

3. EXERCISE OF THE PUBLIC TRUST ALONG THE HAYWARD SHORELINE
IN SAN FRANCISCO BAY, ALAMEDA COUNTY - W 20785, W 20470.

During his preliminary statement to the Commission concerning Calendar Item 1 attached, Mr. William F. Northrop, Executive Officer, stated that the staff is requesting the Commission to formally exercise the public trust on the tide and submerged lands of San Francisco Bay which were included within the perimeter descriptions of State tidelands patents of the last century. Mr. Northrop pointed out that should the Commission adopt the staff recommendation, it will be the first instance in which the State Lands Commission has taken such a step. Mr. Northrop indicated that it is believed the affirmation of the Commission's responsibility as guardian of existing public property rights in the subject estuary is not only necessary to the preservation of the public titles, but will constitute a major step in the direction of clarification of public and private ownership in the area of present confusion and uncertainty.

Mr. Walter D. Cook, Staff Counsel, made the presentation to the Commission on the proposed action. He inserted for the record technical changes to the subject calendar item. A verbatim transcript of Mr. Cook's presentation is on file in the office of the State Lands Commission and by reference made a part hereof.

Appearances:

Mrs. Janice B. Delfino, Member of Citizens Advisory Committee, Hayward Shoreline Planning Agency, appeared in support of the action, and presented slides of the subject area.

Mrs. Ilene Weinreb, Mayor, City of Hayward, welcomed the Commission to Hayward and expressed the City's support of the proposed action.

Mr. Robert Gill, Jr., Wildlife Biologist, State Department of Fish and Game, appeared, indicating Fish and Game's support of the action. He stated that Fish and Game has placed as its No. 1 priority the preservation of coastal wetlands and marshes.

Mr. Michael Wilmar, Deputy Director, San Francisco Bay Conservation and Development Commission, appeared. He noted that his statement had not been formally authorized by SFBCDC, but is based on the San Francisco Bay Plan and the McAteer-Petris Act. He indicated the Bay Commission's full support of the proposed action, explaining the reasons therefor. However,

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Mr. Wilmar asked that an additional finding be made to clarify that today's action in no way dilutes the authority of SFBCDC to also exercise its trust powers on the subject parcels. Mr. N. Gregory Taylor, Deputy Attorney General, stated that that authority is understood and an additional finding would not be necessary.

Mr. John M. Lillie, President, Leslie Salt Company, appeared, stating that at the present time Leslie Salt Company had no objection to the resolution before the Commission concerning the exercise of the trust over a portion of Tidelands Survey No. 101, subject to Leslie's verifying the property descriptions. However, he pointed out that Leslie does not agree with the characterization of a small portion of marsh contained within the description of Parcel 3 as being subject to the trust. Nevertheless, he indicated that they do not feel it necessary to make an issue of it now, based on Leslie's right to continue using the land and the reserved right of the State Lands Commission to review the situation at a later date.

With regard to other Leslie lands within the Hayward Area Shoreline Planning Agency program, Mr. Lillie stated that Leslie does not agree with the conclusions of the State Lands Commission staff, but has not found a basis for successful settlement negotiations. He explained that this has subsequently required Leslie and the State to initiate filing a series of quiet title actions to help clarify these differences. He stated that Leslie hopes a settlement of these issues can be reached as expeditiously as possible so that implementation of the HASPA program will not be unduly delayed.

Chairman Kenneth Cory asked Mr. Lillie to clarify Leslie's position on the proposed action. Mr. Lillie stated that Leslie is in agreement with the resolution as it pertained to these parcels, but has differences on other parcels.

Mr. Edgar B. Washburn, attorney, representing Leslie Salt Company, was introduced by the Executive Officer and stood at the lectern with Mr. Lillie, but did not speak.

Ms. Sandra Way, in pro per, and Mr. Herbert H. Angress, Tomales Bay Realty, both from Marshall, California, appeared and presented statements. Pursuant to their presentations, a lengthy discussion followed. However, their comments were concerned with tidelands in Tomales Bay, and did not relate to the proposed action before the Commission. A transcript of their statements is on file in the office of the State Lands Commission and by reference made a part hereof.

MINUTE ITEM NO. 3. (CONTD)

Upon motion duly made and unanimously approved, the attached resolution was adopted:

Attachments:

Resolution.

Calendar Item No. 1.

May 27, 1975

RESOLUTION

Calendar Item No. 1, for the exercise of the public trust along the Hayward shoreline in San Francisco Bay duly coming on for public hearing before the State Lands Commission of the State of California, at its regular public meeting at 10:00 a.m. on May 27, 1975, in the City Hall, City of Hayward, California; and all persons requesting an opportunity to be heard and to present evidence having been fully heard; and upon due deliberation, and after the Commission having fully considered the said Calendar Item and all matters referred to therein; the testimony and evidence of all persons requesting to be heard; the statements of the staff of the State Lands Division, and of the office of the Attorney General; and all evidence having been filed with the Commission; and the Commission having further fully considered matters of common knowledge to which judicial notice may be taken; and the Commission being fully advised, NOW FINDS:

1. WHEREAS, the real property in the County of Alameda, State of California, described in said Calendar Item as Parcels 1, 2 and 3, and more particularly described in Exhibit "A" attached and by reference made a part hereof, constitutes a part of the tidelands and submerged lands of San Francisco Bay, is subject to the public trust for the benefit of the public, for the purposes of commerce, navigation, and fisheries, and for other purposes as defined in the case of Marks v. Whitney (1971) 6 Cal. 3rd 251; and
2. WHEREAS, it is in the interest of the public that the said parcels be preserved by continued maintenance of the status quo, as hereinafter set forth; and
3. WHEREAS, the said parcels can best be preserved by formal exercise of the public trust property rights as hereinafter set forth;

NOW, THEREFORE, upon motion duly made and unanimously approved, the Commission hereby RESOLVES:

1. The said public trust is hereby formally exercised on and upon the said parcels to require the maintenance of the status quo thereon for the preservation of said parcels in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area, and that no changes be made in any activities, improvements, or facilities on the said parcels, and which are incompatible with the foregoing.

