

MINUTE ITEM

This Calendar Item No. 34
was approved as a State Item
No. 34 by L. J.
Commission by a vote of 3
0 at its 9/29/81
meeting.

CALENDAR ITEM

34

9/29/81
20773
Townsend
SLL 74

COMPROMISE TITLE SETTLEMENT

BACKGROUND AND PRESENT SITUATION:

A title dispute exists between the State, in its sovereign capacity, and HFS Associates, concerning State-Private ownership of a 74.871-acre parcel of real property, bounded northwest by Third Avenue, southwest by Seal Slough (now called Mariner's Lagoon) and southeast by the balance of Brewer's Island (now Foster City), located in San Mateo County.

Mariner's Lagoon (formerly Seal Slough), in its natural state, was at the time of admission to the State of California, a tidal and navigable waterway. As such, the bed and adjoining tidelands are owned by the State and subject to the Public Trust.

HFS claims to own, free of any State right, title or interest, by virtue of being the successor-in-interest of Swamp and Overflowed Land Patent Nos. 66 and 67, said real property located in San Mateo County.

Said Patent Parcel has been filled and reclaimed, and is no longer subject to tidal action, and is no longer susceptible of, or required for, public trust purposes.

HFS has recently completed construction of a regional shopping center on the property, entitled "Mariner's Island Shopping Center", and is ready to proceed in a reciprocal escrow conveying the center in fee to Liberty House, Wards and Bullocks, and a leasehold interest to Fenneys.

Staff of the State Lands Commission is of the opinion that the title evidence and the applicable legal principles of law would lead to the conclusion that the

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CALENDAR ITEM NO. 32 (CONTD)

State, in its sovereign capacity, is the owner of some public trust right, title or interest in the subject parcel, the extent of which has been calculated as 6.4 acres of historic open water parcels, valuing \$23,961.48.

LAND BANK PARCEL:

Pursuant to and contingent on approval of Calendar Item No. 32, of the Commission's regular public meeting held on this day, September 29, 1981, the Commission, on behalf of the State of California, in its sovereign capacity, and the City of Hayward, will enter into a "Land Bank Option Agreement" whereby the City has agreed to convey to the State, under the terms and conditions of the Agreement, about 77.7 acres of real property, (described in the attached Exhibit C, and depicted on the attached Exhibit D) consisting of preserved, open-space marshlands, near the eastern shore of San Francisco Bay, just north of the Dumbarton Bridge, in Alameda County, upon payment to the City of a total purchase price of \$117,260.08, or from time to time, undivided interests therein, upon a lesser payment to the City, equal to the percentage the amount such lesser payment bears to the total price of \$117,260.08.

PROPOSED SETTLEMENT:

HFS has offered to resolve this title dispute by a written agreement in compromise settlement of the legal and evidentiary issues. The staff of the State Lands Commission recommends approval of the settlement in substantially the form of the Agreement, a copy of which is now on file in the Offices of the Commission.

While the Agreement sets forth all the specific terms and conditions of the settlement, a brief summary of some of the principal terms and conditions of the settlement is set forth below as follows:

1. A State Patent to the owners of record of the 74.871 acres of land, bounded northwest by Third Avenue, southwest by Seal Slough (now called Mariner's Lagoon), and southwest by the balance of Brewer's Island (now Foster City), and termination of the public trust thereon, a copy of the legal description of which is attached hereto (entitled Patent Parcel).
2. A Quitclaim Deed to the State, from the City of San Mateo, releasing all right, title or interest that the City has pursuant to their Legislative Grant, Chapter 245, Statutes of 1933, as amended by Chapter 1099, Statutes of 1976.
3. A Grant Deed to the State of California, State Lands Commission, conveying a 20.43 percent undivided interest in the City of Hayward Land Bank Parcel, consisting of 77.7 acres, located near the eastern shore of San Francisco Bay, just north of Dumbarton Bridge, in Alameda County, constituting a private value of \$23,961.48, which sum is agreed to be equal to or greater in value to the sovereign interests being released from the Patent Parcel.
4. The Agreement provides for an escrow and will be effective upon its recordation.
5. HFS will provide a standard form of CLTA title insurance in the amount of \$23,961.48, insuring the State's title to said 20.43 percent undivided interest in the land bank parcel.

