

MINUTE ITEM

61

12/13/88
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AD 83

Calendar Item 61, attached, was pulled from the agenda prior to the meeting.

Attachment: Calendar Item 61.

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| CALENDAR PAGE | |
| MINUTE PAGE | 3564 |

CALENDAR ITEM

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12/13/88
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APPROVAL OF SETTLEMENT OF LITIGATION
IN THE CASE OF CALIFORNIA COASTAL COMMISSION v.
CIRINCIONE-COLES, ETC., MARIN COUNTY SUPERIOR COURT
NO. 125225, BY A TITLE SETTLEMENT AND EXCHANGE
AGREEMENT INVOLVING LANDS ADJACENT TO TOMALES BAY

APPLICANT: Kathryn and Gerald Cirincione-Coles
P.O. Box 776
Inverness, California 94937

This Calendar Item recommends settlement of litigation which includes a boundary dispute among the above-named parties involving an approximate three-and-one-third-acre parcel of land located north of the town of Inverness at the end of Third Valley Creek on the west side of and adjacent to the County of Marin's Chicken Ranch Beach on Tomales Bay. The location of the property is depicted on EXHIBIT "A" and consists generally of a filled former tidal marsh and adjacent lands. The Rancho Punta de los Reyes was surveyed in 1858 and confirmatory patent issued by the United States in 1860. It is alleged that the survey of and the patent for the confirmed rancho included the property in question. The tidal marsh was additionally surveyed, sold and patented by the State as part of Tideland Survey No. 170 (TLS 170), Marin County, in the 1870's.

CALENDAR ITEM NO. 61 (CONT'D)

TLS 170 was the subject of a unanimous decision of the California Supreme Court in 1971, Marks v. Whitney, 6 Cal.3d 251. The Marks case was brought by the Cirincione-Coles' (Coles) predecessor-in-interest, Larry Marks, who sought to keep his neighbor and others from using a portion of the tidelands described in TLS 170. In overruling both the trial and appellate courts, the Supreme Court issued one of the leading cases on Public Trust law in the United States. The Court ruled that the tidelands owned by Marks were burdened by a public easement for not only commerce, navigation, and fisheries, but also "preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environment which provide food and habitat for fish and marine life and which favorable affect the scenery and climate of the area." (Pg. 260.) Exactly which portion, if any, of the property was affected by the Marks' decision is contested by the parties.

Today very little of the property remains subject to tidal action. The property is not in a natural state and has little wetland characteristics remaining except in a man-made drainage channel and a portion of Third Valley Creek. The property has been the subject of both natural and artificial processes, including deposition, flooding, filling, grading, and channeling. The parties to the litigation vigorously dispute a multitude of legal and factual issues, including issues relating to the original physical character and title of the subject property and to the causes of the change in its characteristics from its original physical character at time of statehood to its present state.

The litigation, from which this title dispute arose, was commenced by the California Coastal Commission to enjoin an alleged violation of a coastal permit issued to the Coles. About a year after the preliminary injunction was issued, enjoining the Coastal Act violation, the litigation was expanded by the Coles to include the issue of title to the land involved. The case has involved arduous, extensive, and expensive pre-trial discovery and preparation for trial, the results of which made clear to each of the parties that a settlement without trial would be in the interest of all parties.

CALENDAR ITEM NO. 61 (CONT'D)

The Coles and the Commission each engaged expert consultants to provide advice and opinions and conduct prudent and necessary investigations concerning the physical and historical conditions concerning the settlement area and adjacent or similar areas of the Tomales Bay shoreline. Surveying experts also prepared maps and analyses showing the respective parties' contentions as to the nature and extent of the Coles' and SLC's respective titles and boundaries.

In conjunction with the investigations of conditions, maps and opinions and the evaluations of experts of the uncertainties and contentions presented, the parties made a genuine effort through discussions to determine the true location of their common boundary which would take into consideration all of the issues over which there was a bona fide dispute. For purposes of said negotiations, the parties relied upon and used the data prepared by the expert consultants retained by the respective parties hereto. As a result of these long-term expensive and thorough investigations, the Coles and the Commission staff concluded, solely for purposes of this dispute, that locating a last natural ordinary high water mark by scientific analysis and available technology could be argued to be impracticable and was subject to reasonable dispute.