2. Activities and improvements on said parcels, which are hereby deemed to be, and to have been heretofore, compatible with the foregoing trust, include the following:
 - a. Continued use and maintenance of existing structures, facilities, or improvements, if any, which have lawfully been placed on the said parcels in good faith by the patentee or his successors in interest pursuant to any express or implied license contained in the patent, the within trust exercise not requiring or contemplating the taking of possession thereof in any manner; and
 - b. Continuance of existing uses of said parcels, if any, for salt production on the said parcels or on other lands for which the said parcels are used in connection therewith; and
 - c. State highway uses; and
 - d. Uses and facilities for utilities; and
 - e. Public navigation, fishing, hunting, and access.
3. The jurisdiction of the Commission is continuing, and nothing herein contained shall in any manner limit, prohibit or restrict the Commission on its own motion, or upon the request of lawful owners of any underlying fee interest, or other parties, and after further public hearings, from amending or revoking this resolution in the future; from establishing different criteria of trust exercise; from taking possession of improvements on said parcels pursuant to law; from requiring permits or licenses or charges for activities, improvements or other use of the said parcels whatever; nor from taking any action whatever which may later be deemed necessary or appropriate in the interest of the public and consistent with the public's property rights.
4. It is the intent of the Commission to fully and completely carry out its responsibilities as guardian of the public titles, while recognizing the reasonable requirements of any parties which may be the lawful owners of an underlying fee interest, to the extent such requirements do not substantially interfere with the public rights.
5. An Environmental Impact Report is not required for the action taken by this resolution by reason of the categorical exemptions under the provisions of PRC 21085; 14 Cal. Adm. Code 15100, et seq., and 2 Cal. Adm. Code 2907.

6. The State Lands Division is directed to record this resolution in the office of the Alameda County Recorder.

Attachment: Exhibit "A" (Description)

PARCEL 1

State Tide Lands Survey No. 83, Alameda County, located in Section 35 Township 3 South, Range 3 West, Mount Diablo Meridian.

EXCEPTING THEREFROM THE FOLLOWING: Beginning on the Westerly boundary line of Swamp and Overflowed Land Survey No. 245 at a point from which the corner common to Swamp and Overflowed and Tide Land Surveys Nos. 68, 82, 83 and 245 bears N. $10\frac{1}{4}^{\circ}$ West (42) forth two rods distant; thence running through said survey No. 83, S. $53\frac{3}{4}'$ W. (1462.56/100) fourteen hundred and sixty two and $56/100$ feet to the East boundary line of Tide Land Survey No. 107; thence South along said boundary (200) two hundred feet; thence N. $54^{\circ} 26'$ E. (1491.60/100) fourteen hundred and ninety and $60/100$ feet to said boundary of Survey No. 245; thence along the same, North $10\frac{1}{4}^{\circ}$ W. (200) two hundred feet to the point of beginning, containing (5.80/100) Five and $80/100$ acres of tide land, as described in the deed from August L. Johnson to F. I. Lemos, dated February 8, 1928, recorded February 10, 1928 in Book 1825 of Official Records, page 49.

PARCEL 2

PARCEL 2A (South portion of Parcel 2)

All that portion of Tide Lands Survey No. 88, Alameda County, located in Section 1 and 2 Township 4 South, Range 3 West, Mount Diablo Meridian described as follows:

Beginning at the Southeast corner of said Tide Lands Survey No. 88. THENCE FROM SAID POINT OF BEGINNING West 1929.44 feet; thence North 370.46 feet; thence North $69^{\circ} 37' 47''$ East 360.77 feet; thence South $20^{\circ} 27'$ East 196.50 feet; thence North $69^{\circ} 33'$ East 1458.52 feet; thence South $10^{\circ} 45'$ East 836.19 feet to the point of beginning.

PARCEL 2B (North portion of Parcel 2)

All that portion of Tide Lands Survey No. 88, Alameda County, located in Sections 1 and 2 Township 4 South, Range 3 West, Mount Diablo Meridian described as follows:

Beginning at the Northeast corner of said Tide Lands Survey No. 88. THENCE FROM SAID POINT OF BEGINNING South $10^{\circ} 45'$ East 472.84 feet; thence South $59^{\circ} 33'$ West 1550.00 feet; thence South $20^{\circ} 27'$ East 173.67 feet; thence South $69^{\circ} 37' 47''$ West 299.27 feet; thence North to the Northwest corner of said Tide Lands Survey 88; thence East to the point of beginning.

PARCEL 3

Survey No. 101 State Tide Lands Alameda County, Township No. 4 South Range No. 3 West Mount Diablo Meridian: Section No. 12 the N $1/2$ of said Section, more particularly described as follows:

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PARCEL 3 (continued)

The North half of Section twelve (12) in Township Four (4) South
Range Three (3) West Mount Diablo Meridian;

EXCEPTING THEREFROM the Northeast 1/4 of Section 12.
and also excepting therefrom the lands described in Exhibit A of the
Judgment quieting title to real property, filed December 27, 1967, in the
case of Leslie Salt Co., a corporation, Plaintiff v. State of California,
Defendant, in the Superior Court of the State of California for the County
of Alameda, Action No. 328991, said Judgment being recorded on December 27,
1967 as Instrument No. AZ 133202, in Reel 2098, Image 701.

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CALENDAR ITEM

5/75

WDC

W 20785

W 20470

1.

EXERCISE OF THE PUBLIC TRUST ALONG THE
HAYWARD SHORELINE IN SAN FRANCISCO BAY, ALAMEDA COUNTY

Fee title to the beds of all the waterways of the State below the Ordinary High Water Mark (except those previously validly granted to private parties by the Spanish or Mexican governments on the date of statehood) passed from the Federal government to the State of California at the time of statehood (September 9, 1850) by virtue of its sovereignty, on an equal footing with the original thirteen colonies, to be held by the State in trust for the benefit of the public. Under a series of general statutes (Stats. approved March 28, 1868, Stats. 1868, Ch. 415, p. 507, in this instance) beginning shortly after statehood, the Legislature authorized the sale of tidelands by patent. Sales of submerged lands below mean low tide were not authorized by these statutes. To the extent submerged lands were described in the State Patents, there was no valid conveyance, and the State remains the owner, holding title in trust for the public purposes of commerce, navigation, and fisheries.

Valid State patents of true tidelands between the mean high and low tide lines did not divest the public of its rights in the tidelands. The buyer of land under these statutes received the title to the soil, the *jus privatum*, subject to the public right of navigation, and in subordination to the right of the State to take possession and use and improve it for that purpose, as it may deem necessary, subject to payment for the taking of possession of improvements made in good faith. This was affirmed in the landmark case entitled People v. California Fish Co., 166 Cal. 576, p. 596.