AB 884:

N/A.

EXHIBITS:

- A. Description of Patent Parcel.
- B. Site Plat of Patent Parcel.
- C. Description of Land Bank Parcel.
- D. Site Map of Land Bank Parcel.

IT IS THEREFORE RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE PROPOSED COMPROMISE TITLE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST IN THE SUBJECT PARCEL FOR THE LAND BANK IS IN THE BEST INTERESTS OF THE STATE:
 - a) FOR THE IMPROVEMENT OF NAVIGATION;
 - b) AID IN RECLAMATION;
 - c) FOR FLOOD CONTROL;
 - d) ENHANCEMENT OF THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND UPLAND;
 - e) PROTECTION, PRESERVATION AND ENHANCEMENT OF THE TIDELANDS AND SUBMERGED LANDS, PUBLIC ACCESS THERETO AND PUBLIC USE THEREOF PURSUANT TO THE PUBLIC TRUST.
2. FIND THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING IN THE WATERS INVOLVED; AND THAT THE REAL PROPERTY RECEIVED BY THE STATE, IS OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF THE INTERESTS IN THE SUBJECT PARCEL BEING RELINQUISHED BY THE STATE.
3. FIND THAT THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE RESPECTING THE PRIVATE-STATE TITLES WITHIN THE SUBJECT PARCEL; THAT THE PROPOSED AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED; THAT IT IS IN LIEU OF THE COSTS, DELAYS AND UNCERTAINTIES OF TITLE LITIGATION; THAT IT IS CONSISTENT WITH AND IS AUTHORIZED BY THE REQUIREMENTS OF LAW INCLUDING SECTION 6307 OF THE P.R.C., AS WELL AS THE OTHER PROVISIONS OF DIV. 6 THEREOF, AND IS CONSISTENT WITH THE STATE'S POWER TO RESOLVE AND SETTLE A CONTROVERSY IN LIEU OF LITIGATION; THAT ON THE EFFECTIVE DATE OF THE AGREEMENT AND CONSISTENT WITH THE TERMS THEREOF; THE SUBJECT PARCEL WILL NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THE PUBLIC TRUST MAY BE TERMINATED THEREON; AND THAT THE PROPOSED AGREEMENT IS IN THE BEST INTERESTS OF THE STATE.

4. FIND AND DETERMINE THAT SETTLEMENT OF THIS TITLE DISPUTE IN LIEU OF LITIGATION IS NOT A PROJECT WITHIN THE REQUIREMENTS OF CEQA.
5. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGEMENT AND RECORDATION ON BEHALF OF THE COMMISSION OF THE FOLLOWING DOCUMENTS:
 - A. THE COMPROMISE TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT OF FILE WITH THE COMMISSION.
 - B. A PATENT CERTIFICATE AND A PATENT OF THE SUBJECT PARCEL IN SAN MATEO COUNTY, CALIFORNIA, DESCRIBED IN EXHIBIT A, FOREVER FREE OF THE PUBLIC TRUST.
 - C. A QUITCLAIM DEED TO THE STATE, FROM THE CITY OF SAN MATEO, RELEASING ALL RIGHT, TITLE OR INTEREST THAT THE CITY HAS PURSUANT TO THEIR LEGISLATIVE GRANT, CHAPTER 245, STATUTES OF 1933, AS AMENDED BY CHAPTER 1099, STATUES OF 1976.
 - D. A CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDING OF THE CONVEYANCE TO THE STATE OF THE UNDIVIDED 20.43 PERCENT FEE INTEREST IN THE LAND BANK PARCEL IN ALAMEDA COUNTY, CALIFORNIA, DESCRIBED IN EXHIBIT B.
6. AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION, AND/OR THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGEMENT AND RECORDATION OF DOCUMENTS OR TITLE, CONVEYANCES, STIPULATIONS, ESCROW INSTRUCTIONS, DEEDS, AGREEMENTS, CERTIFICATES OF ACCEPTANCE AND CONSENTS TO RECORDATION, AND SUCH OTHER DOCUMENTS AS MAY BE REASONABLE AND CONVENIENT TO CARRY OUT THE SAID COMPROMISE TITLE SETTLEMENT AGREEMENT; TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER THEREOF.