With the assistance of the Court, after lengthy, extensive and difficult negotiations over the course of two days, the parties finally reached a negotiated settlement concerning all enforcement, indemnification and title and boundary questions that were presented for determination in the litigation and all other claims and causes of action that arise out of the facts, circumstances and events that are set forth in the complaint and cross-complaint in the litigation.

Solely for purposes of this litigation, the parties acknowledge that, since 1850, the relationship of the settlement area to the waters and tides of Tomales Bay has been significantly altered, in part, because of the following: (a) changes in upland drainage patterns affecting the sediment transport system; (b) the effect of artificial activities in and around Tomales Bay. Thus, the physical conditions present today in the settlement area are no longer in a state of nature. In the Marks case, which concerned, at least in part, the settlement area, the Court stated:

"It is impossible to determine at this time how much of such increment or decrement has resulted from man-made or

CALENDAR ITEM NO. 61 (CONT'D)

artificial causes or to determine where the line of ordinary high water was [when the two Marks cases were begun], or where such line...would be in a state of nature...From all that can now be determined, it will forever be impossible to separate natural from heretofore or now existing man-made influences upon the fluctuations of such line." (Marks v. Whitney, Marin Co. Sup. Ct. No. 37048, Corrected Judgment After Appeal, Filed May 1, 1972.)

Thus, locating a last natural ordinary high water mark in the settlement area by scientific analysis and available technology would be subject to considerable dispute and, that in view of the bona fide disputes between the parties, the exchange of potential interests and the agreement on the location of a agreed common boundary is reasonable and in the best interests of both parties.

As a result of said negotiations, the parties to the litigation have reached a proposed Litigation Settlement Agreement which, sets forth all the specific terms and conditions of the settlement, a copy of which is now on file in the Sacramento office of the Commission and which is broadly summarized as follows:

1. The Coles shall pay the California Coastal Commission the sum of \$20,000.
2. The Coles and the State Lands Commission have agreed to establish a common boundary line and to exchange their respective interests on either side of that line.
3. In addition, as part of said exchange, the Coles will convey to the State Lands Commission in fee the property that lies westerly of said agreed common boundary line and southerly of the bank of Third Valley Creek. It is the Commission's intention to lease such area to Marin County for a pathway when requested by the County.
4. As further consideration for the exchange of the Commission's interest in the Coles' fee, the Coles' agree to pay to the SLC the sum of \$20,000 into the Kapiloff Land Bank pursuant to P.R.C. Section 8610 et seq.

CALENDAR ITEM NO. 61 (CONT'D)

5. With respect to the use of the Coles' fee for the grazing or stabling of horses, the County of Marin has agreed that such use will be considered as a legal non-conforming use for up to three (3) horses.
6. Marin County will erect a woven wire, non-climb fence up to five (5) feet in height for the Coles along the easterly boundary of the Coles' fee (the boundary between the Coles' fee and the Commission's fee). In addition, the Coles, if they desire, will be allowed to erect a fence of less than six (6) feet in height along the southerly boundary of their property northerly of the County of Marin's drainage easement without a permit.
7. The Commission agrees to remove or caused to be removed invasive, exotic plants such as pampas grass or scotch broom that may come to establish themselves on the Commission's property. Such removal will be within a reasonable time of written notice to the State Lands Commission. The Commission further agrees not to take any action or cause to be taken any action that would unreasonably affect the Coles' northern drainage, vegetation, or their view of Tomales Bay from the easterly deck attached to their house.
8. The Commission agrees to maintain the drainage that enters into the State fee from the north.
9. The Commission will grant to the Coles a ten foot-wide access easement across the State Lands Commission's fee to Chicken Road Beach.
10. The Coles may maintain, on their fee, the southerly drainage encompassed within the drainage easement of the County of Marin and the northerly drainage in a manner consistent with the Marin County Local Coastal Program and all other applicable federal, state or local statutes, rules or regulations.
11. Any surveying necessary in connection with this settlement will be accomplished by the Commission and the Coles each agreeing to pay for one-half of such costs.

CALENDAR ITEM NO. 61 (CONT'D)

12. Mutual releases as appropriate will be executed by parties releasing all further claims or causes of actions arising out of the facts and circumstances described in the complaint and first cross-complaint.
13. The parties recognize that it is appropriate to obtain judicial approval of this Agreement and judicial confirmation of the title and boundaries of the respective parties as determined by this Agreement.

