

MINUTE ITEM

This Calendar Item No. C45 was approved as Minute Item No. 45 by the California State Lands Commission by a vote of 3 to 2 at its 12/9/04 meeting.

**CALENDAR ITEM
C45**

A 13
S 3

BLA 274

12/09/04
W 25114
D. Plummer
M. Bell
B. Stevenson
P. Peterson

REQUEST FOR AUTHORITY TO ENTER A BOUNDARY LINE AGREEMENT WITH THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO CONCERNING TWO PARCELS OF LAND WITHIN HUNTERS POINT NAVAL SHIPYARD

PARTY TO AGREEMENT:

Redevelopment Agency of the
City and County of San Francisco
c/o William J. White
Shute, Mihaly & Weinberger
396 Hayes Street
San Francisco, CA 94102

The purpose of this calendar item is to seek State Lands Commission authorization to enter an agreement to set the ordinary high water mark within two parcels of land at Hunters Point Naval Shipyard, City and County of San Francisco (the "Agreement"). The parcels are shown for reference purposes on Exhibit A to this calendar item (attached and incorporated by reference). On Exhibit A, the parcels are labeled "A-1" and "A-2." The agreed ordinary high water mark within each parcel is also shown for reference in Exhibit A. This Agreement will be entered into with the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic (the "Redevelopment Agency").

Hunters Point Naval Shipyard contains lands that were historic uplands and lands that were below the historic ordinary high water mark. The uplands were a part of Rancho Rincon de las Salinas y Potrero Nuevo confirmed in 1857. Beginning in the 1860's, the Legislature authorized the conveyance of tide and submerged lands at the Shipyard, both through statutes with special application to this area (see Chapter 325, Statutes of 1863), and through statutes of general application, such as those pertaining to sales of sovereign lands by to the Board of Tideland Commissioners and through the tidelands patent program. Also, in 1939, the United States filed condemnation actions concerning lands at the Shipyard. The Shipyard was closed by the United States in 1974, and the

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United States intends to convey whatever interests it may have to the Redevelopment Agency. The lands within A-1 and A-2 are the first to be conveyed by the United States within the Shipyard. The Agreement proposed in this calendar item will be signed following transfer of parcels A-1 and A-2 from the United States to the Redevelopment Agency.

The State Lands Commission, with the advice of the Office of the Attorney General, asserts that the public trust exists in the former and present tide and submerged lands within the Shipyard. This position was recognized and supported in state legislation found in Chapter 464, Statutes of 2002 and Chapter 435, Statutes of 2003. Through Chapters 464 and 435, the State Lands Commission is authorized to enter settlement and exchange agreements concerning public trust land title issues at the Shipyard. The culmination of such agreements will be the final configuration of public trust lands as shown in the diagram in Section 10 of Chapter 435. These lands---which will be public trust lands administered by the Redevelopment Agency as a trustee---are planned to be used for a variety of public trust purposes, including parks, restaurants, services to visitors, and heavy maritime industry. In coming years, the State Lands Commission will consider agreements to implement the title settlement plan described in Chapter 435 for the Shipyard.

The purpose of this calendar item is more limited in scope. It is to set the ordinary high water mark within parcels A-1 and A-2. There is some uncertainty as to the location of this boundary within the properties, and the boundary is depicted somewhat differently in various historic maps. For example, varying locations of the boundary could be interpreted from historic U.S. Coast and Geodetic Survey Topographic maps, historic Board of Tideland Commissioners maps, and the map of Rancho Rincon de las Salinas y Potrero Nuevo. These uncertainties have been resolved in a manner acceptable to the Boundary Determination staff of the State Lands Commission, and the resolution is reflected in the lines shown for reference in Exhibit A. As can be seen in Exhibit A, the greater part of parcels A-1 and A-2 consists of uplands within Rancho Rincon de las Salinas y Potrero Nuevo, and the lesser part consists of historic tide and submerged lands.

There will be two important effects of this agreement: First, the State and the Redevelopment Agency will agree that the land inland of the agreed lines is uplands within the Rancho and that no public trust title exists there; second, the parties will agree that the land waterward of the boundary is historic tide and submerged lands, title to which is, at least in part, disputed. This will lead to future agreements as discussed earlier. In fact, part of parcel A-1 will ultimately become public trust lands through future

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exchanges concerning other areas at the Shipyard as the final configuration of public trust lands is achieved.

