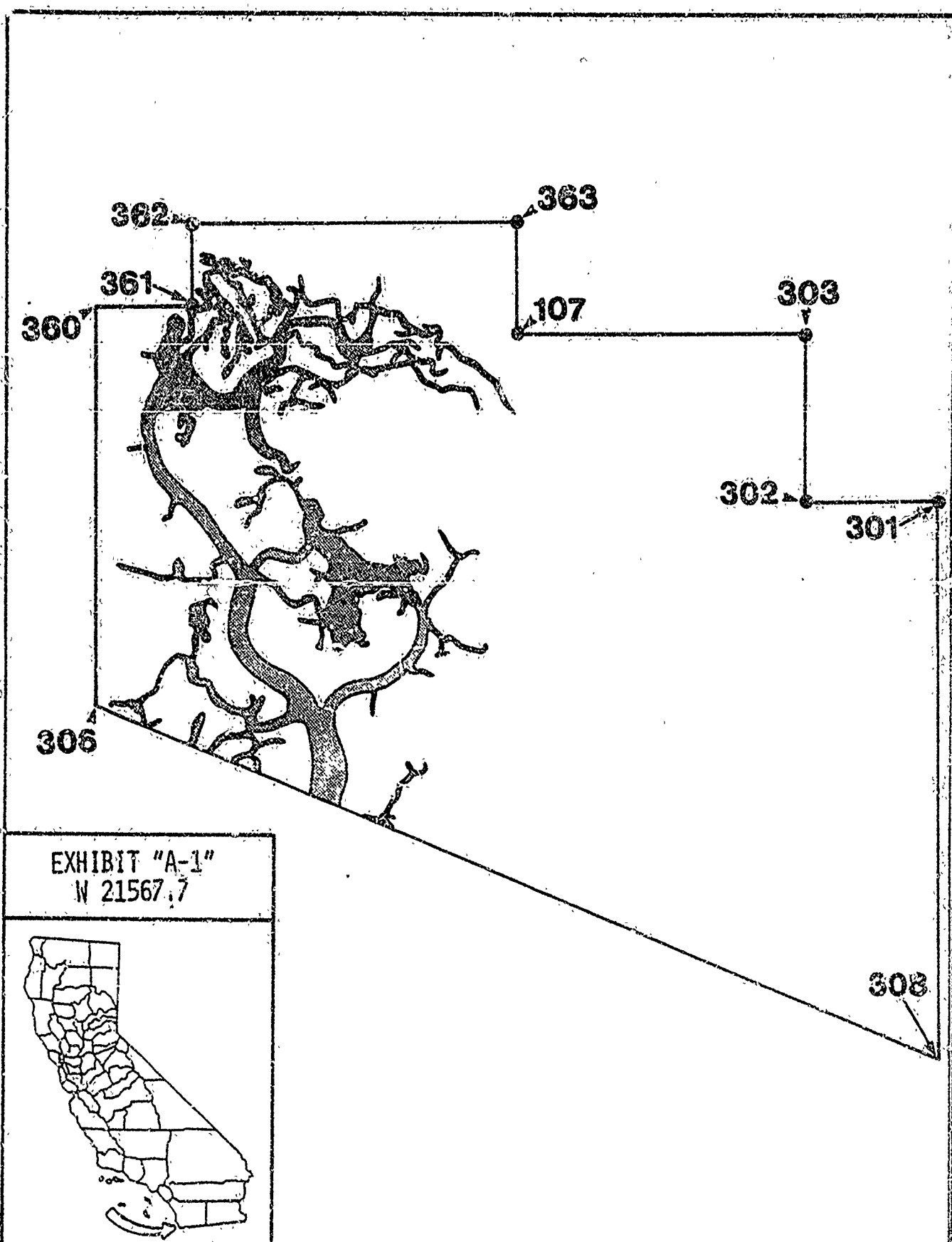


EXHIBIT "A-1"
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(Added, 12/12/80)