The public tidelands trust easements are traditionally defined in terms of navigation, commerce, and fisheries. The public uses to which tidelands are subject are sufficiently flexible to encompass changing needs. In administering the trust, the State is not burdened with an outmoded classification favoring one mode of utilization over another. There is growing recognition that one of the most important uses of the tidelands-- a use encompassed within the tidelands trust--is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area. The California Supreme Court discussed this evolving concept in Marks v. Whitney, 6 Cal. 3d 251, p. 259 (1971).

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Division 6 of the Public Resources Code, with particular reference to Section 6301, constitutes a delegation to the State Lands Commission of authority over the ungranted tidelands trust easement, and the trust over submerged lands of the State, with the resultant Commission responsibility for preservation and protection of the public's property rights.

State Lands Division title studies have shown the existence of the public sovereign trust on certain tidelands and submerged lands of the open waters of San Francisco Bay. The lands, located in Alameda County, California, are identified as Parcels 1, 2 and 3, and are described in Exhibit "A" of the State Lands Division Staff Report attached and by reference made a part hereof.

The public interest indicates that the lands should remain in their present state as open space for protection and enhancement of the environment. A formal exercise of the trust by the Commission is suggested for Commission consideration as an appropriate means of protection and preservation of the public property rights.

As a result of the extensive title studies in the San Francisco and San Pablo Bay Estuaries conducted by the State Lands Division in the past few years, the parcels mentioned above have been found to consist of patented tidelands and State-owned submerged lands subject to the public trust. The present open and generally natural conditions of the parcels, in conjunction with the need for their preservation as open space, for wildlife protection, and for other public purposes, as shown by Hayward Area Shoreline Planning Agency and San Francisco Bay Conservation and Development Commission studies and the other evidence, demonstrates the need for the Commission to assert its jurisdiction over the lands by exercising the public trust easement over the tidelands and the trust over the submerged lands, to retain the status quo, and to thereby prevent future changes without a full opportunity for the Commission to later consider whether such change may be in derogation of the public trust titles.

The following documents are being filed with this Calendar Item for consideration by the Commission, and are incorporated herein by reference, as if set forth in full herein:

1. Copies of applications, plats and field notes, certificates of purchase and patents for said Surveys 83, 88, and 101;
2. Application, plat and field notes for said Survey No. 100;
3. The said township maps for T 3 S, R 3 W and T 4 S, R 3 W, MDM;

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4. Hayward Shoreline Environmental Analysis, July 1973;
5. Recommended Hayward Area Shoreline Findings and Policies, January 16, 1974;
6. Hayward Shoreline Planning Program with accompanying map entitled "Hayward Shoreline, Summary of Conservation and Development Policies," dated January 16, 1974;
7. Copy of pages 9 through 13 of the San Francisco Bay Plan, January 1969;
8. Copy of Map of the Swamp and Overflowed, Salt Marsh, and Tide Lands in County of Alameda, California, by E. H. Dyer, County Surveyor, 1861.

EXHIBITS: A. Suggested Form of Resolution.
 B. Staff Report.

IT IS RECOMMENDED THAT THE COMMISSION FORMALLY EXERCISE THE PUBLIC TRUST OVER PARCELS 1, 2 AND 3, FOR THE PURPOSES SET FORTH IN THE FORM OF RESOLUTION, IDENTIFIED AS EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF, WHICH IS SUBMITTED FOR THE CONSIDERATION OF THE COMMISSION.

Attachments: Exhibits "A": Proposed Resolution.
 Exhibit "B": Staff Report.

EXHIBIT "A"

RESOLUTION

Calendar Item No. 1, for the exercise of the public trust along the Hayward shoreline in San Francisco Bay duly coming on for public hearing before the State Lands Commission of the State of California, at its regular public meeting at 10:00 a.m. on May 27, 1975, in the City Hall, City of Hayward, California; and all persons requesting an opportunity to be heard and to present evidence having been fully heard; and upon due deliberation, and after the Commission having fully considered the said Calendar Item and all matters referred to therein; the testimony and evidence of all persons requesting to be heard; the statements of the staff of the State Lands Division, and of the office of the Attorney General; and all evidence having been filed with the Commission; and the Commission having further fully considered matters of common knowledge to which judicial notice may be taken; and the Commission being fully advised, NOW FINDS:

1. WHEREAS, the real property in the County of Alameda, State of California, described in said Calendar Item as Parcels , 2 and 3, and more particularly described in Exhibit "A" attached and by reference made a part hereof, constitutes a part of the tidelands and submerged lands of San Francisco Bay, is subject to the public trust for the benefit of the public, for the purposes of commerce, navigation, and fisheries, and for other purposes as defined in the case of Marks v. Whitney (1971) 6 Cal. 3rd 251; and
2. WHEREAS, it is in the interest of the public that the said parcels be preserved by continued maintenance of the status quo, as hereinafter set forth; and
3. WHEREAS, the said parcels can best be preserved by formal exercise of the public trust property rights as hereinafter set forth;

NOW, THEREFORE, upon motion duly made and unanimously approved, the Commission hereby RESOLVES:

1. The said public trust is hereby formally exercised on and upon the said parcels to require the maintenance of the status quo thereon for the preservation of said parcels in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area, and that no changes be made in any activities, improvements, or facilities on the said parcels, and which are incompatible with the foregoing.

2. Activities and improvements on said parcels, which are hereby deemed to be, and to have been heretofore, compatible with the foregoing trust, include the following:
- a. Continued use and maintenance of existing structures, facilities, or improvements, if any, which have lawfully been placed on the said parcels in good faith by the patentee or his successors in interest pursuant to any express or implied license contained in the patent, the within trust exercise not requiring or contemplating the taking of possession thereof in any manner; and
 - b. Continuance of existing uses of said parcels, if any, for salt production on the said parcels or on other lands for which the said parcels are used in connection therewith; and
 - c. State highway uses; and
 - d. Uses and facilities for utilities; and
 - e. Public navigation, fishing, hunting, and access.
3. The jurisdiction of the Commission is continuing, and nothing herein contained shall in any manner limit, prohibit or restrict the Commission on its own motion, or upon the request of lawful owners of any underlying fee interest, or other parties, and after further public hearings, from amending or revoking this resolution in the future; from establishing different criteria of trust exercise; from taking possession of improvements on said parcels pursuant to law; from requiring permits or licenses or charges for activities, improvements or other use of the said parcels whatever; nor from taking any action whatever which may later be deemed necessary or appropriate in the interest of the public and consistent with the public's property rights.
4. It is the intent of the Commission to fully and completely carry out its responsibilities as guardian of the public titles, while recognizing the reasonable requirements of any parties which may be the lawful owners of an underlying fee interest, to the extent such requirements do not substantially interfere with the public rights.
5. An Environmental Impact Report is not required for the action taken by this resolution by reason of the categorical exemptions under the provisions of PRC 21085; 14 Cal. Adm. Code 15100, et seq., and 2 Cal. Adm. Code 2907.