The State Lands Commission is authorized to enter the Agreement both through Section 6357 of the Public Resources Code and Section 6 of Chapter 464, Statutes of 2002. A draft boundary line agreement has been prepared with the participation of the Office of the Attorney General and is on file in the Sacramento offices of the State Lands Commission.

STATUTORY AND OTHER REFERENCES:

- A. PRC: Div. 6, Parts 1 and 2; Div. 13
- B. Cal. Code Regs.: Title 2, Div. 3; Title 14, Div. 6

PERMIT STREAMLINING ACT:

N/A

OTHER PERTINENT INFORMATION:

Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, Section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutorily exempt project. The project is exempt because it involves settlements of title and boundary problems.

EXHIBIT:

- A. Site and location maps of the Parcels A-1 and A-2 and Hunters Point Naval Shipyard

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

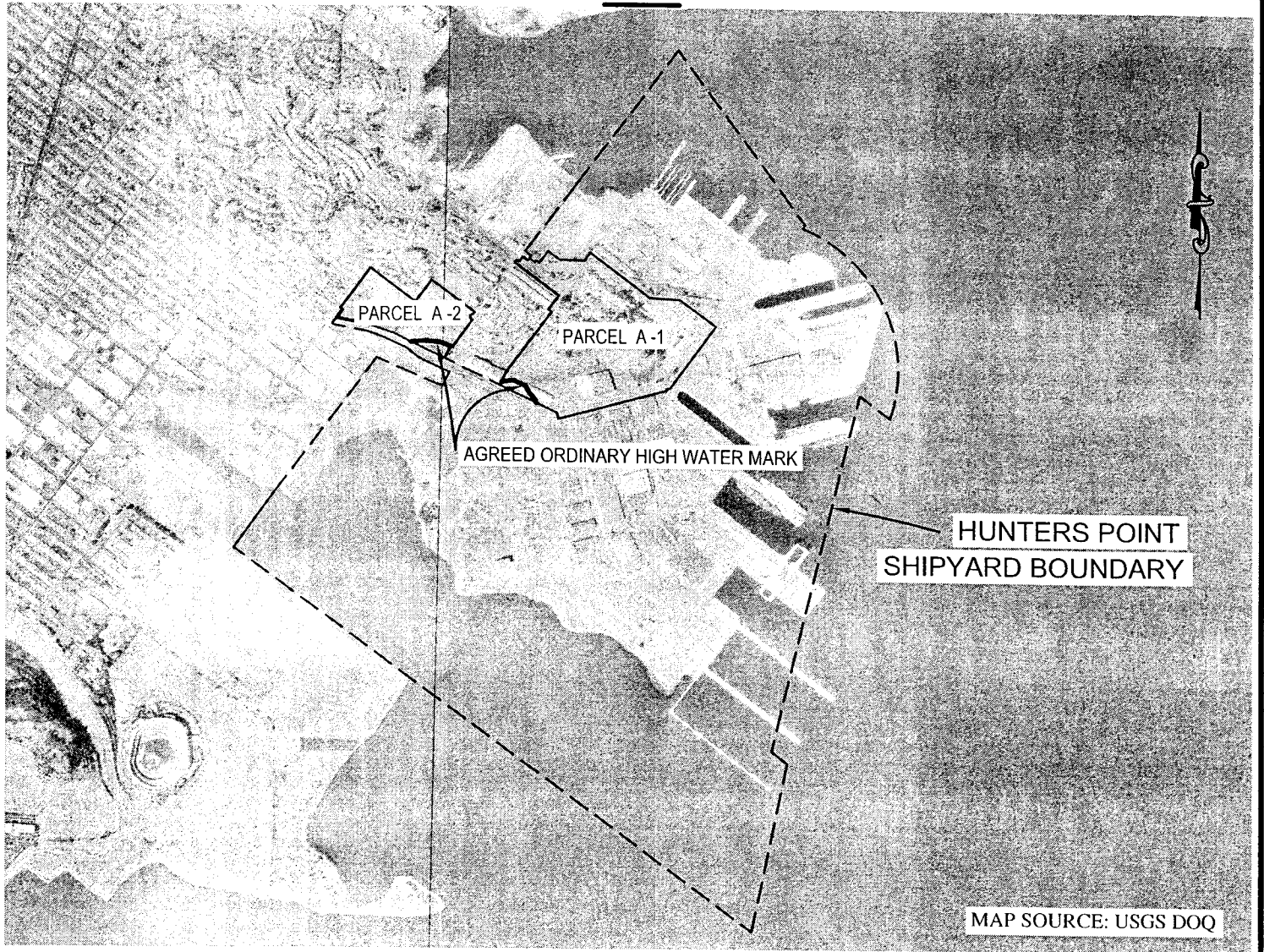
1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14 CALIFORNIA CODE OF REGULATIONS SECTION 15061, AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.