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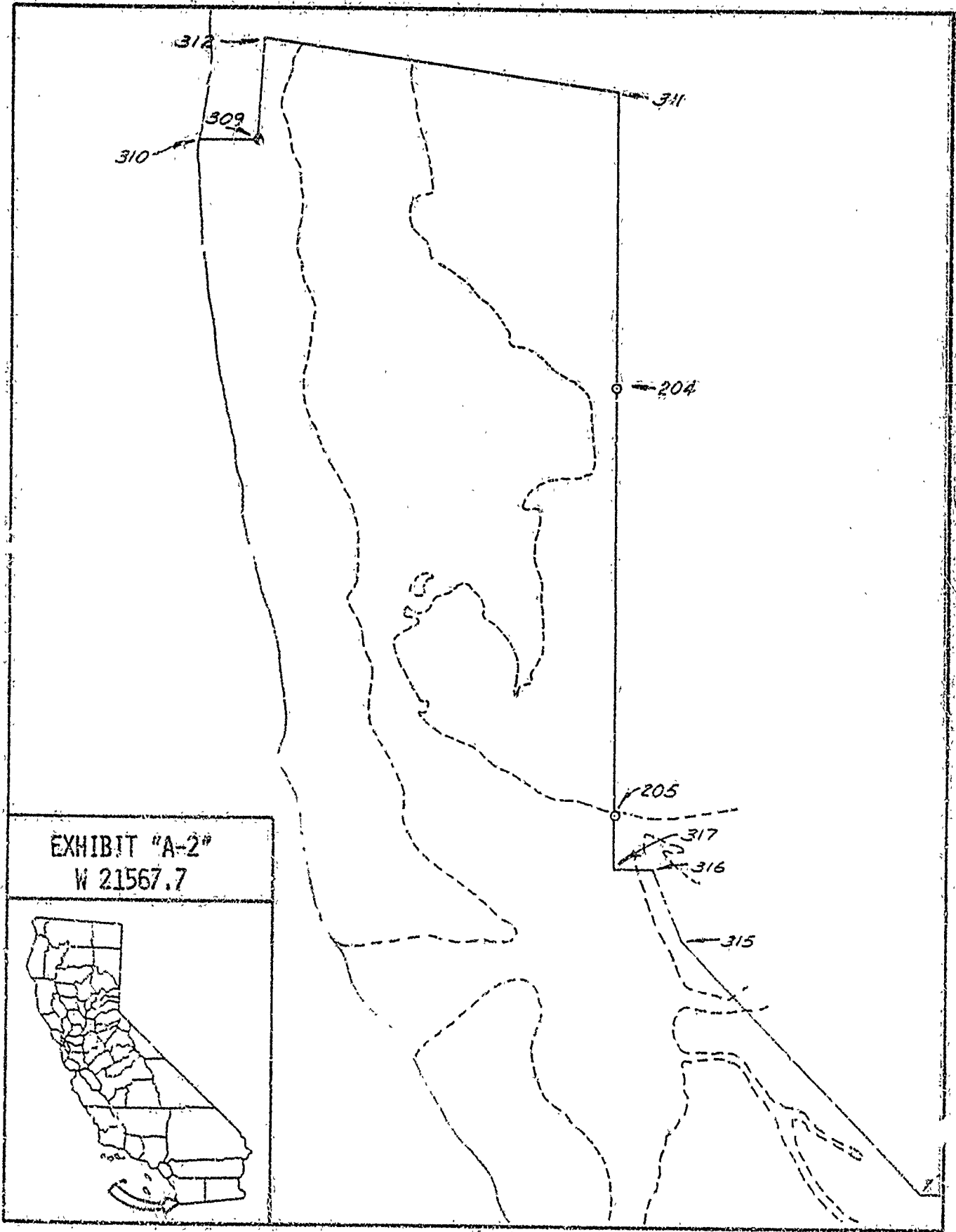