6. The State Lands Division is directed to record this resolution in the office of the Alameda County Recorder.

Attachment: Exhibit "A"

W 20785
W 20470

STAFF REPORT
for consideration by the
STATE LANDS COMMISSION
STATE OF CALIFORNIA

Public Hearing
Hayward, California
May 27, 1975
Calendar Item No. 1

Discussion of the Needs and Basis for the Formal
Exercise of the Public Trust over Tidelands and
Submerged Lands of San Francisco Bay, being Portions
of the Real Property included within the Perimeter
Descriptions of Surveys No. 83, 88, and 101,
incorporated in Patents of STATE TIDE LANDS along
the Hayward Shoreline, Alameda County, California

Prepared by:

STATE LANDS DIVISION
SPECIAL LITIGATION UNIT

WALTER COOK
Staff Counsel

I

The State Lands Division has been conducting title studies relating to the State's sovereign property rights in the area of the Hayward Shoreline.

- A. The studies became necessary as a result of a number of matters which will require the Commission to proceed at a relatively early date with action to establish the nature and extent of public titles, and to protect and defend those public property rights found to exist. Such matters include the following:
1. Leslie Salt Co., in 1974, initiated efforts to clear the public titles from the land it claims in the area. This has required the State to collect and analyze the evidence of public titles. Other private parties along the Hayward Shoreline are also interested in clearing their title claims. Leslie has now filed a quiet title action against the State in the Alameda County Superior Court, concerning lands they claim (Baumberg Tract) north of Mt. Eden Creek.
 2. The Hayward Area Shoreline Planning Agency (HASPA) has been conducting comprehensive studies for the area. The HASPA proposals contemplate the acquisition of private titles for public purposes. This will require the payment of just compensation for any private interests acquired. On the other hand, the public agencies cannot pay private parties for property rights already owned by the public. It is therefore essential to the implementation of the proposals that the nature and extent of public titles be established at an early date.
 3. Other public agencies also will require a resolution of titles to carry out their programs in the area.
 4. The general obligations of the Commission, as guardian and trustee of the public property rights in the South San Francisco Bay Estuary, indicates the need for studies of the public titles necessary to enable the Commission to properly carry out its duties in response to the pending activity in the area.
 5. Investigations of public titles in other parts of South San Francisco Bay estuary which were required for other matters have had the incidental benefit of providing evidence helpful to title studies in the Hayward area.
- B. By reason of the large area, the complexity of the evidence, and the differing issues relating to each parcel, the studies have been and are being conducted on a parcel-by-parcel basis. The action indicated by our present studies is not intended to exclude or limit action that may be indicated from time to time in the future by the continuing title studies.
- C. As a result of these studies, three actions have been filed by the State Lands Commission in the Alameda Superior Court (pursuant to Resolution

of the Commission adopted at its regular meeting of April 30, 1975) seeking to quiet the public titles to a number of parcels in the vicinity.

II

The staff title studies show that Parcels 1, 2, and 3 are subject to the public trust for commerce, navigation, and fisheries, and other public purposes as set forth in the case of Marks v. Whitney (1971) 6 Cal. 3d 251.

In 1874-1877, Parcels 1, 2, and 3 were included within the real property described as Tide Land Surveys 83, 88, and 101 in State Tideland Patents to private parties. The land described has been continuously since statehood of the character of tidelands and submerged lands located below the ordinary high water mark of San Francisco Bay, originally acquired by the State of California by reason of its sovereignty, in trust for the benefit of the public.

To the extent Parcels 1, 2, and 3 may have been validly conveyed by the State Tideland Patents, the grantee took the mere proprietary interest in the soil (*jus privatum*) and holds it subject to the public easement, People v. Calif. Fish Co., (1913) 166 Cal. 576.**

A. PARENT TITLES:

1. Parcels 1 and 2:

- a. Parcels 1 and 2 are located on the mud flats to the north and south of the Hayward-San Mateo Bridge Toll Station and were included within the description contained in State Tideland Patent of Surveys Nos. 79, 80, 81, 82, 83, 87, and 88, State Tide Lands, issued to Richard Barron and recorded April 21, 1877 in Book B of Patents, page 55, Alameda County Recorder. The parcels are totally within Surveys 83 and 88, excluding the portion required by CALTRANS.
- b. The Tideland Survey 83 portion of the patent was based on Certificate of Purchase No. 149, to Richard Barron, for 80 acres of STATE TIDE LAND, dated December 6, 1870, and the Tideland Survey 88 portion was based on Certificate of Purchase No. 132, to James Barron, for 67.87 acres of STATE TIDE LAND, dated February 20, 1869.
- c. The application, plat, and field notes for Survey No. 83, dated October 9, 1867, show that the Survey was styled "Swamp and Overflowed and Salt Marsh and Tide Lands Survey No. 83", with the jacket stamped with the word "Tide".
- d. The application, plat, and field notes for Tide Lands Survey 88 show:
 1. Application signed by James Barron, dated and verified August 19, 1868, under the Act approved

**Parcels 1, 2, and 3 are located in Alameda County, California, and are particularly described in the Attached Exhibit A which is made a part hereof for all purposes.

March 28, 1868, and, among other things, verifying the lands to be Tideland, no part of which is below low tide.

2. Undated Survey Plat and Field Notes, signed by W. F. Boardman, County Surveyor, Alameda County, certified by him that no part of the land is below low tide.
3. Parcels 1, 2, and 3 were never segregated as Swamp and Overflowed Lands; have never been of the character of Swamp and Overflowed Lands under the Arkansas Swamp Land Act; and have always been of the character of Tidelands and Submerged Lands of the State of California, acquired by the State by right of its sovereignty, in trust for the benefit of the public.

