

MINUTE ITEM

This Calendar Item No. 27  
 was approved as Minute Item  
 No. 27 by the State Lands  
 Commission by a vote of 2  
 to 0 at its 11/23/81  
 meeting.

CALENDAR ITEM

27

11/23/81  
 W 503.862  
 Judson  
 Hally

APPROVAL OF PROPOSED STIPULATED JUDGMENT  
 REGARDING DUFAU V. MOSELEY  
 PLACER COUNTY SUPERIOR COURT NO. 43857

In 1973 Jean Dufau purchased from Charles H. Moseley an improved lot in the Tahoe Vista subdivision fronting on Lake Tahoe. He made further improvements and opened a restaurant named Le Petit Pier. In 1975 Dufau sued Moseley because the State Lands Commission claimed ownership of a substantial portion of the lot purportedly conveyed to him and this caused delays in acquiring building permits and reduced the amount of land purchased. The issue arose because the grant deed, by which the property was conveyed, described the lot as extending an approximate distance from the upland to Lake Tahoe and the State Lands Commission claimed the landward boundary of the State's sovereign ownership of the bed of Lake Tahoe was the high water mark rather than the low water mark. This meant that title to a substantial portion of the land purportedly conveyed was claimed by the State to the high water mark, whereas the conveyance was made on the assumption that the lakeward boundary of the lot was the low water mark. Mr. Dufau brought the State into this action in August of 1976 seeking declaratory relief on the issue of the location of the State's boundary.

During the pendency of this action the Lyon and Fogerty cases were filed and made their way to the California Supreme Court on the question of the location of the landward boundary of the State's sovereign title to the beds of non-tidal navigable waters and the existence of a public trust in the shorezone. In March of this year the State Supreme Court held in these companion cases, State v. Superior Court (Lyon) 29 Cal. 3d 210 and State v. Superior Court (Fogerty) 29 Cal. 3d 240, that the bed of Lake Tahoe is owned by the State up to the low water mark and that the privately owned shorezone between the low and high water mark is subject to the public trust for commerce, navigation, fishing, recreation, or for the purpose of preserving the property in its natural state.

A 3

S 1

CALENDAR PAGE	83
MINUTE PAGE	2534

CALENDAR ITEM NO. 27 (CONT'D)

At its meeting on October 30, 1981 the Commission adopted the elevations of 6223 and 6229.1 feet Lake Tahoe Datum as the low and high water marks at Lake Tahoe for purposes of its jurisdiction and the administration of its programs as authorized in Division 6 of the P.R.C. The staff has determined that the subject parcel and improvements thereon fall entirely landward of elevation 6223 feet, the low water mark, and thus are not on State-owned land. However, a portion of the subject property including much of the restaurant falls waterward of elevation 6229.1 feet, the high water mark of Lake Tahoe, and thus is subject to the public trust.

The Dufau property is a narrow parcel approximately 71 feet in width extending from State Highway 28 to the low water mark of Lake Tahoe. The parcel was filled and leveled between the low and high water marks with the landward edge having a nearly vertical slope. The restaurant and its facilities occupy most of this area. There is no usable beach on this property lakeward of the high water mark. The restaurant, Le Petit Pier, is open to the public and has a reputation of providing fine french cuisine.

The Placer County Counsel has informed the staff that the restaurant is considered by the County to provide a needed service to the public and that the use of this lakefront parcel as a high quality restaurant is consistent with the County's land use objectives.

The staff has concluded after examining the improvements to the property falling between the high and low water marks of the lake and the existing uses to which the land is put that because the very limited beachfront involved does not constitute an impairment to navigation or other recreational uses and the restaurant does afford public use and enjoyment of the shorezone, this use is consistent with the reasonable needs of the public trust.

The staff and Attorney General's office therefore recommend resolving this litigation by stipulated judgment. The judgment would recognize the State's title to the bed of Lake Tahoe to the low water mark at elevation 6223 feet and the existence of the trust to the high water mark at elevation 6229.1 feet. It would also recognize that the subject lot and improvements fall entirely landward of the low water mark, thereby being privately owned, and a portion thereof falls lakeward of the high water mark, thereby being subject to the trust. The judgment would further recognize that the Commission considers the existing uses of the shorezone to be consistent with the reasonable needs of the trust.

