

MINUTE ITEM

Minute Item No. 29
San Mateo County Lands
9/26/85

CALENDAR ITEM

Meeting

29

A 14, 18, 19, 20, 21, 23

S 9, 10, 11, 13

09/26/85
W 20905
AD 29
Valentine

APPROVAL OF A
LITIGATION SETTLEMENT AGREEMENT CONCERNING
LANDS LOCATED IN ALAMEDA, SAN MATEO,
AND SANTA CLARA COUNTIES

APPLICANT: Ideal Basic Industries, Inc.
c/o Pillsbury, Madison & Sutro
P. O. Box 7880
San Francisco, California 94104

Beginning in the 1960s, the State Lands Commission, on its own initiative and in response to the request of interested public and private entities, began a program of perfecting public title in the South San Francisco Bay Area.

In 1968, the Commission filed suit to quiet title to lands claimed by Westbay Community Associates ("Westbay") which Westbay proposed to fill and then develop. Several intervenors joined in the suit, eventually bringing the disputed acreage to 10,000 acres. The suit was settled in 1978, following extensive public hearings, with the State's title being recognized to 7,267 acres and a public trust easement recognized over the remainder. Westbay's fee title subject to the public trust easement was recognized as 2,325 acres. (Three relatively small parcels were excluded from the settlement at that time. They are the subject of another unrelated agreement.)

Upon completing that settlement, the Commission turned its attention to resolving similar title and boundary problems on the east side of South San Francisco Bay. Over 21,000 acres of open bay lands are included within the perimeter descriptions set forth in early State tidelands patents to private parties. The property is located in Alameda, San Mateo, and Santa Clara counties. This real property ("subject property") is depicted on Exhibit "A" and described in Exhibit "B".

CALENDAR PAGE	<u>155</u>
MINUTE PAGE	<u>2011</u>

CALENDAR ITEM NO. 29 (CONT'D)

Ideal Basic Industries, Inc. (Ideal) (an affiliate of Westbay Community Associates) is the record owner of the subject property as successor-in-interest to State patents which characterized the subject property as tidelands.

Ideal contends that the State patents conveyed all right, title, and interest of the State within the subject property without any reservations to the State, expressed or implied, and that Ideal holds title to the property free and clear of any State right, title, or interest. As a further alternative contention, Ideal claims that it owns all lands landward of the line of permanent submergence or the mean lower low water line.

In connection with South San Francisco Bay litigation studies, the staff of the State Lands Commission has conducted a study of the physical information relating to the tidal regime, Placement of historic tide lines and evidence of title to the subject parcel and has had lengthy negotiations with representatives of Ideal. Based on that study and negotiations, and for the purpose of resolving this dispute, the staff has drawn a number of conclusions, including those summarized below:

1. The entire subject property is presently either tide or submerged lands.
2. The subject property contains submerged lands incorrectly characterized and conveyed as tidelands to Ideal's predecessors-in-interest.
3. Having made a detailed study of the location of the legal boundary between such tide and submerged lands, such boundary location is uncertain. This uncertainty is caused in large part because the relationship of the subject parcel to the waters and tides of the bay has been significantly altered, in part, because of the following:
(a) the reclamation of substantial portions of the marshes of San Francisco Bay and the Sacramento/San Joaquin Delta and their consequent removal from tidal inundation;
(b) changes in upland drainage patterns affecting the sediment transport system; (c) changes in land elevation due to subsidence, filling, or dredging, and (d) the effect of man's activities in and around San Francisco Bay and the Sacramento/San Joaquin Delta. Thus, the physical conditions present today in the settlement area are no longer in a state of nature. Given that the subject parcel is no longer in a natural condition, the opinion of consultants that locating a last natural ordinary low water

mark by scientific analysis and available technology would be impracticable, if not impossible, and given the bona fide disputes between the parties, the location of the compromise boundary is reasonable and in the best interests of both parties.

4. The facts concerning the title to and boundaries of the subject property and applicable legal principles lead to the conclusion that the State, in its sovereign capacity, is the owner of substantial public trust right, title, or interest in the subject property. The exact extent and nature of the State's interest is, however, subject to uncertainty and dispute.

Following several years of negotiations, representatives of the State and Ideal have reached an understanding to resolve the title and boundary dispute by written agreement in compromise settlement of the legal and factual issues.