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2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE AND TO DELIVER THE SUBJECT BOUNDARY LINE AGREEMENT INTO ESCROW FOR RECORDATION IN THE CITY AND COUNTY OF SAN FRANCISCO IN A FORM SUBSTANTIALLY SIMILAR TO THAT NOW ON FILE WITH THE COMMISSION, AS PROVIDED FOR IN THE BOUNDARY LINE AGREEMENT AND ANY ESCROW INSTRUCTIONS PREPARED PURSUANT TO IT.
3. FIND THAT THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THE LOCATION OF THE ORDINARY HIGH WATER MARK WITHIN THE SUBJECT PROPERTIES; THAT THE AGREEMENT IS A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED; THAT SETTLING THE DISPUTE BY ENTERING INTO THE AGREEMENT WILL AVOID THE COSTS, DELAY, AND UNCERTAINTIES OF TITLE LITIGATION; AND THAT ENTERING INTO THE AGREEMENT IS CONSISTENT WITH AND AUTHORIZED BY LAW.
4. AUTHORIZE AND DIRECT THE STAFF OF THE COMMISSION AND/OR THE OFFICE OF THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE BOUNDARY LINE AGREEMENT AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL OR ADMINISTRATIVE PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

NO SCALE

SITE

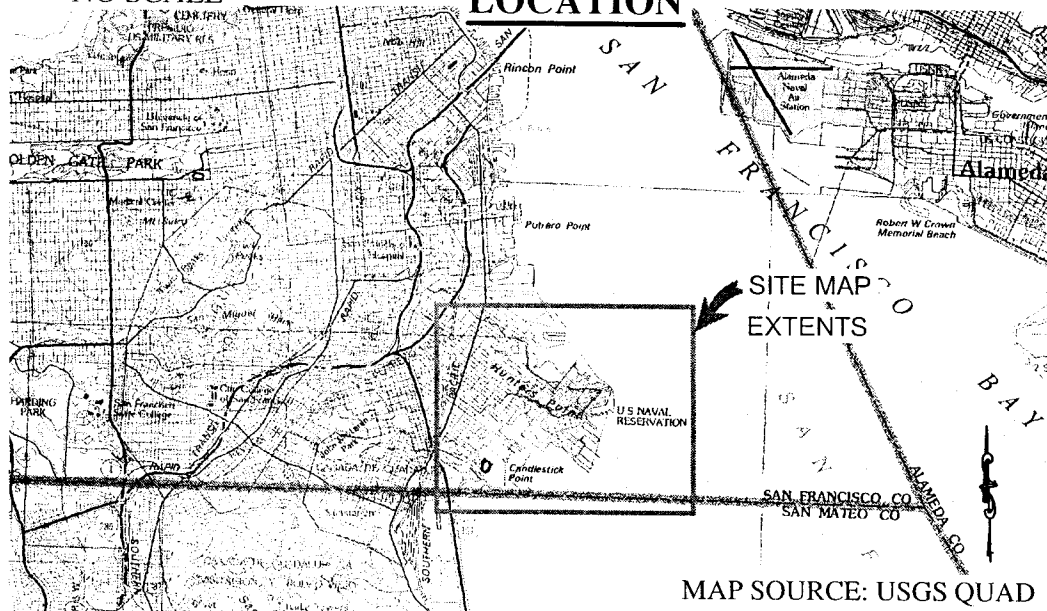


MAP SOURCE: USGS DOQ

HUNTERS POINT SHIPYARD, PARCEL A

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A
BOUNDARY LINE AGREEMENT
CITY AND COUNTY OF
SAN FRANCISCO



This Exhibit is solely for purposes of generally defining the subject premises and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

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MJJ 11/04