CALENDAR ITEM NO. 27 (CONTD)

EXHIBITS:       A. Site Map.  
                  B. Aerial Photo.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THIS STIPULATED JUDGMENT IS IN SETTLEMENT OF TITLE AND BOUNDARY LITIGATION AND, THEREFORE, NO ENVIRONMENTAL DOCUMENT IS REQUIRED.
2. APPROVE SETTLING THIS LITIGATION BY STIPULATED JUDGMENT AS PROPOSED ABOVE.
3. FIND THAT THE EXISTING USES OF THE SUBJECT PROPERTY IS CONSISTENT WITH THE REASONABLE NEEDS OF THE PUBLIC TRUST.
4. AUTHORIZE THE STAFF AND OFFICE OF THE ATTORNEY GENERAL TO TAKE SUCH ACTION AS IS NECESSARY TO CREATE THE STIPULATED JUDGMENT.

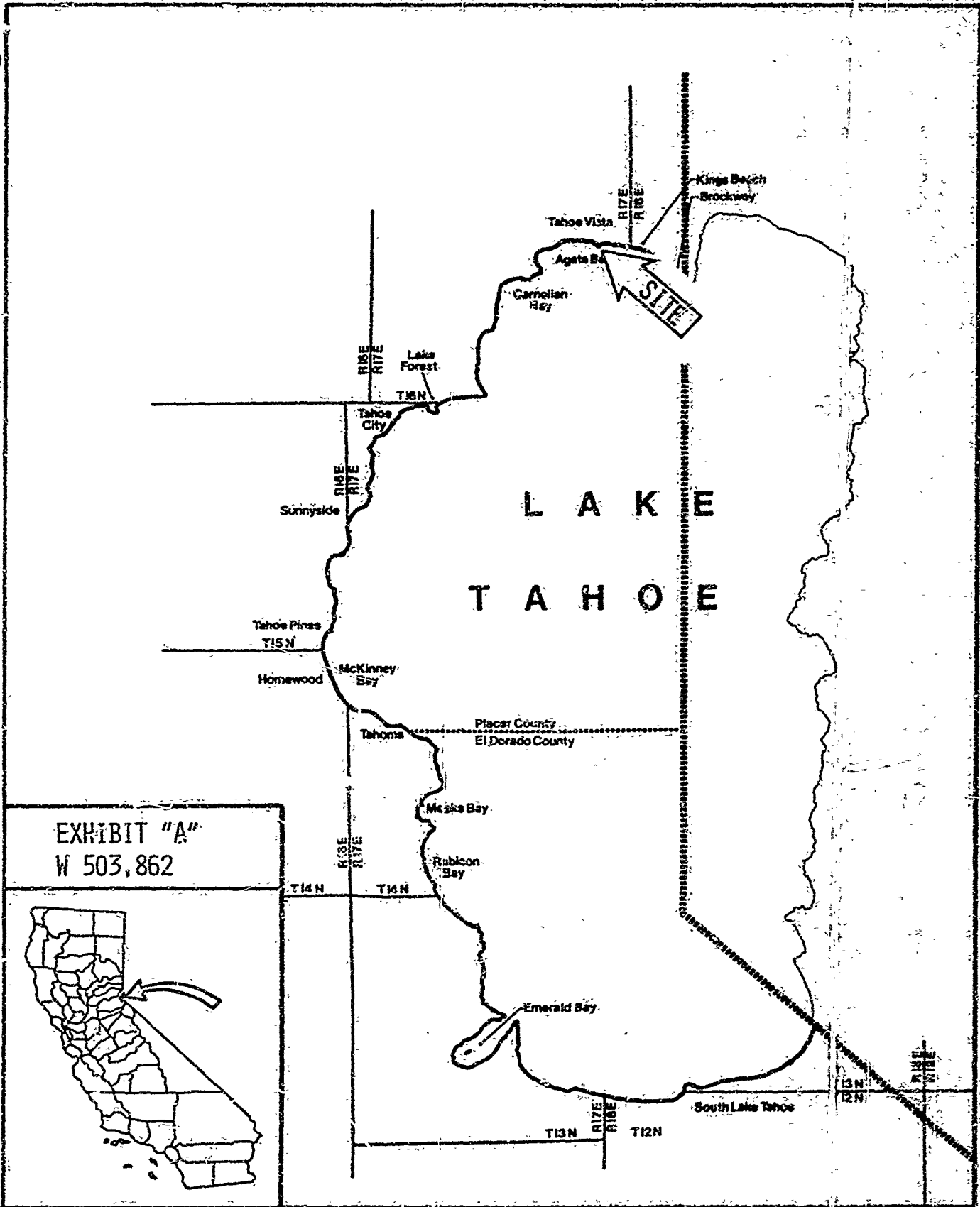
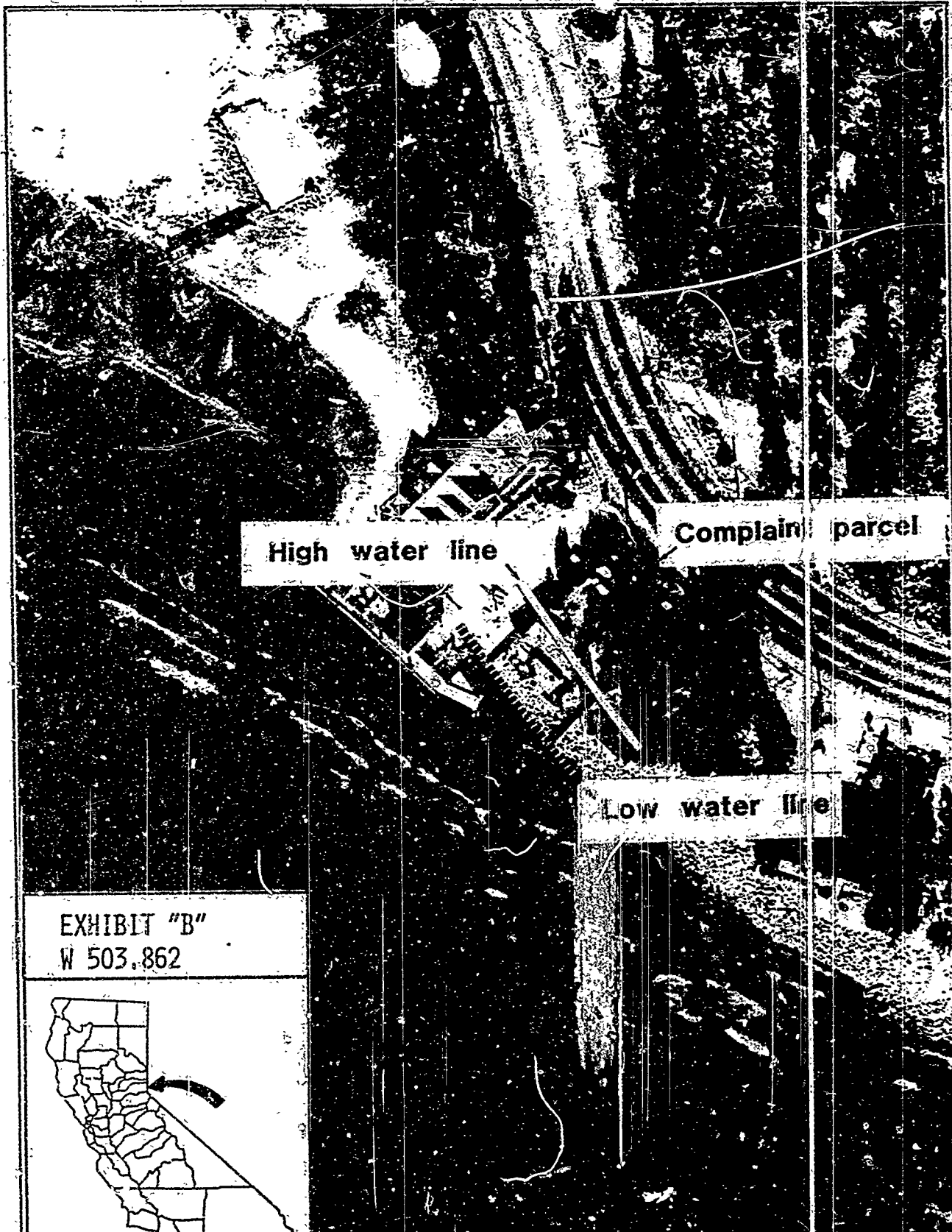


EXHIBIT "A"  
W 503,862



CALENDAR PAGE	86
MINUTE PAGE	2537



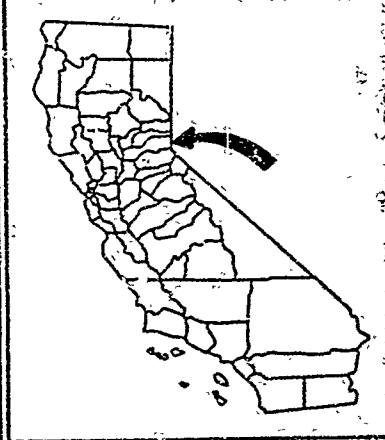
High water line

Complainant parcel

Low water line



EXHIBIT "B"  
W 503.862



Scale: 1 in. = 100 ft. 187

CALENDAR PAGE  
MINUTE PAGE 2538