EXHIBIT A
"PATENT PARCEL"
LAND DESCRIPTION

A parcel of land situated in the City of San Mateo, San Mateo County, California, more particularly described as follows:

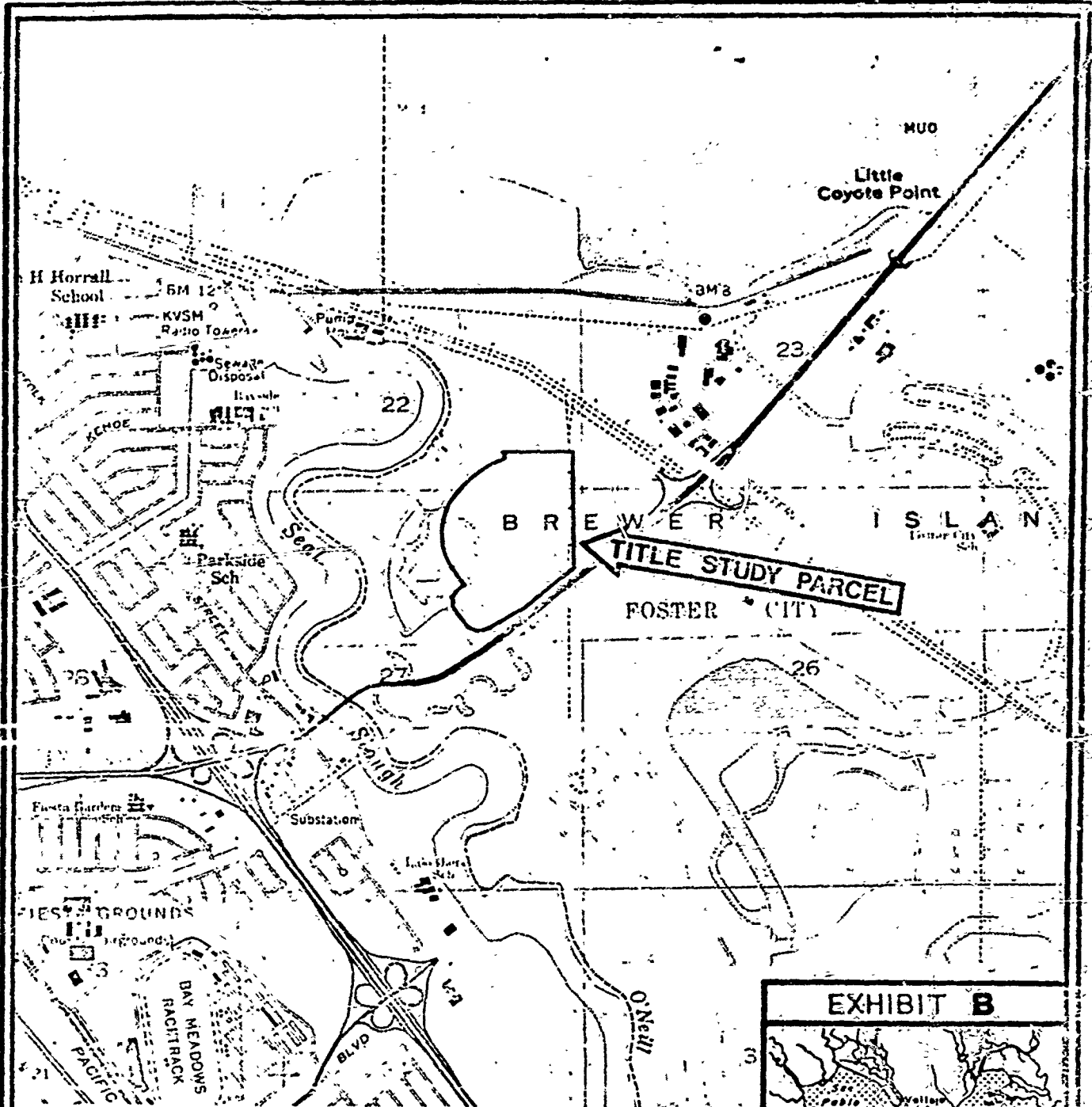
Parcel "A" as shown on that certain map entitled "Mariners Island Unit No. 4", recorded April 4, 1979 in Volume 99 of Maps at pages 35 thru 38 in the Office of the County Recorder of San Mateo County, California.

