MINUTE ITEM
This Calendar Item No. 29
was approved as Minute Item
No. 29 by the State Lands
Commission by a vote of 2
to 0 at its 10-30-80
meeting.

CALENDAR ITEM

29.

10/80
W 22587
Collins
Scott

ONE PICO-SANTA MONICA BEACH BOUNDARY
AGREEMENT - BLA NO. 200

APPLICANT: One Pico Enterprises, Inc., et al.
12838 Evanston Street
Los Angeles, California 90049

City of Santa Monica
City Attorney
1685 Main Street
Santa Monica, California 90401

This proposed One Pico-Santa Monica Beach Boundary Agreement - BLA No. 200 between the State of California, acting by and through its State Lands Commission, its Department of Parks and Recreation and its Attorney General, the City of Santa Monica and certain Private Parties, namely, One Pico Enterprises, Inc., a California corporation, Bruce M. Frome, Ina Diane Frome, Robert Coleman, John R. Naye, Susan J. Naye, Donald P. Novack, Linda D. Novack and Pico One Associates, a general partnership, provides for the settlement of the interests of the respective parties; and for the determination and location of the ordinary high water mark of the Pacific Ocean within the Agreement Area; for the conveyance of fee title to certain uplands from the Private Parties to the City of Santa Monica; for the execution of all documents and maps necessary to accomplish the provisions of said Agreement and the approval of all acts of the City of Santa Monica and authorization to the staff and the Attorney General necessary to accomplish the provisions of said Agreement in order to confirm and quiet title to the respective interests in land within the Agreement Area in the State, in the City of Santa Monica and in the Private Parties.

The property involved in this transaction, i.e., the Agreement Area, consists of approximately 1.5 acres located along Santa Monica State Beach at the corner of Pico Boulevard and the Promenade in the City of Santa Monica, Los Angeles County, California, more particularly shown in the attached Exhibits "A" and "C".

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S 22

This Agreement will settle a dispute which exists between the State, the City, and Private Parties, who own the uplands in the Agreement Area, as to the location of the ordinary high water mark.

It is generally recognized that the shoreline in the City of Santa Monica has been subject to artificial influences for many years. The particular property involved in this Agreement was subject to a prior lawsuit the judgment of which was upheld in the landmark appellate decision, Carpenter v. City of Santa Monica (1944) 63 Cal App. 2d 772. In that case the lower court, in its findings of fact, found that the last natural position of the shoreline at the property could best be estimated by the tide line surveyed by the United States Coast and Geological Survey in 1876. The location of this line was some 10 to 25 feet landward of the northeasterly line of The Promenade as shown on Exhibit "B". However, the purpose of this case, which was brought by the Private Parties' predecessors-in- interest, was to seek damages against the City of Santa Monica for erosion resulting from the effect of the Santa Monica Breakwater; it was not an action to quiet title.

While there may be some question as to whether this case would be res judicata as to the location of the tidelands boundary in this area, the City and State have taken the position that these findings, if not conclusive, would be indicative of the boundary.

The Private Parties, on the other hand, contend that the Carpenter case is not controlling and that the last natural position of the mean high tide line is significantly seaward of this 1876 line.

The findings of fact in Carpenter noted that the 1876 survey "was and is subject to possible error of 33 feet on either side of the mean high tide line as plotted on the map thereof due to the conditions under which the survey was made and the methods used in making it," and that the survey may have been made "after heavy storms, when the beaches were in a state of erosion always caused by such storms." Considering this possible error and more recent studies of the 1876 survey which indicate that the line shown may not have been that of mean high tide, it is the staff's and the Attorney General Office's opinion that this boundary agreement which settles upon the southwest boundary of

the Promenade as the tidelands boundary in the area to be a fair and reasonable representation of the location of the ordinary high water mark in the area. Such a settlement is also consistent with the position the State has taken in the past as to the location of the last natural mean high tide line along Santa Monica Beach in areas south of the Santa Monica Pier. This is a favorable agreement in that the agreed line is approximately 110 feet landward of the Official Mean High Tide Line of 1921.

The State and City also claim that public access and recreational easements have arisen over The Promenade and the area southwest of The Promenade by virtue of past use of these areas by the public under the doctrine of implied dedication (see Gion v. City of Santa Cruz (1970) 2 Cal. 3d 29). The Private Parties dispute these claims. This agreement would settle the status of any easements arising under the doctrine of implied dedication.

