

MINUTE ITEM

This Calendar Item No. 47
was approved as Minute Item
No. 47 by the State Lands
Commission by a vote of 3
to 0 at its 10/26/83
meeting.

CALENDAR ITEM

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10/26/83
W 20313
W 503.890
A. Scott/
R. Ludlow/
Skinner
BLA 241

APPROVAL OF
LITIGATION AND TITLE SETTLEMENT AGREEMENT
BETWEEN CASIMER AND ETTA MALINOWSKI
V. STATE LANDS COMMISSION

BACKGROUND:

The Malinowski's are owners of a portion of an island located in the Sacramento River, Sacramento County, commonly known as Long Island. A dispute over the location of the boundary between the Malinowski's upland and the State's sovereign land arose when the Malinowski's began the process of subdividing this upland parcel. The State felt that a portion of the area being subdivided was sovereign land based on a stipulated judgment entered in 1948 in the case of Rosillini, et al. v. State. The State felt the boundary line established by this judgment was a fixed line. The Malinowski's felt that the judgement established a meander line and therefore the true boundary of their upland parcel was the current high water mark.

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In May 1977 the Malinowski's filed a suit to quiet title against the State and were successful in that the court determined that the 1948 judgment line was a moving line. The State then filed an appeal of that judgment.

CURRENT SITUATION:

Staff of the Commission and the Attorney General's Office have been negotiating a settlement of this litigation with the Malinowski's. A Litigation and Title Settlement Agreement has been negotiated and is on file in the Sacramento Office of the Commission. The basic terms of the agreement are:

1. A Boundary Line Agreement will be executed between the Malinowski's and the State establishing the current Mean High Tide Line, described in attached Exhibit "A" as fixed boundary.
2. The Malinowski's will pay \$18,000 to the Land Bank in exchange for any interest of the State between the new boundary described in Exhibit "A" attached and the boundary described in the 1948 Rosillini judgment.

Staff of the Commission and that of the Attorney General's Office believes that approval of the proposed settlement agreement as on file will be in the best interest of the State.

AB 884: N/A.

EXHIBITS: A. Boundary Line Description.
B. Site Map.

IT IS THEREFORE RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THIS ACTION IS IN SETTLEMENT OF A TITLE DISPUTE AND IS IN LIEU OF LITIGATION; THEREFORE, CEQA DOES NOT APPLY.

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2. DETERMINE AND DECLARE THAT THE SUBJECT COMPROMISE TITLE SETTLEMENT AGREEMENT IS IN THE BEST INTERESTS OF THE STATE AND THAT THE SETTLEMENT PARCEL HAS BEEN EXCLUDED FROM THE PUBLIC CHANNELS AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR COMMERCE, NAVIGATION AND FISHING, IS NO LONGER, IN FACT, TIDELANDS OR SUBMERGED LANDS AND UPON RECORDATION OF THE COMPROMISE TITLE SETTLEMENT AGREEMENT SHALL BE FREE FROM THE PUBLIC TRUST FOR COMMERCE, NAVIGATION AND FISHERIES.
3. DECLARE AND DETERMINE THAT THE SUM OF \$18,000 THE STATE IS RECEIVING PURSUANT TO THE SUBJECT COMPROMISE TITLE SETTLEMENT AGREEMENT IS EQUAL TO OR GREATER THAN THE VALUE OF THE STATE'S INTEREST BEING GIVEN UP IN THE SETTLEMENT PARCEL.
4. DETERMINE AND DECLARE THAT THE SUBJECT COMPROMISE TITLE SETTLEMENT IS BEING MADE IN LIEU OF LITIGATION, IS A TITLE SETTLEMENT WITHIN THE MEANING OF PUBLIC RESOURCES CODE SECTION 8601(d) AND AUTHORIZE ACCEPTANCE OF THE SUM OF \$18,000 TO BE DEPOSITED IN THE LAND BANK FUND PURSUANT TO PUBLIC RESOURCES CODE SECTION 8625(a).
5. APPROVE THE PROPOSED COMPROMISE TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM ON FILE IN THE SACRAMENTO OFFICE OF THE STATE LANDS COMMISSION, BETWEEN THE STATE AND THE MALINOWSKI'S.
6. AUTHORIZE EXECUTION, ACCEPTANCE AND RECORDATION OF THE SETTLEMENT AGREEMENT TOGETHER WITH ANY OTHER DOCUMENTS NECESSARY TO ESTABLISH AS A FIXED BOUNDARY THAT LINE DESCRIBED IN EXHIBIT "A" ATTACHED HERETO.
7. AUTHORIZE THE STAFF OF THE STATE LANDS COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE PROVISIONS OF THE SETTLEMENT AGREEMENT, INCLUDING, BUT NOT LIMITED TO, APPEARANCES IN ANY LEGAL PROCEEDINGS TO FINALIZE THE SETTLEMENT AGREEMENT.