2. Parcel 3:

- a. Parcel 3, which is located at the mouth of Mt. Eden Creek, was included within the description of State Tideland Patent of Tideland Survey No. 101. The Tideland Patent was issued to Arthur W. Jee and was recorded on February 6, 1874 in Book A of Patents, page 579, Alameda County Recorder.
- b. The Tideland Patent recites that it was based on Certificate of Purchase 147, dated July 14, 1870, to Arthur W. Jee, showing \$74.30 down payment (\$256.00 bal.) for 320 acres of STATE TIDE LAND, described as Survey No. 101, being the North $\frac{1}{2}$ of Section 12, T.4 S., R 3 W., M.D.M., bearing receipt of the County Treasurer for full payment, and marked cancelled.
- c. The application and field notes for Tide Land Survey No. 101 show:
 1. Application signed by Arthur W. Jee, dated and verified April 22, 1870, under Act approved March 28, 1868, and, among other things, verifying the lands to be tideland, no part of which is below low tide.
 2. Survey, undated, by Louis Castro, County Surveyor, Alameda County, certified by him that no part of the land is below low tide.

d. Former Patent Application Surveys:

The lands within Tideland Survey 101 were surveyed previously as a part of Tide Land Survey No. 100, which is marked "abandoned" and is carried in the Commission's records as "Dead", bears the standard low tide line certification and allegation; is verified by Arthur W. Jee on January 13, 1870; marked received and filed January 17, 1870, and approved March 10, 1870 by John W. Bost, State Surveyor General, with plat and field notes containing section line calls and showing survey to bound Surveys Nos. 280, 244, and 88, with date of survey not shown; with letter to Alameda County Surveyor's Office dated April 22, 1870, signed by Arthur W. Jee, with documentary tax stamps affixed, abandoning "all his right, title, and interest in and to certain tidelands . . . known and described in a certain application and survey as No. 100, filed in the Surveyor General's office January 17, 1870, and approved by the Surveyor General, March 10, 1870".

3. Qualifications:

- a. The foregoing recitations are not necessarily deemed to constitute correct statements.

B. NAVIGATION OF MT. EDEN CREEK:

Parcel 3 is located at, and constitutes a part of the mouth of Mt. Eden Creek, a navigable waterway of the State of California.

1. The earliest maps show the existence of Allen's and Eden Landings, and show the deep waters of Mt. Eden Creek which were susceptible of navigation.
2. By statute (Stats. 1852, p. 223 and Stats. 1867-68, p. 680), the Legislature has declared the north branch of Alameda Creek to be navigable to Eden Landing. In referring to the north branch of Alameda Creek, the Legislature had reference to what is now known as Mt. Eden Creek.
3. The U. S. Descriptive Report No. H-2304, dated 1897, by the U. S. Coast & Geodetic Survey, describes Mt. Eden Slough (or Creek) as having been navigated by sailing craft and a small stern wheeler.

C. RECORD TITLES:

1. CALTRANS, (Parcels 1 and 2):

- a. The California Department of Transportation asserts ownership, in a proprietary capacity, of the underlying fee title to Parcel 1 by reason of its acquisition deed recorded July 11, 1961, in Reel 363 of Official Records, Image 177, and to Parcel 2 by reason of its acquisition deed recorded July 11, 1961, in Reel 363 of Official Records, Image 177, and by acquisition deed recorded September 12, 1951, in Book 6532 of Official Records, page 461, all in the office of the Recorder of Alameda County.
- b. Parcels 1 and 2 are excess to the needs of CALTRANS, but their interest has not been sold by reason of its limitations on the sale of tidelands within two miles of a city, as set forth in Calif. Const. Art. XV, Sec. 3.
- c. The portion of Tide Land Survey No. 83, which has been excepted from Parcel 1, was not a part of this title study.
- d. The portion of Tide Land Survey No. 88, which has been excepted from Parcel 2, is used by CALTRANS for State highway purposes.

2. LESLIE SALT CO., INC., (Parcel 3):

- a. Leslie asserts the ownership of Parcel 3 by reason of Indenture recorded March 23, 1931, in Book 2558, page 238, of the

Official Records of the Alameda County Recorder.

- b. The Leslie ownership claims are shown on the Map of the Option of Leslie to the Trust for Public Lands.
- c. The portion of Tide Land Survey No. 101, which has not been included as a part of Parcel 3, was not a part of this title study.

D. HISTORIC AND PRESENT LAND CHARACTER:

1. The earliest evidence of the shoreline shows all the subject parcels to have been a part of the open waters of San Francisco Bay. A deep water channel extended out from Mt. Eden Creek (aka Union City Creek) across Parcel 3.
2. The map prepared by E. H. Dyer in 1861 refers to all the parcels as Tide Lands and shows the mouth of Mt. Eden Creek at Parcel 3.
3. The U. S. Township Plat for T.4 S., R.3 W. shows Parcels 2 and 3 to have been a part of the open waters of San Francisco Bay.
4. The U. S. Township Plat for T.3 S., R.3 W. shows Parcel 1 to have been a part of the open waters of San Francisco Bay.
5. Current conditions, as shown by the U.S.G.S. Quadrangle, "Redwood Point", photo-revised in 1968, and by aerial photography taken by NASA on February 5, 1974, show the parcels remain as part of the open waters of San Francisco Bay to the present time. Except for the approach to the Hayward-San Mateo Bridge, Parcels 1, 2, and 3 are in a generally natural and open state. Parcel 3 contains a small amount of salt marsh at the mouth of Mt. Eden Creek. This originally consisted of open water prior to artificial changes.
6. The parcels consist, in part, of tidelands, between the mean high and low tide, and, in part, of submerged lands below the mean low tide.

III

It is in the public interest that the parcels be preserved by continued maintenance of the status quo:

A. The Hayward Area Shoreline Planning Agency (HASPA)

1. Reports and Findings: The Hayward Area Shoreline Planning Agency (HASPA) has prepared its report, dated July 1973, entitled the "Hayward Shoreline Environmental Analysis", its statement of "Recommended Hayward Area Shoreline Findings and Policies", dated January 16, 1974, and its statement of the "Hayward Shoreline and Planning Program", with accompanying map entitled "Hayward Shoreline, Summary of Conservation and Development Policies", dated January 16, 1974. Such documents are incorporated herein by reference for all purposes.