The Commission is vested with all former authority of the California Surveyor General. (P.R.C. Section 6102). SLC has been delegated jurisdiction over tide and submerged lands which have not been granted to local agencies in trust, and such jurisdiction and authority as remains in the State as to tidelands and submerged lands which have been granted, in trust, to local governmental agencies and private parties (P.R.C. Section 6301; see also P.R.C. Div. 6, including but not limited to, sections 6216, 6307, 6308, 6357, 6463, 6464, and 7555), together with all authority necessary to accomplish the foregoing responsibilities implied from such sections and from applicable case law.

Staff has appraised the potential interest of the State in the subject property and evaluated the law and evidence bearing on the title dispute, and has reached the opinion that the interest to be obtained by the State in real property together with the \$20,000 is equal to or greater than the value of the State's interest in the property which the State will quitclaim to the Coles.

EXHIBITS: A. Site Map.
 B. Location Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 UNDER THE STATUTORY EXEMPTION FOR SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS, PURSUANT TO P.R.C. 21080.11.

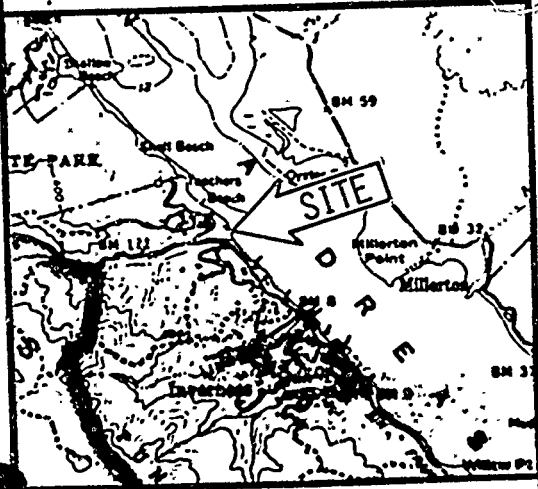
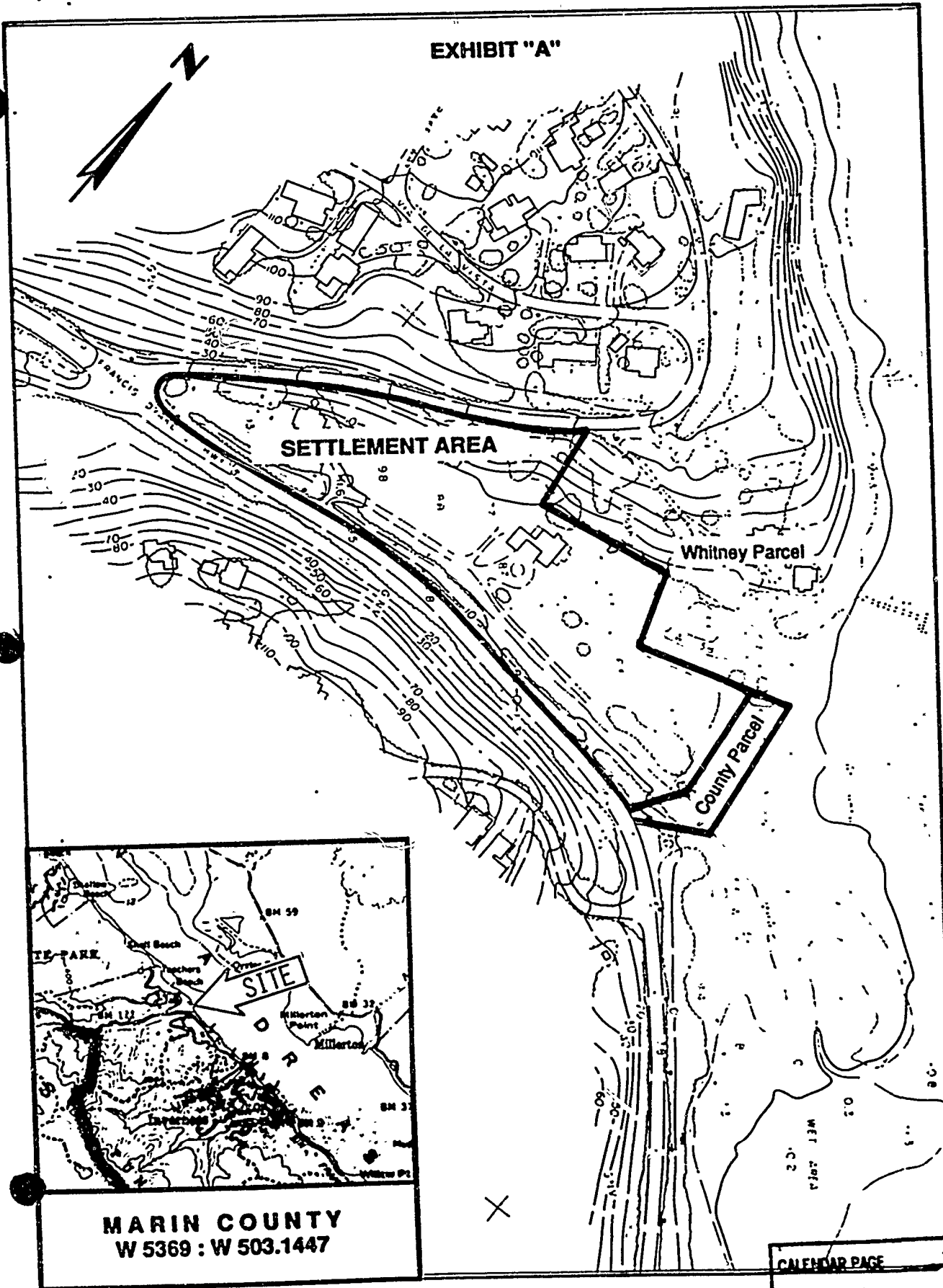
CALENDAR ITEM NO. 61 (CONT'D)