The necessity of settling these conflicting claims has been brought about by Private Parties' proposal to develop the area northeast of the Promenade as a condominium project. It is staff's understanding that all permits for such project have been granted; however, a condition of the Coastal Permit was that the boundary problem be settled. Moreover, this Agreement will allow the Private Parties to obtain a clear title report as to the area on which they propose to build the condominiums.

A copy of this Agreement is on file in the Office of the State Lands Commission and incorporated herein by this reference. While the Agreement sets forth all the specific terms and conditions of the settlement, for purposes of convenience, a brief summary of its principle terms are as follows:

1. All Parties agree to a common tidelands boundary line within the Agreement Area; such boundary being the southwest boundary of the Promenade as shown on Exhibit "B" and described in Exhibit "C" hereof.

2. The Parties agree and will confirm that the State is vested with all right, title and interest in Parcel 1 as shown on the map of Exhibit "B" hereof subject to the common law trust for commerce, navigation and fisheries.

3. The Parties agree and will confirm that the Private Parties, who are successors-in-interest to the original grantees of the Rancho San Vicente y Santa Monica, are vested with fee title to the upland Parcels 2A and 2B as shown on the map of Exhibit "B". It is recognized that Parcel 2A, i.e., the Promenade, is subject to a street, sidewalk and pathway easement in favor of the public and the City of Santa Monica.

4. The Private Parties will grant fee title to Parcel 2A (i.e., the Promenade) to the City subject to the easements of the public for street, sidewalk and pathway purposes.

5. The confirmations of title will be accomplished by this Agreement and an exchange of quitclaim deeds. The State will also be provided with title insurance to Parcel 1 in the amount of $100,000.00 to be paid for by the Private Parties.

This Agreement is authorized by Section 6357 of the Public Resources Code.

Since the Agreement is for purposes of settling a title dispute it is exempt from preparation of an EIR under the provisions of P.R.C. 6371 AND 21065, 14 Cal. Adm. Code 15037 and 2 Cal. Adm. Code 2903(d). However, the Private Parties remain subject to all lawful requirements of public agencies for permits, mitigation, use, or otherwise, independent of this Agreement.

This project is situated on State land identified as possessing significant environmental values pursuant to P.R.C. 6370.1, and is classified in a use category, Class C, which authorizes Multiple Use.

Staff review indicates that there will be no significant effect upon the identified environmental values.

An evaluation has been made by the Commission's staff and the Attorney General's Office which shows that this Agreement is in the public interest and once implemented will enhance and enlarge public rights in the Agreement Area and increase the utilization of the lands and waterways for trust purposes, and is therefore in the best interest of the State.

The Office of the Attorney General concurs in these opinions and has approved this Agreement.

EXHIBITS: A. Site Map. B. Agreement Area Parcel Map.
C. Boundary Line Description.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THIS TRANSACTION IS IN SETTLEMENT OF TITLE AND BOUNDARY LITIGATION AND DETERMINE THAT AN EIR HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH REPORT IS NOT REQUIRED UNDER THE PROVISIONS OF P.R.C. 6371 AND 21065, 14 CAL. ADM. CODE 15037 AND 2 CAL. ADM. CODE 2903(d).

2. DETERMINE THAT THIS PROJECT IS EXEMPT FROM THE REQUIREMENTS OF ARTICLE 6.5, OF TITLE 2, OF THE CAL. ADM. CODE BECAUSE THIS PROJECT IS NOT A DEVELOPMENT WITHIN THE MEANING OF SECTION 2503, OF TITLE 2, OF THE CAL. ADM. CODE AND SECTION 30105 OF THE P.R.C.

3. APPROVE THE ONE PICO-SANTA MONICA BEACH BOUNDARY AGREEMENT - BLA NO. 200 AND AUTHORIZE THE EXECUTION OF SAID AGREEMENT ON BEHALF OF THE STATE LANDS COMMISSION IN SUBSTANTIALLY THE FORM OF THE AGREEMENT ON FILE WITH THE COMMISSION.

4. FIND THAT THE SETTLEMENT PROVIDED FOR IN THE AGREEMENT IS IN THE BEST INTEREST OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION, COMMERCE AND FISHING, THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION, COMMERCE AND FISHING IN THE LANDS AND WATERS INVOLVED BUT WILL IN FACT ENHANCE AND ENLARGE PUBLIC RIGHTS AND UTILIZATION OF SAID LANDS AND WATERWAYS FOR TRUST PURPOSES.