2. History of Agency: HASPA was composed of the East Bay Regional Park District, Alameda County, Hayward Area Recreation and Park District, and the City of Hayward, and was established in 1971 by joint powers agreement, for the purpose of preparing policies and a plan for the Hayward Area Shoreline, a 31 square mile land and water area between San Leandro and Fremont in Alameda County.
3. Studies: HASPA was assisted by comprehensive background reports and maps prepared by the Hayward Area Shoreline Technical Advisory Committee which is made up of staff of the HASPA members and of the San Francisco Bay Conservation and Development Commission (BCDC).
4. The HASPA Environmental Analysis (pp. 25-26) discusses the importance of preservation of the shallow bay water and tidal mudflats in considerable detail.
5. HASPA Recommended Policies, (Jan. 16, 1974):
 - a. Parcels 1, 2 and 3 are shown to be covered by young Bay mud in excess of 15 feet in depth. The recommended policy provides that areas covered with significant depths of "young mud" should not be filled or developed with structures, except as required for public facilities or safety, but should remain open as wildlife habitats, recreation areas, and salt production facilities.
 - b. Maximum public use of the shoreline area is desirable and should be encouraged consistent with ecological and safety considerations, (p. 1, No. 4, and p. 5 No. 17).
 - c. Tidal flats and salt ponds of low salinity should be designated on the plan map and preserved for migratory waterfowl that depend on these areas, (p. 6, No. 24).
 - d. The salt production industry should be encouraged to continue (p. 7, No. 26) with the provision that evaporating ponds which are no longer required for salt production be converted to other uses based on the following:
 - 1st priority - conversion to marsh or other ecological use
 - 2nd priority - conversion to parks and recreation or other public facilities
 - 3rd priority - conversion to private uses
- B. The San Francisco Bay Conservation and Development Commission, (BCDC), in Plan Map 5 of the San Francisco Bay Plan, dated January 1969,

"designates the areas adjoining Parcels 1, 2, and 3 as "Salt Pond Managed Wetland" behind the levees, and as "Tidal Marsh" outside the levees. The parcels themselves are shown as open waters of the Bay. The Bay Plan Supplement, dated January 1969, in its Report on Marshes and Mud Flats, includes a discussion of the importance of the mud flats and the marshes on pp. 64 through 67, as follows:

"The Importance of the Mud Flats:

"Although they may not appear attractive, mud flats are an important link in the Bay's life cycle. They draw foods from marshes and from open water and turn this food into forms upon which many wild birds, fish, and mammals depend.

"Microscopic plants (algae) and animals (plankton) occupy the mud surface and float in the water above it; their food value is not known exactly, but is estimated to be very high. The other major foods are decomposing plants and other organisms, together with the bacteria and fungi working upon them (called detritus). Much of this food material comes from decomposing salt marsh grasses.

"Clams, mussels, worms, and other mud-dwellers feed on these foods and themselves become food for fish or birds, or they produce larvae upon which the fish or birds may feed.

"The importance of these food sources (which will be considered further in the BCDC report on fish and wildlife) is indicated by estimates that over one million shorebirds are supported on the Palo Alto mud flats alone during a winter season, and by estimates that up to 70% of the shorebirds of the Pacific Flyway between Canada and Mexico directly depend upon the San Francisco Bay mud flats for their survival.

"The mud flats also play an important role in providing sufficient oxygen in the waters of the Bay for the maintenance of fish and the abatement of pollution. The mud algae, exposed to abundant light alternating with abundant water, produce and expel oxygen into the water and into the air.

"The Importance of the Marshes:

"Salt marshes are extraordinarily fertile - one of the most productive natural areas in our environment. Situated in well-watered, fairly temperate and sunlit areas, marsh plants are highly productive. One type of marsh plant alone, cord grass, has seven times the food value of an equivalent acreage of wheat.

"The food value of the marsh plants is primarily passed to the flooding waters and thence to the mud flats and nearby shallows, thereby supporting a vast marine-life nursery. Also large numbers of birds, including ducks and geese, come to the marshes, especially during the winter, to feed directly on the lush vegetation or on the brackish water animals that thrive in the marsh.

"Marsh plants appear to help in preventing air pollution. Many marsh plants can change a common air pollutant, carbon monoxide, into relatively harmless carbon dioxide and thus reduce the potential hazard of the poisonous gas. Research is needed to determine whether the extraordinarily productive marshes play a major role in cleansing the air of major pollutants.

"The Effects of Diking and Filling:

"Three-quarters of all the marshland that ever existed around San Francisco Bay has been filled or diked off.

"Not only should all remaining marshes be considered a valuable resource to be maintained, but new marshes should be created. If existing marshes are filled for necessary public purposes, new marshes should be created to compensate for the loss. Former marshlands could be restored by removing dikes that now separate them from tidal action and by once again allowing Bay waters to cover them (at such places as the diked marshland at Corte Madera and some of the salt ponds of the South Bay). New marshland probably can also be created by placing dredged spoil on mud flats to raise them to an elevation at which vegetation could become established. In either case, the principal cost will probably be the public acquisition of the lands to be made into marshes.

"SUMMARY

"The Bay is a single physical mechanism, in which actions affecting one part may also affect other parts. The marshes and mud flats of the Bay are the source of food for fish and bird life. Substantial filling of the marshes and mud flats would substantially reduce the amount of food and the amount of fish and bird life the food supports.

"As long as man values the fish and wildlife in the Bay, and uses the Bay as a receptacle for sewage and other wastes, maintenance of the marshes and mud flats is essential. Any reduction not only reduces the amount of food available to fish and wildlife, but also reduces the supply of oxygen in the water for the maintenance of marine life and the abatement of pollution."

The following policy statement has been adopted by B.C.D.C.:

Possible Bay Planning Conclusions
Based on the Report on Marshes and Mud Flats

1. To conserve fish and wildlife, San Francisco Bay must have an adequate food supply and its waters must have an adequate supply of oxygen. This means that the marshes and mud flats must be maintained to the fullest possible extent. Filling and diking, which eliminates marshes and mud flats, should therefore be allowed only for purposes providing substantial public benefits and for which there are no reasonable alternatives.
2. Any proposed fills, dikes, or piers, should be thoroughly evaluated to determine their effect on marshes and mud flats, and then modified as necessary to minimize any harmful effects.
3. To offset possible additional losses of marshes due to filling for purposes providing substantial public benefits, and to augment the present marshes, the Commission's plan for the Bay should consider (a) restoring former marshes through removal of existing dikes, and (b) creating new marshes through carefully placed lifts of dredging spoils.

Adopted by the Commission at its meeting of 10/21/66

- C. The Department of Fish and Game, Region 3, recommends that the entire shoreline be maintained as open space.
- D. At this time, the best interests of the State would appear to be served by the retention of the status quo with respect to the present character of the said parcels as a part of the tidal and marsh areas of the Bay, for their preservation in a natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area. This does not require the taking of possession of lawful improvements on the land, if any, nor any interference with lawful salt production, if any, on Parcels 1, 2, and 3, or any nearby land, nor to require the prohibition limitation, or other interference with existing lawful uses of the parcels.
- E. The action being considered is also consistent with the State policy for the protection and enhancement of the environment, expressed by the Legislature in Public Resources Code, Sections 21000 and 21001.