EXHIBIT "A-2"
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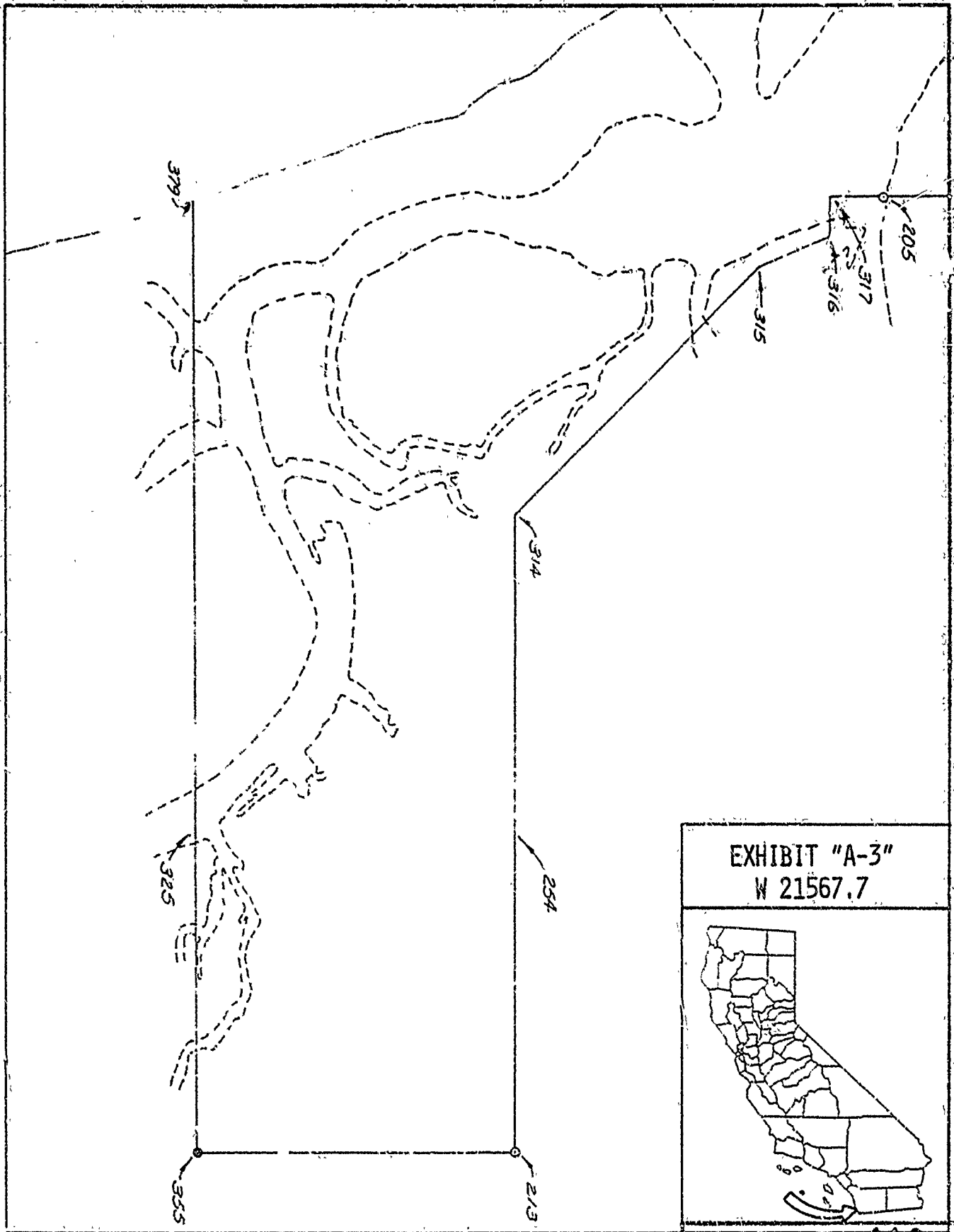
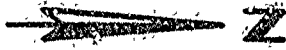