Under the proposed settlement, the State will receive or have its title confirmed to 16,500 acres of the subject lands and be recognized as the owner of a public trust easement over the remainder of the property. Ideal's underlying title will be confirmed as to approximately the landward 4,600 acres subject to the public trust easement. The agreement also provides for certain procedures to be followed in the event of the public exercise of the easement, the issuance of an aquaculture lease to Ideal on certain lands and for certain dredging rights. The agreement, if approved by the Commission, will also be subject to court approval. All of this will be described in greater detail below

A public meeting on this proposed agreement was held on September 18, 1985, at the Hayward City Hall. (A copy of the shorthand reporter's transcript of the public meeting is on file in the offices of the Commission.)

While the agreement sets forth all the specific terms and conditions of the settlement a brief summary of major provisions is as follows.

1. The parties will agree to a compromise boundary fixed in location, as shown on Exhibit "A", separating those lands in Alameda County, owned in fee by the State as sovereign lands, and lands owned in fee by Ideal subject to a public trust easement. The easement is acknowledged to be owned by the State of California.

CALENDAR ITEM NO. 29 (CONT'D)

2. To implement the boundary agreement, Ideal will quitclaim to the State approximately 16,500 acres lying bayward of the compromise line mentioned above and depicted on Exhibit "A". The State will patent (quitclaim) to Ideal those lands landward of this compromise line, subject to the public trust easement. Said lands to be patented to Ideal, subject to the public trust easement by the State, consist of approximately 4,600 acres. In Santa Clara and San Mateo counties and most southerly portion of Alameda County, Ideal will quitclaim all of its disputed tideland titles to the State.
3. In light of the legal and factual uncertainty involved in establishing a true legal boundary between State-owned sovereign lands and private lands subject to the public trust easement, it is possible that in this transaction a portion of the lands lying landward of the agreed boundary were and continue to be submerged lands. In order to remedy any legal defect resulting from such a possible situation, there is a provision in the agreement that it shall be deemed an exchange pursuant to P.R.C. Section 6307. To the extent it should ever be determined that the agreed boundary is located bayward of the ordinary low water mark, it is agreed the State shall have exchanged to Ideal any such submerged lands found to be bayward of the ordinary low water mark and landward of the agreed boundary in return for Ideal's conveyance to the State of its lands in San Mateo, Santa Clara and southerly portion of Alameda Counties. These lands have been appraised and the lands to be conveyed to the State are of equal or greater value than are the lands to be confirmed to Ideal.
4. The Commission will find that an agreement to be entered into between the California Department of Fish and Game and Ideal to use portions of the subject property for aquacultural purposes is consistent with the public trust easement over the leased parcels and agrees not to take any action inconsistent with the aquaculture agreement during its term.
5. Upon Ideal's request made at any time during the initial five-year period of the aquacultural agreement mentioned above, the Commission will agree to issue a dredging permit with respect to any of those lands included in the aquaculture agreement which are found not to be suitable for aquaculture purposes. The dredging permit will be subject to compliance with CEQA and in the Commission's

standard form lease with the customary terms and conditions. This permit shall not be issued or utilized in such a way as to interfere with the aquaculture agreement entered into between Ideal and the Department of Fish and Game. The acreage of the dredging permit shall be reasonable in light of prevailing market conditions and the environmental problems associated with dredging.

6. The State agrees to give Ideal a 90-day notice of any proposed exercise of the public trust easement for a particular trust purpose or purposes over lands as to which Ideal holds the fee title. Ideal is also afforded the opportunity to provide reasons why such public trust easement should not be exercised or to present for Commission action an application by Ideal to use such lands for a particular public trust purpose.
7. The Litigation Settlement Agreement must also receive court approval.

Staff has investigated the State's interest in the subject parcel and has evaluated the law and facts concerning that interest. Based on such investigation and evaluation, staff is of the opinion that the location of the compromise boundary agreed to by Ideal and the State is a good faith attempt to locate that property boundary given both factual and legal uncertainties. The public trust character of the subject property will be retained. All those lands to be patented to Ideal will be held subject to a public trust easement; the remainder will be held in fee as sovereign lands of the State.

The staff of the State Lands Commission and Attorney General's Office recommend approval of the settlement in substantially the form of the agreement now on file with the State Lands Commission.

STATUTORY AND OTHER REFERENCES:

- A. P.R.C.: Div. 6, Parts 1 and 2; Div. 13.
- B. Cal. Adm. Code: Title 2, Div. 3; Title 14, Div. 6.