IV

Authority of the Commission with respect to the existing public property rights:

- A. The primary jurisdiction and authority of the Commission stems from Division Six of the Public Resources Code, with particular reference to Section 6301 of the Code, which reads as follows:

6301: "The commission has exclusive jurisdiction over all ungranted tidelands and submerged lands owned by the State, and of the beds of navigable rivers, streams, lakes, bays, estuaries, inlets, and straits, including tidelands and submerged lands or any interest therein, whether within or beyond the boundaries of the State as established by law, which have been or may be acquired by the State (a) by quitclaim, cession, grant, contract, or otherwise from the United States or any agency thereof, or (b) by any other means. All jurisdiction and authority remaining in the State as to tidelands and submerged lands as to which grants have been or may be made is vested in the commission.

"The commission shall exclusively administer and control all such lands, and may lease or otherwise dispose of such lands, as provided by law, upon such terms and for such consideration, if any, as are determined by it.

"The provisions of this section do not apply to land of the classes described in Section 6403, as added by Chapter 227 of the Statutes of 1947."

B. Public Resources Code Section 6312 recognizes the power to exercise the trust easement over lands to which the underlying fee has been granted, and sets forth a limitation thereon. It reads as follows:

6312: "Neither the state, nor any political subdivision thereof, shall take possession of lawful improvements on validly granted or patented tidelands or submerged lands without the tender of a fair and just compensation for such lawful improvements as may have been made in good faith by the grantee or patentee or his successors in interest pursuant to any express or implied license contained in the grant or patent.

"Nothing herein contained shall be deemed to prevent the parties to a grant or patent of tidelands from agreeing, as a part of such grant or patent, that there shall be no compensation paid for any improvement made on those tidelands to which such agreement relates.

"Nothing herein contained is intended to increase, diminish, or affect the title of any person in any validly granted or patented tidelands or submerged lands.

"This section shall not be construed to require compensation for any change in the use of tidelands or submerged lands as a result of governmental regulation that prohibits, restricts, delays, or otherwise affects the construction of any planned or contemplated improvement.

"As used in this section, the term "grant" or "granted" shall not be construed to apply to legislative grants in trust to local governmental entities."

The taking possession of any lawful improvements is not needed nor required for the exercise of the public trust easement as herein presented for Commission consideration.

- C. The public purposes for which the tideland trust easement may be exercised include public hunting and fishing, Forestier v. Johnson (1912) 164 Cal. 24; complete removal of tidelands by dredging for navigation purposes, Newcomb v. City of Newport Beach (1936) Cal. 2d 393; use for highway purposes, Colberg Inc. v. State (1967) 67 Cal. 2d 408. The California Supreme Court in 1971, in the case of Marks v. Whitney 6 Cal. 3d 251, held the public trust to be sufficiently flexible to encompass changing public needs. On pages 259-260, the Court stated that: "There is a growing public recognition that one of the most important uses of the tidelands - a use encompassed within the tidelands trust - is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area. It is not necessary to here define precisely all the public uses which encumber tidelands.
- D. The staff of the State Lands Division, with the concurrence of the office of the Attorney General, is of the opinion that the Commission has the authority to formally exercise the trust for the purposes set forth herein. "The powers of the State as trustee are not expressed. They are commensurate with the duties of the trust. Every trustee has the implied power to do anything necessary to the execution and administration of the trust." Peo. v. Calif. Fish Co. (1913) 166 Cal. 576, at p. 597.
- E. The action contemplated constitutes the exercise of the public property rights in the presently existing tidelands trust easement. It is based on title to real property, and differs from the exercise of the police power, such as in matters of zoning. The public easement exists in conjunction with the proprietary or private underlying fee title, and to the extent the trust exercise is for public easement purposes, the easement is paramount to and defines the limits of the underlying fee title.
- F. The action being considered does not contemplate the construction of improvements, nor the alteration, modification, or other change in the physical, aesthetic, scenic, or other environmental qualities of the land. Pursuant to Public Resources Code, Section 21085, implemented by 14 Cal. Admin. Code, Section 15100, et seq., and 2 Cal. Admin. Code, Section 2907, the said action is for the preservation and enhancement of natural resources and the environment, and it is thereby categorically exempt from the environmental impact report requirements.
- G. Precedent for the exercise of the trust easement includes the March 8, 1949 Resolution No. C-11641 (Book 29811, p. 160) of the

City Council of Long Beach, Legislative Trust Grantee,
exercising the easement for the public development of an
aquatic playground area.

V

It is recommended that the said Parcels, 1, 2, and 3 remain in their present condition as open space for the protection and enhancement of the environment. A formal exercise of the trust by the Commission is suggested for Commission consideration as an appropriate means of protection and preservation of the public property rights.

STATE LANDS DIVISION
SPECIAL LITIGATION UNIT

WALTER COOK
Staff Counsel

WC ng

Exhibit A: Parcels 1, 2, and 3 descriptions
Exhibit B: Vicinity Map
Exhibit C: Index Map

PARCEL 1

State Tide Lands Survey No. 83, Alameda County, located in Section 35 Township 3 South, Range 3 West, Mount Diablo Meridian.

EXCEPTING THEREFROM THE FOLLOWING: Beginning on the Westerly boundary line of Swamp and Overflowed Land Survey No. 245 at a point from which the corner common to Swamp and Overflowed and Tide Land Surveys Nos. 68, 82, 83 and 245 bears N. $10\frac{1}{4}^{\circ}$ West (42) forth two rods distant; thence running through said survey No. 83, S. $53\frac{3}{4}^{\circ}$ W. (1462.56/100) fourteen hundred and sixty two and $56/100$ feet to the East boundary line of Tide Land Survey No. 107; thence South along said boundary (200) two hundred feet; thence N. $54^{\circ} 26'$ E. (1491.60/100) fourteen hundred and ninety and $60/100$ feet to said boundary of Survey No. 245; thence along the same, North $10\frac{1}{4}^{\circ}$ W. (200) two hundred feet to the point of beginning, containing (5.80/100) Five and $80/100$ acres of tide land, as described in the deed from August L. Johnson to F. I. Lemos, dated February 8, 1928, recorded February 10, 1928 in Book 1825 of Official Records, page 49.