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DESCRIPTION

COMMENCING at a point on the south line of a Dredger Cut located N 26° 31' 17" E 26.27 feet, N 56° 36' 43" W 52.37 feet, N 75° 04' 43" W 53.08 feet, N 62° 12' 43" W 59.00 feet, N 59° 17' 43" W 115.61 feet, and N 57° 57' 43" W 59.43 feet from a 3/4 inch iron bolt set in the westerly line of that certain tract of land shown on the survey entitled "Survey for J. A. & A. C. La Montagne of a Portion of Long Island", filed in the office of the County Recorder of Sacramento County on October 4, 1953, in Book 11 of Surveys, Map No. 3, said 3/4 inch iron bolt being located S 26° 31' 17" W 6.50 feet and N 63° 28' 43" W 200.00 feet from an iron pipe at the most northerly corner of Lot 12, as said lot is shown on the survey entitled "Plat of Survey of Long Island Tract No. 1", filed in the office of the County Recorder of Sacramento County on February 21, 1950, in Book 8 of Surveys, Map No. 5; thence from said Point of Commencement N 57° 57' 43" W, 59.44 feet to the most northwesterly corner of that certain parcel conveyed by James A. La Montagne and Alta C. La Montagne, his wife, to Melvin H. Wright and Elmer Wright, by deed recorded November 28, 1956, in Book 3200 Page 543, Official Records; thence S 26° 31' 17" W 42.28 feet along the northwesterly line of said parcel; thence continuing S 26° 31' 17" W, 162.80 feet to the POINT OF BEGINNING of the herein described line. Thence, generally northwest-erly the following eleven courses:

- 1) N 39° 28' 42" W 55.37 feet;
- 2) N 61° 03' 00" W 36.07 feet;
- 3) N 49° 52' 50" W 123.26 feet;
- 4) N 42° 21' 58" W 219.49 feet;
- 5) N 88° 29' 46" W 30.40 feet;
- 6) N 51° 53' 27" W 63.92 feet;
- 7) N 37° 51' 35" W 96.15 feet;
- 8) N 47° 10' 42" W 31.43 feet;
- 9) N 21° 26' 45" E, 28.69 feet to a 1 1/2" iron pipe with a California State Lands Commission Brass Cap stamped "BLA POINT NO. 2 LS 4333, 1981";
- 10) N 21° 26' 45" E, 36.69 feet to a 1 1/2" iron pipe with a California State Lands Commission Brass Cap stamped "BLA POINT NO. 1 LS 4333, 1981";
- 11) N 21° 26' 45" E, 50.91 feet to a point on that line, course N 49° 05' 05" W, 768.41 feet, described as N 49° 04' W, 767.76 in Paragraph 1 of that Judgment Quieting Title and Fixing Boundaries recorded in Book 660112 Page 356 of Official Records of Sacramento County and the end of the herein described line, said point being distant thereon 220.13 feet from the southeasterly terminus of said course;

thence, S 49° 05' 05" E, 203.22 feet to a point on the northerly line of the lands of J. A. & A. C. La Montagne as shown on that "Record of Survey of a Portion of Long Island" filed September 28, 1956, Book 12 of Surveys, Map No. 55, Sacramento County Recorder's Office; thence along the northerly line of said La Montagne lands, S 63° 41' 43" E, 23.49 feet, S 57° 54' 43" E, 125.47 feet, S 56° 49' 43" E, 163.96 feet, and S 57° 57' 43" E, 180.42 feet to said Point of Commencement.