5. AUTHORIZE THE STATE LANDS COMMISSION STAFF AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE TERMS AND PROVISIONS OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, EXECUTION OF ALL DOCUMENTS, MAPS, TITLE AND ESCROW INSTRUCTIONS, AND APPEARANCES IN ANY LEGAL PROCEEDINGS BROUGHT CONCERNING THE ABOVE TRANSACTION.

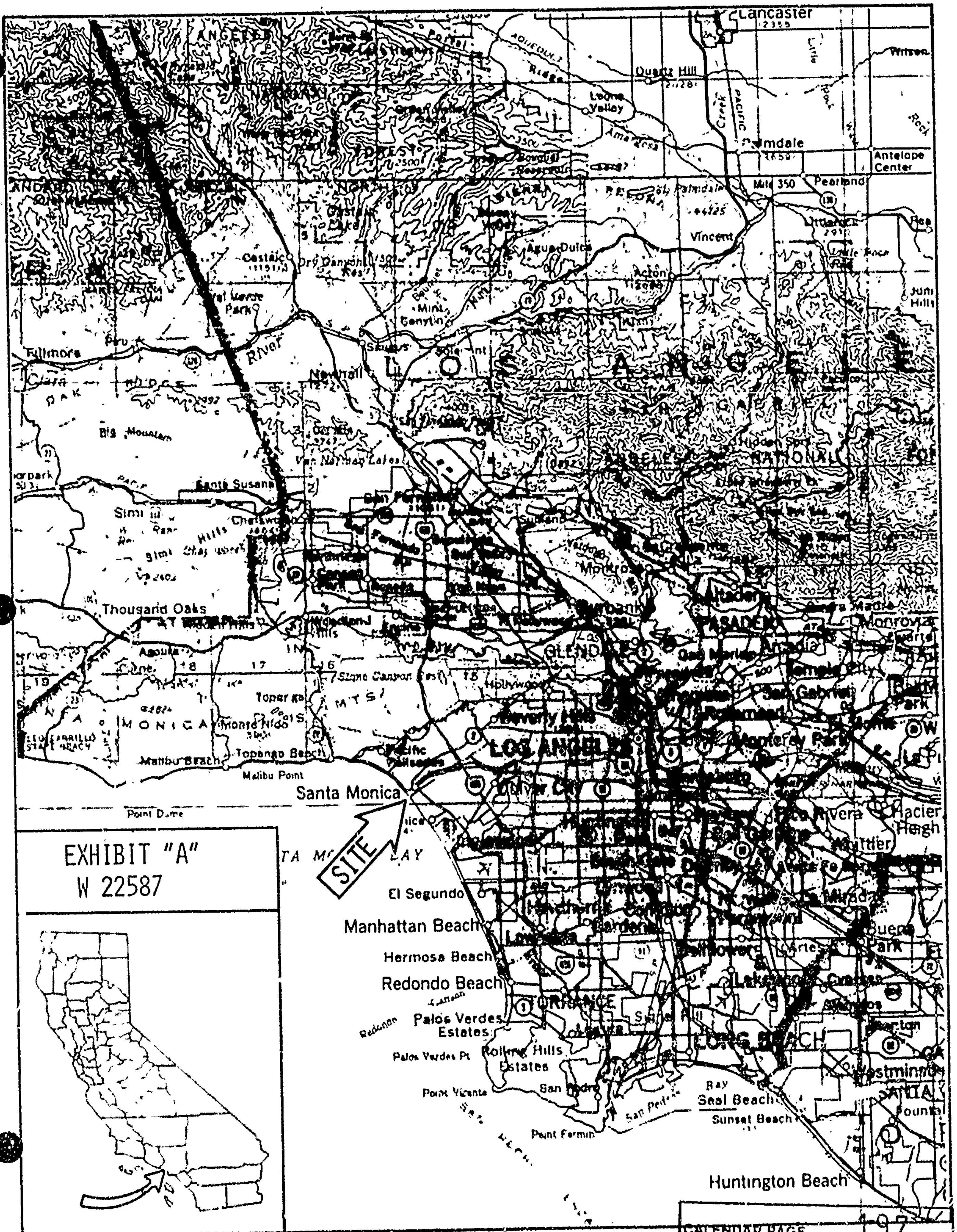
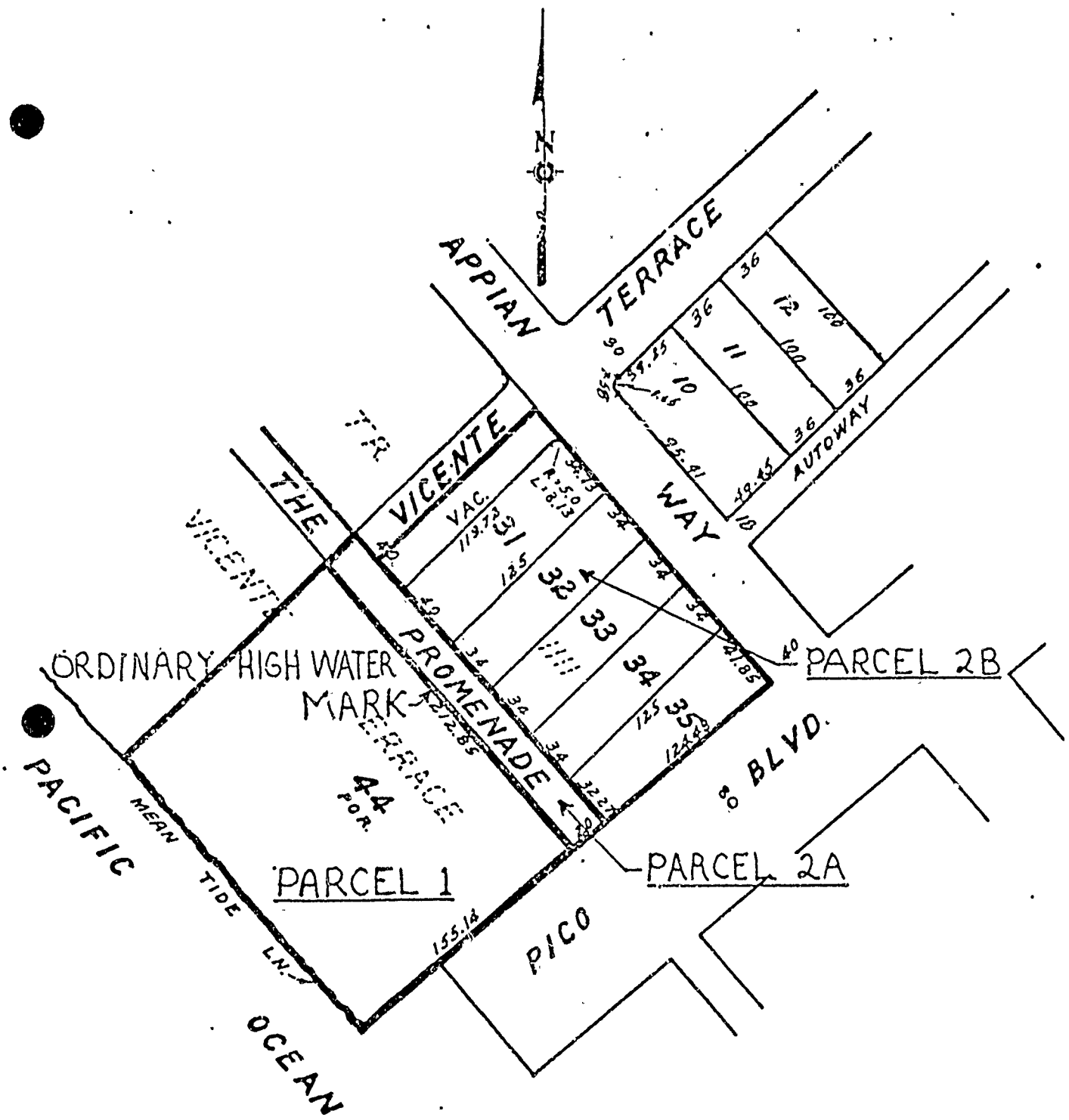


EXHIBIT "A"
W 22587

CALENDAR PAGE 197
MINUTE PAGE 2494



PLAT OF ONE PICO-SANTA MONICA BOUNDARY LINE AGREEMENT - BLA NO. 200

EXHIBIT B

EXHIBIT C

The Southwesterly line of The Promenade in the City of Santa Monica, County of Los Angeles, State of California, which is shown on the map of Tract No. 1111, recorded in Book 17, Pages 154 and 155 of Maps, in the office of the County Recorder of said County, extending from the Northwesterly line of Pico Boulevard (formerly Fremont Avenue) to the Southwesterly prolongation of the Northwesterly line of Vicente Terrace as shown on the map of said Tract No. 1111.