AB 884:

N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CFQA Guidelines (14 Cal. Adm. Code 15061), the staff has

CALENDAR ITEM NO. 29 (CONT'D)

determined that this activity is exempt from the requirements of the CEQA as a statutory exempt project. The project is exempt because it involves settlements of title and boundary problems.

Authority: P.R.C. 21080.11.

- EXHIBITS. A. Graphic Depiction of Settlement Area.
 B. Description of Subject Property.

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 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. FIND THAT.
 - a. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE RESPECTING THE PRIVATE/STATE TITLES AND THE LOCATION OF THE BOUNDARY BETWEEN SUCH TITLES
 - b. THE PROPOSED LITIGATION SETTLEMENT AGREEMENT REFLECTS A GENUINE EFFORT TO DETERMINE THE TRUE BOUNDARY AND THE COMPROMISE BOUNDARY SET FORTH IN SUCH AGREEMENT IS A LINE WHICH FAIRLY REPRESENTS THOSE EFFORTS GIVEN THE CONTESTED ISSUES OF LAW AND FACT.
 - c. THE LOCATION OF THE AGREED BOUNDARY IS REASONABLE IN LIGHT OF ITS UNCERTAINTY AS A MATTER OF FACT AND LAW.
 - d. SETTLEMENT OF THIS TITLE AND BOUNDARY DISPUTE, AS DESCRIBED HEREIN, WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHT OF NAVIGATION AND FISHING IN THE WATERS INVOLVED AND, IN FACT, WILL PROTECT THOSE RIGHTS.
 - e. LEASE OF STATE SOVEREIGN WATER BOTTOMS AND LEASE OF LANDS IN WHICH THE STATE OWNS THE PUBLIC TRUST EASEMENT BY THE CALIFORNIA DEPARTMENT OF FISH AND GAME TO IDEAL FOR AQUACULTURAL PURPOSES IS CONSISTENT WITH PUBLIC TRUST PURPOSES.
 - f. SAID AGREEMENT IS IN THE BEST INTERESTS OF THE STATE, INCLUDING, BUT NOT LIMITED TO, THE IMPROVEMENT OF NAVIGATION AND ENHANCEMENT OF THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND UPLAND.

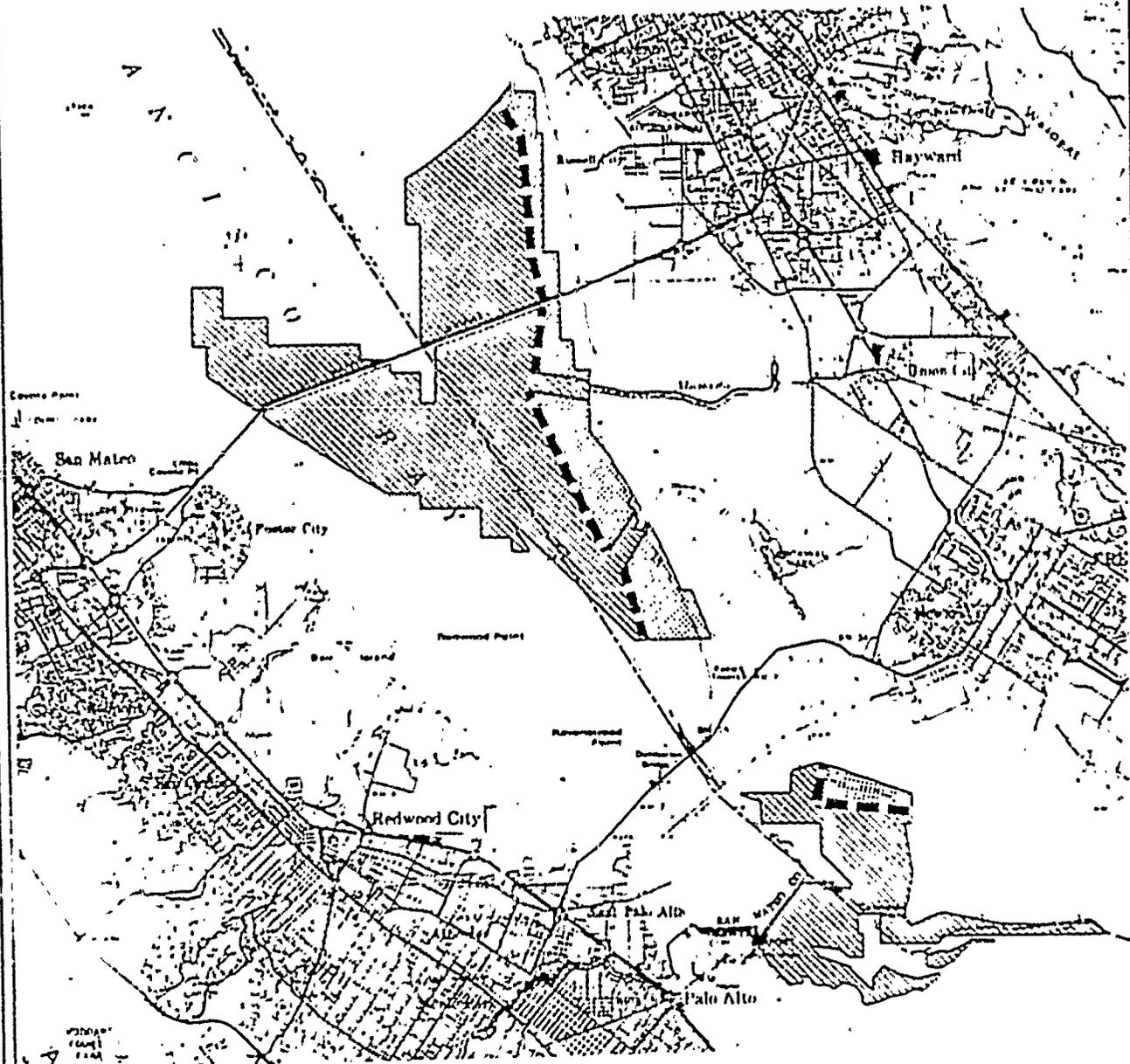
CALENDAR ITEM No. 29 (CONT'D)