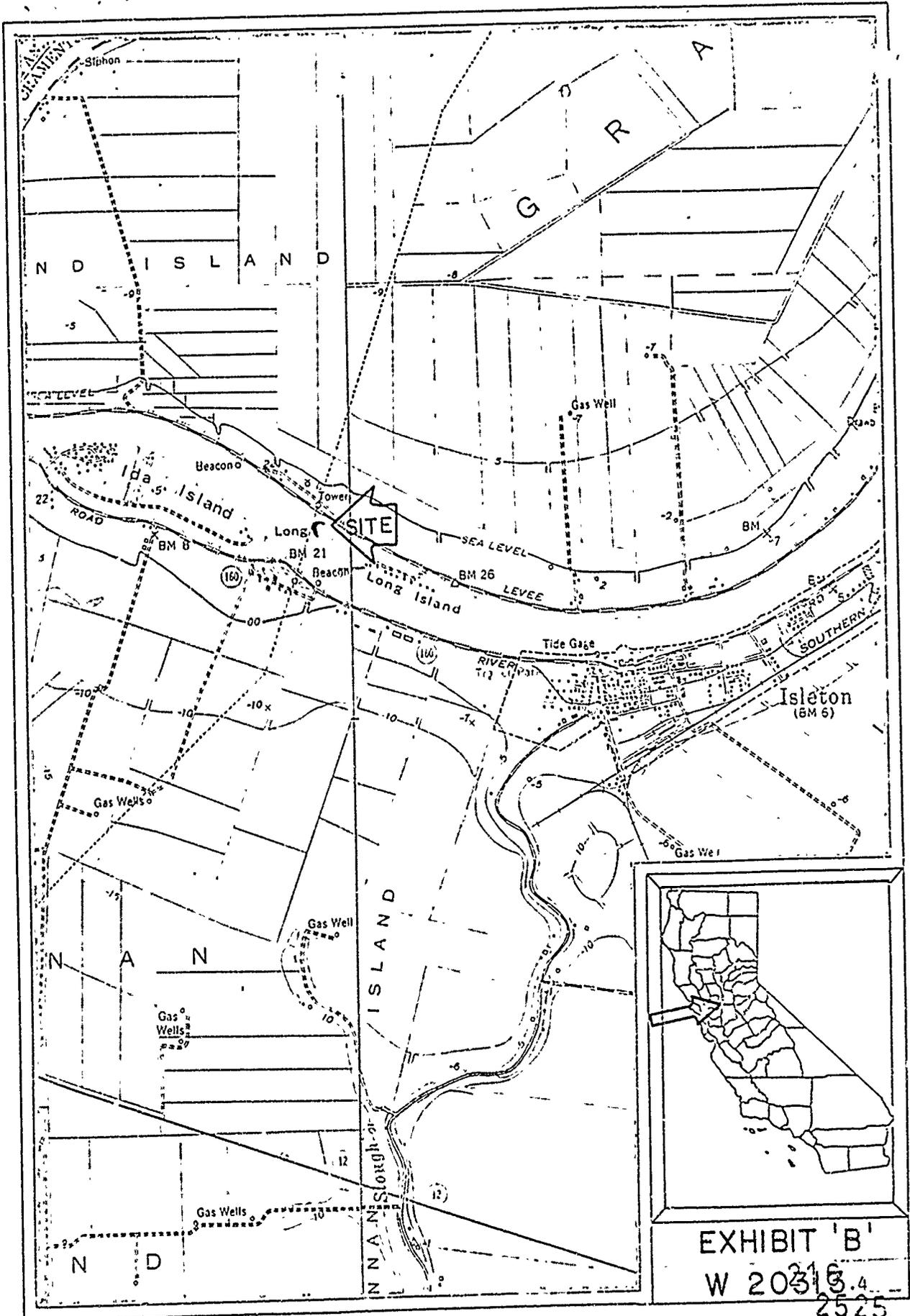
The Basis of Bearings of the herein described line is that certain course N 00° 05' E, 3119.1 feet on the westerly boundary of that 234.36 acre tract of the lands of Charles W. and Andrew G. Griffin shown on the Plat of Survey filed December 30, 1946, in Book 5 of Surveys, Map No. 23 in the office of the County Recorder of Sacramento County.

Added 10/26/83

END OF DESCRIPTION
EXHIBIT "A"

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Added 10/26/83