END OF DESCRIPTION

Prepared June 25, 1981 by Garry A. Weldon, LS3752

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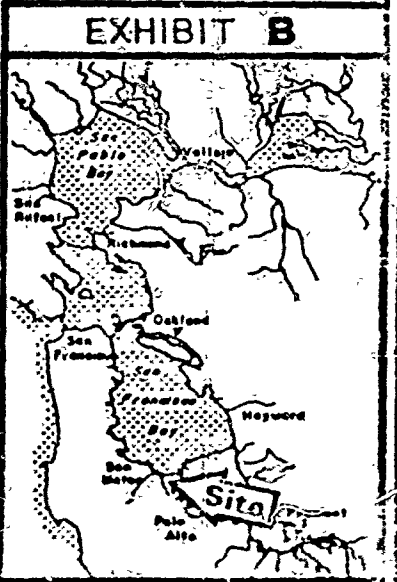
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NOTE:
 Parcel A as shown on Subdivision
 Map 99/35, San Mateo County

STATE LANDS COMMISSION
 PORTION OF U.S.G.S. QUADRANGLE
 SAN MATEO 1956
 PHOTOREVISED 1968 & 1973

Prepared by: B Lee Date: 11-6-80 A:20 S:10
 Title Study: MAVERICKS ISLAND SHIPPING CENTER W 20773



23-N39-E-43

LAND BANK PARCEL

EXHIBIT "C"

LAND DESCRIPTION

All that certain real property in the Township of Eden, County of Alameda, State of California, described as follows:

A portion of the land conveyed to the City of Hayward by deed dated June 19, 1978 and recorded August 3, 1978 in Reel 5516 of Official Records of Alameda County, Image 237, (78-148844), described as follows:

COMMENCING at the most northern corner of said land, being the most eastern corner of the 235 acre, more or less, parcel of land conveyed to the City of Hayward by Deed dated May 21, 1965 and recorded September 24, 1965 in Reel 1604 of Official Records of Alameda County, Image 694, (AX 132369), said corner being marked by a bolt shown on Record of Survey No. 508, filed in Book 3 of Record of Surveys at Page 32, in the Office of the Alameda County Recorder; run thence southeasterly along the general eastern line of said land, (78-148844), 914.22 feet to an angle point therein marked by a "Found Concrete Monument per R/S - 3/32" shown on said Record of Survey No. 508, said point being the POINT OF BEGINNING of this description; and running thence southwesterly parallel with the southeastern line of said 235 acre parcel of land S 66° 16' 58" W 993.54 feet, to the northern line of the southeast 1/4 of the northeast 1/4 of Section 36, Township 3 South, Range 3 West, Mount Diablo Meridian; thence West along last said line 350.00 feet, to the western line of said southeast 1/4, being the western line of said land (78-148844); thence South along last said line 2640.00 feet to the southern line of said land; thence East along last said line 800.00 feet; thence N 45° E 650.00 feet to a line drawn South from the actual point of beginning; thence North 2580.00 feet to the point of beginning.

Containing 77.7 acres, more or less.