2. FIND THAT WITH RESPECT TO THE PROPOSED LITIGATION SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST IN THE AREA LANDWARD OF THE AGREED COMMON BOUNDARY LINE FOR THE COLES' INTEREST IN THE AREAS BAYWARD OF THE AGREED COMMON BOUNDARY LINE EXHIBITS "D-1 & D-2", PLUS THE TRANSFER OF FUNDS TO THE KAPILOFF LAND BANK ACCOUNT (\$20,000):
- A. THE AGREEMENT IS IN THE BEST INTEREST OF THE STATE FOR THE BENEFIT OF THE PUBLIC TRUST USES AND PURPOSES WHICH INCLUDE IMPROVEMENT OF NAVIGATION, AID IN RECLAMATION, FLOOD CONTROL, PROTECTION AND IMPROVEMENT OF FISHERIES, RECREATION, SCIENTIFIC STUDY, OPEN SPACE, ECOLOGICAL PRESERVATION OF THE TIDE AND SUBMERGED LANDS AND PUBLIC ACCESS THERETO, PURSUANT TO THE PUBLIC TRUST.
 - B. THAT THE INTEREST IN LAND TOGETHER WITH THE MONEY RECEIVED BY THE STATE LANDS COMMISSION ARE OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF THE INTERESTS IN THE PARCEL BEING RELINQUISHED BY THE STATE.
 - C. THE PARCEL TO BE QUITCLAIMED BY THE STATE HAS BEEN IMPROVED, RECLAIMED AND FILLED, HAS BEEN EXCLUDED FROM THE PUBLIC CHANNELS, AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING AND IS NO LONGER IN FACT TIDELAND OR SUBMERGED LAND.
 - D. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS WITHIN THE SUBJECT PROPERTY.
 - E. THE PROPOSED LITIGATION SETTLEMENT AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED.
 - F. THE AGREEMENT IS IN LIEU OF THE COSTS, DELAYS AND UNCERTAINTIES OF FURTHER LITIGATION, IS CONSISTENT WITH AND IS AUTHORIZED BY THE REQUIREMENTS OF LAW.
 - G. ON THE EFFECTIVE DATE OF THE AGREEMENT AND CONSISTENT WITH ITS TERMS, THE COMMISSION FINDS AND HAS DETERMINED THAT THE PARCEL TO BE QUITCLAIMED BY THE STATE WILL NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THE PUBLIC TRUST INTEREST MAY BE TERMINATED.