PARCEL 2

PARCEL 2A (South portion of Parcel 2)

All that portion of Tide Lands Survey No. 88, Alameda County, located in Section 1 and 2 Township 4 South, Range 3 West, Mount Diablo Meridian described as follows:

Beginning at the Southeast corner of said Tide Lands Survey No. 88. THENCE FROM SAID POINT OF BEGINNING West 1929.44 feet; thence North 370.46 feet; thence North $69^{\circ} 37' 47''$ East 360.77 feet; thence South $20^{\circ} 27'$ East 196.50 feet; thence North $69^{\circ} 33'$ East 1458.52 feet; thence South $10^{\circ} 45'$ East 836.19 feet to the point of beginning.

PARCEL 2B (North portion of Parcel 2)

All that portion of Tide Lands Survey No. 88, Alameda County, located in Sections 1 and 2 Township 4 South, Range 3 West, Mount Diablo Meridian described as follows:

Beginning at the Northeast corner of said Tide Lands Survey No. 88. THENCE FROM SAID POINT OF BEGINNING South $10^{\circ} 45'$ East 472.84 feet; thence South $59^{\circ} 33'$ West 1550.00 feet; thence South $20^{\circ} 27'$ East 173.67 feet; thence South $69^{\circ} 37' 47''$ West 299.27 feet; thence North to the Northwest corner of said Tide Lands Survey 88; thence East to the point of beginning.

PARCEL 3

Survey No. 101 State Tide Lands Alameda County, Township No. 4 South Range No. 3 West Mount Diablo Meridian: Section No. 12 the N $1/2$ of said Section, more particulary described as follows:

Exercise of the public trust along the Hayward Shoreline in San Francisco Bay
W 20785 & W 20470

PARCEL 3 (continued)

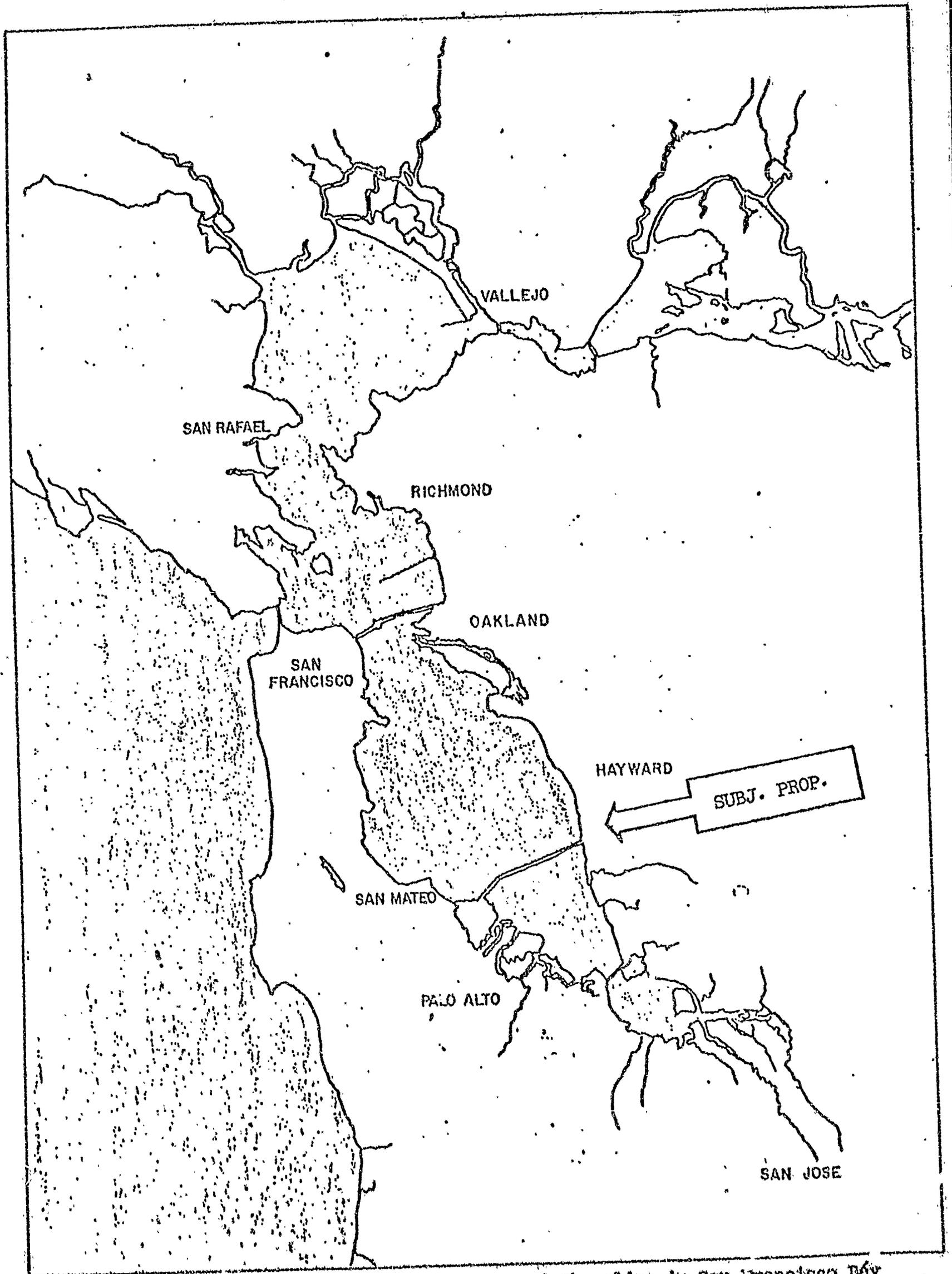
The North half of Section twelve (12) in Township Four (4) South
Range Three (3) West Mount Diablo Meridian;

EXCEPTING THEREFROM the Northeast 1/4 of Section 12.
and also excepting therefrom the lands described in Exhibit A of the
Judgment quieting title to real property, filed December 27, 1967, in the
case of Leslie Salt Co., a corporation, Plaintiff v. State of California,
Defendant, in the Superior Court of the State of California for the County
of Alameda, Action No. 328991, said Judgment being recorded on December 27,
1967 as Instrument No. AZ 133202, in Reel 2098, Image 701.

Exercise of the public trust along the Hayward Shoreline in San Francisco Bay
W 20785 & W 20470

EXHIBIT A - Description - p. 2

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Exercise of the public trust along the Hayward Shoreline in San Francisco Bay
W 20785 & W 20470

EXHIBIT B - Vicinity Map