9. TO THE EXTENT IT MIGHT EVER BE DETERMINED THAT THERE ARE ANY LANDS LYING BETWEEN THE ORDINARY LOW WATER MARK AND AGREED BOUNDARY, PURSUANT TO THE PROVISIONS OF PUBLIC RESOURCES CODE SECTION 6307, SUCH LANDS SHALL BE DEEMED TO HAVE BEEN EXCHANGED TO IDEAL FOR IDEAL'S CONVEYANCE TO THE STATE OF IDEAL'S INTERESTS IN LANDS IN SAN MATEO, SANTA CLARA, AND THE SOUTHERLY PORTION OF ALAMEDA COUNTIES WHICH LANDS SO RECEIVED BY THE STATE ARE OF EQUAL OR GREATER VALUE THAN ANY TITLE INTERESTS OF THE STATE CONVEYED TO IDEAL.

INASMUCH AS THE PUBLIC TRUST OWNERSHIP OF THE STATE IS NOT BEING TERMINATED OVER ANY OF THE LANDS INVOLVED IN THE EXCHANGE, THE LAND SO ACQUIRED SHALL HAVE THE SAME STATUS AS TO ADMINISTRATION AND CONTROL OF THE LAND FOR WHICH IT WAS EXCHANGED. NOTHING IN THIS AUTHORIZATION CONSTITUTES COMMISSION CONSENT FOR IDEAL TO IMPROVE, FILL, OR RECLAIM THE LANDS INVOLVED, EXCEPT AS EXPRESSLY SET FORT HEREIN NOR SHALL THIS ITEM BE CONSTRUED AS AUTHORITY TO TERMINATE THE PUBLIC TRUST OWNERSHIP IN ANY OF THE LANDS INVOLVED HEREIN.

3. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGEMENT AND RECORDATION ON BEHALF OF THE COMMISSION OF THE FOLLOWING DOCUMENTS:
- a. THE LITIGATION SETTLEMENT AGREEMENT, INCLUDING INSTRUMENTS OF CONVEYANCE IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION.
 - b. CERTIFICATES OF ACCEPTANCE AND CONSENT TO RECORD QUITCLAIM DEEDS TO THOSE LANDS TO BE RECEIVED BY THE STATE
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, AND RECORDATION OF ALL DOCUMENTS 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 RELATED TO THE SUBJECT MATTER OF THE AGREEMENT.