CALENDAR ITEM NO. 61 (CONT'D)

3. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGEMENT, ACCEPTANCE, AND RECORDATION ON BEHALF OF THE COMMISSION OF THE LITIGATION SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION WHICH INCLUDES THE FOLLOWING:
 - A. QUITCLAIM OF INTEREST BY KATHRYN AND GERALD CIRINCIONE-COLES IN LANDS BAYWARD OF AGREED COMMON BOUNDARY LINE TO STATE.
 - B. QUITCLAIM OF PATHWAY AREA FROM KATHRYN AND GERALD CIRINCIONE-COLES TO STATE.
 - C. QUITCLAIM OF INTEREST BY STATE TO KATHRYN AND GERALD CIRINCIONE-COLES IN LANDS LANDWARD OF AGREED COMMON BOUNDARY LINE FREE OF THE PUBLIC TRUST.
4. 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, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AND PAYMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE LITIGATION SETTLEMENT AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

EXHIBIT "A"



MARIN COUNTY
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CALENDAR PAGE 331
MINUTE PAGE 3573

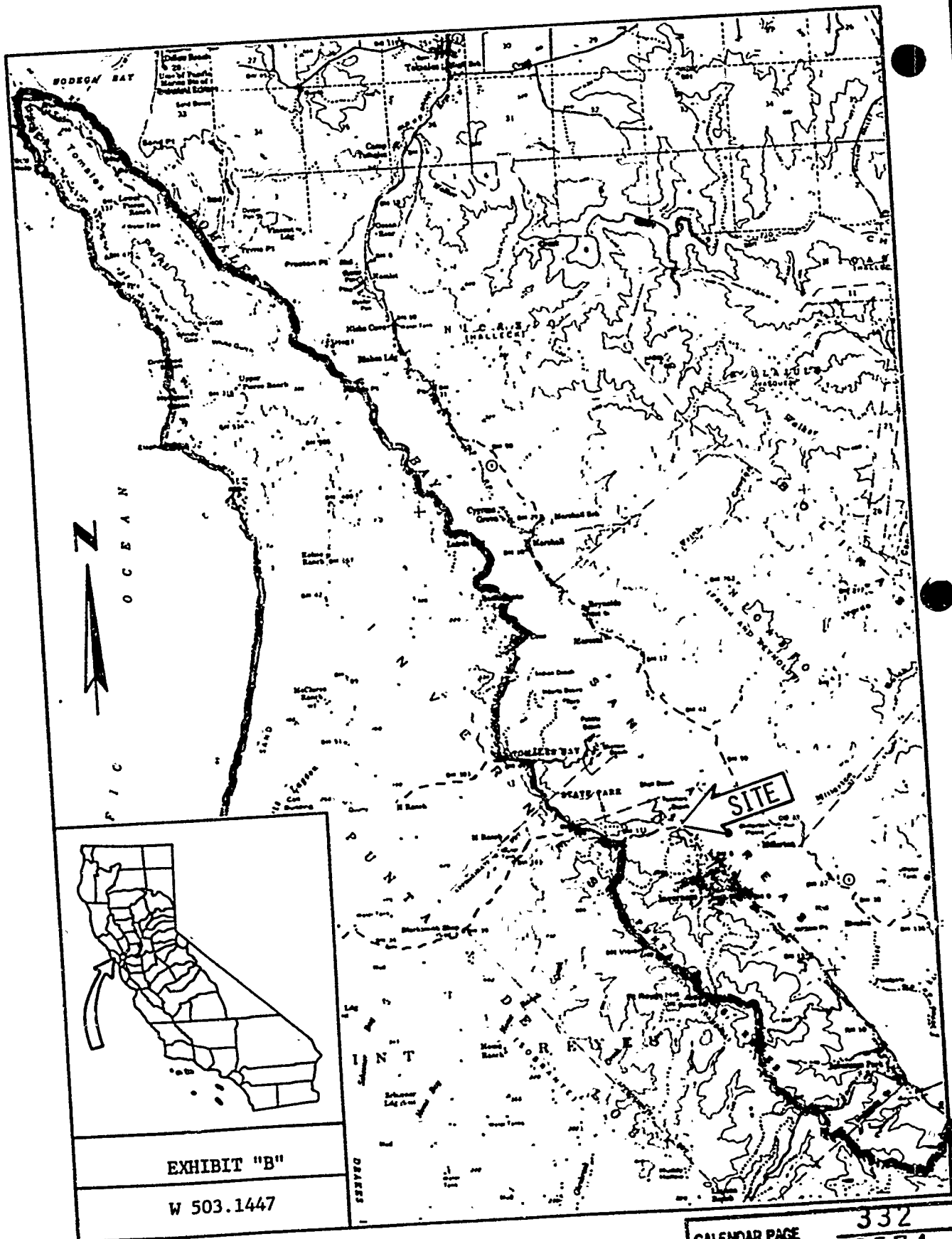


EXHIBIT "B"

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|---------------|------|
| CALENDAR PAGE | 332 |
| MINUTE PAGE | 3574 |