END OF DESCRIPTION

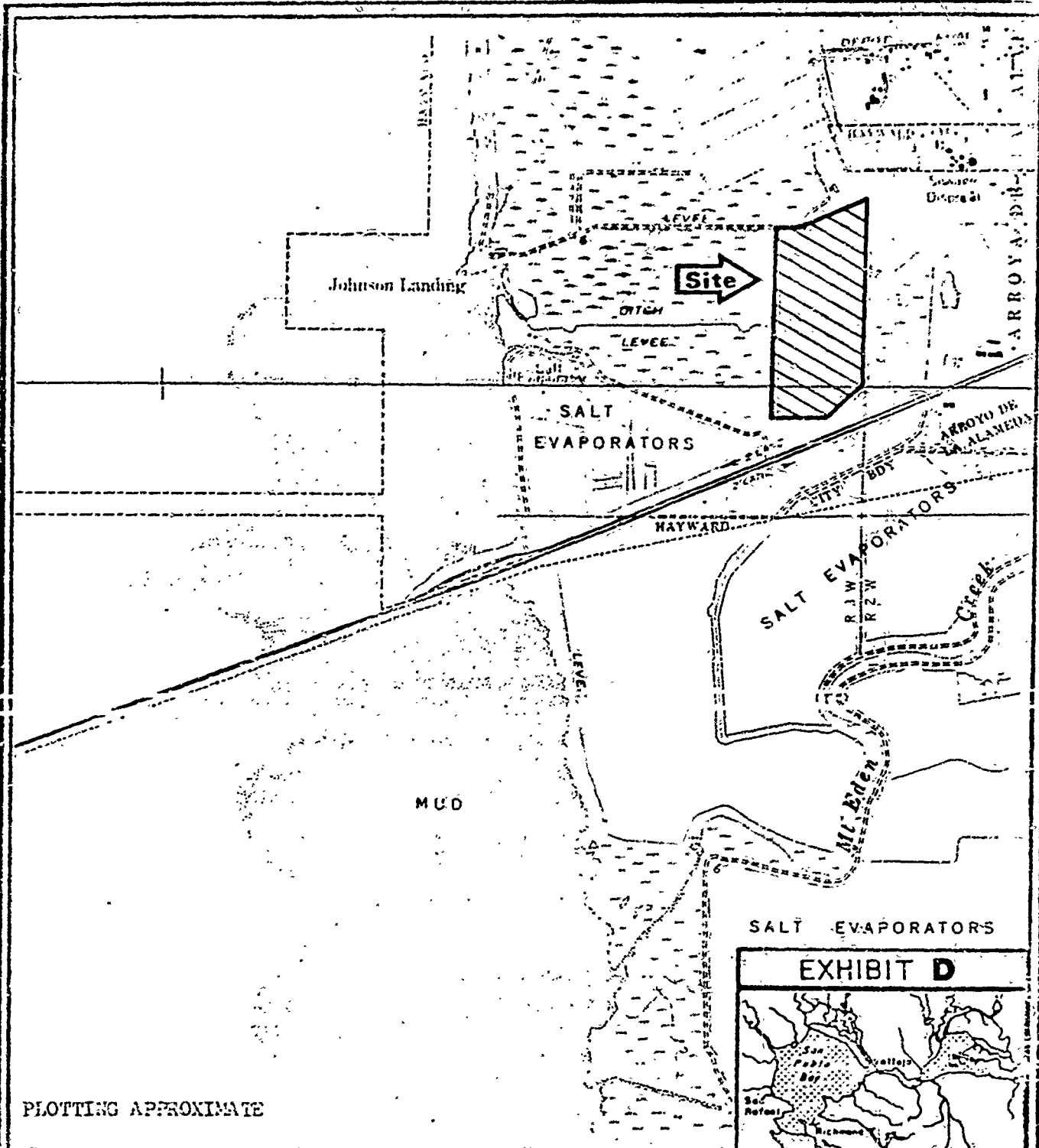
PREPARED SEPTEMBER 11, 1981 BY GARRY A. WELDON L.S. 3752

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1977



PLOTTING APPROXIMATE

STATE LANDS COMMISSION
**PORTION OF U.S.G.S. QUADRANGLES
 SAN LEANDRO, REVISED 1980 &
 REDWOOD POINT, REVISED 1980**

Prepared by J.J. FILL Date: 7-20-81 A:15 G:8

Title Sheet: 7 1978



MINUTE PAR 1978