EXHIBIT "A"
 Graphic Depiction of Settlement Area



-  Settlement Area
-  Agreed Boundary Line
-  Ideal to State
-  State to Ideal - Subject to "Public Trust Easement"

EXHIBIT "B"
Description of Settlement Area

All those portions of the Tide Land Locations and Tide Land Surveys, claimed by Ideal Basic Industries, Inc., within the present (May 1985) boundaries of San Mateo County, California, described as follows:

Tide Land Locations 86 and 87, patented April 29, 1901 and recorded August 8, 1901 in Book C of patents at page 213, Official Records of Alameda County.

Tide Land Locations 88 and 90, patented April 29, 1901 and recorded August 8, 1901 in Book C of patents at page 211, Official Records of Alameda County.

Tide Land Location 89, patented July 6, 1895 and recorded April 6, 1896 in Book C of patents at page 137, Official Records of Alameda County.

Tide Land Location 91, patented March 14, 1892 and recorded March 29, 1892 in Book C of patents at page 36, Official Records of Alameda County.

Tide Land Locations 92 and 94, patented April 29, 1901 and recorded September 4, 1901 in Book C of patents at page 215, Official Records of Alameda County.

Tide Land Location 93, patented July 6, 1895 and recorded April 6, 1896 in Book C of patents at page 135, Official Records of Alameda County.

Tide Land Location 95, patented May 1, 1901 and recorded September 4, 1901 in Book C of patents at page 218, Official Records of Alameda County.

Tide Land Survey 106, patented May 1, 1901 and recorded September 23, 1901 in Book C of patents at page 221, Official Records of Alameda County.

Tide Land Survey 108, patented March 14, 1892 and recorded March 29, 1892 in Book C of patents at page 41, Official Records of Alameda County.

All those portions of the Tide Land Locations and Tide Land Surveys claimed by Ideal Basic Industries, Inc., within the present (May 1985) boundaries of Santa Clara County, California, described as follows:

Tide Land Survey 105, patented January 9, 1879 and recorded July 22, 1879 in Book B of patents at page 190, Official Records of Alameda County.

Tide Land Locations 47 and 49, patented October 17, 1878 and recorded February 28, 1879 in Book C of patents at page 113, Official Records of Santa Clara County.

Tide Land Location 163, patented August 11, 1890 and recorded September 27, 1890 in Book E of patents at page 38, Official Records of Santa Clara County.

Tide Land Location 164, patented August 11, 1890 and recorded September 27, 1890 in Book E of patents at page 40, Official Records of Santa Clara County.

Tide Land Survey 2, patented May 9, 1889 and recorded May 23, 1889 in Book D of patents at page 267, Official Records of Santa Clara County.

CALENDAR PAGE	164
MINUTE PAGE	272

All those portions of the Tide Land Locations and Tide Land Surveys claimed by Ideal Basic Industries, Inc., within the present (May 1985) boundaries of Alameda County, California described as follows:

Tide Land Location 85, patented March 14, 1892 and recorded March 29, 1892 in Book C of patents at page 39, Official Records of Alameda County.

Tide Land Location 89, patented July 6, 1895 and recorded April 6, 1896 in Book C of patents at page 137, Official Records of Alameda County.

Tide Land Location 91, patented March 14, 1892 and recorded March 29, 1892 in Book C of patents, at page 36, Official Records of Alameda County.

Tide Land Survey 103, patented March 10, 1879 and recorded July 22, 1879 in Book B of patents at page 192, Official Records of Alameda County.

Tide Land Surveys 105 and 110, patented January 9, 1879 and recorded July 22, 1879 in Book B of patents at page 190, Official Records of Alameda County.

Tide Land Survey 106, patented May 1, 1901 and recorded September 23, 1901 in Book C of patents at page 221, Official Records of Alameda County.

Tide Land Survey 107, patented March 14, 1892 and recorded March 29, 1892 in Book C of patents at page 38, Official Records of Alameda County.

Tide Land Survey 108, patented March 14, 1892 and recorded March 29, 1892 in Book C of patents at page 41, Official Records of Alameda County.

Tide Land Location 47, patented October 17, 1878 and recorded February 28, 1879 in Book C of patents at page 113, Official Records of Santa Clara County.

Tide Land Locations 48 and 50, patented October 17, 1878 and recorded March 19, 1879 in Book 2 of patents at page 20, Official Records of San Mateo County.

Tide Land Location 156, patented April 13, 1889 and recorded May 13, 1889 in Book 2 of patents at page 310, Official Records of San Mateo County.

CALENDAR PAGE	165
MINUTE PAGE	202