EXHIBIT "A-3"
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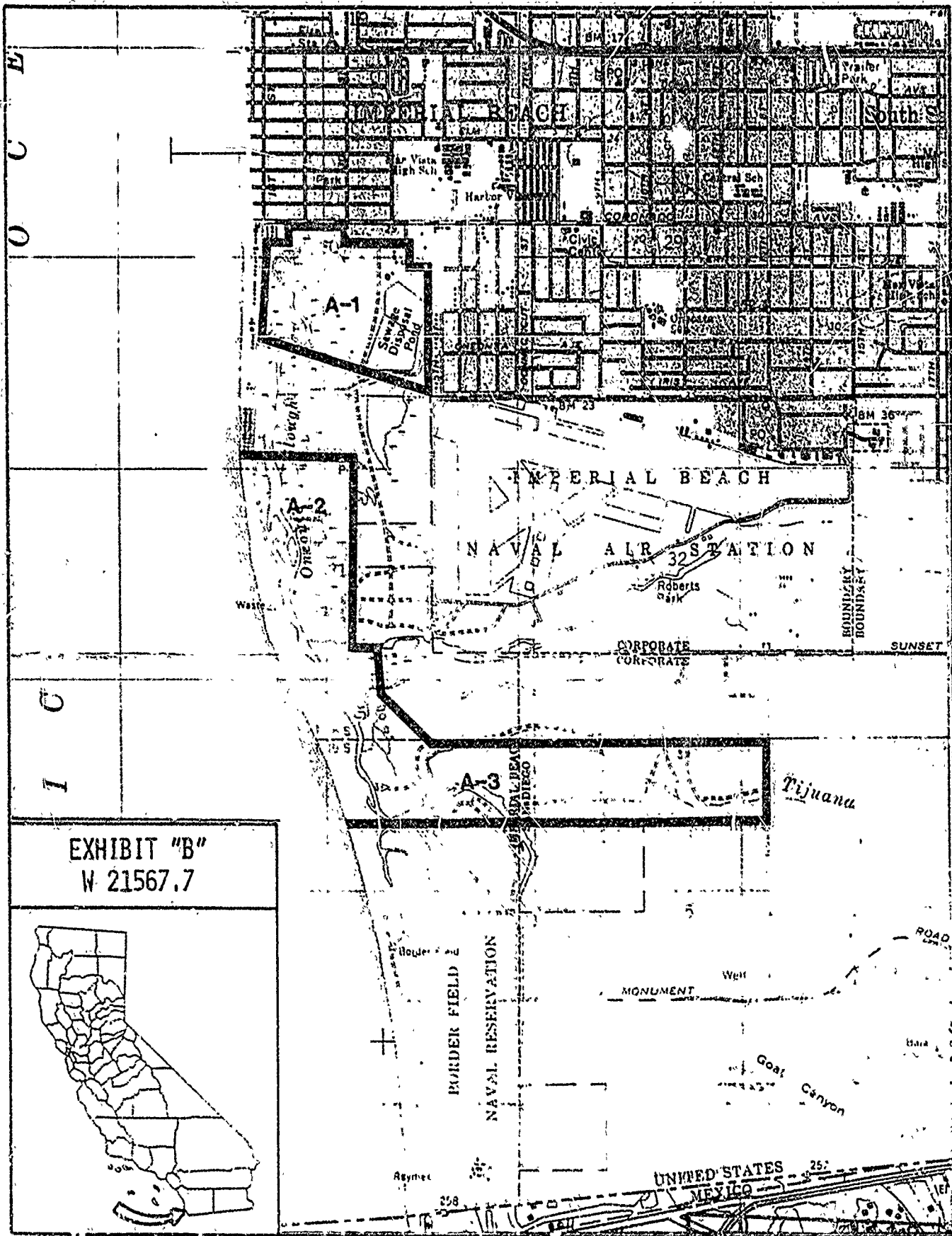


EXHIBIT "B"
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(Added, 12/12/80)

UNITED STATES
MEXICO

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