

MINUTE ITEM
This Calendar Item No. 35
was approved as Minute Item
No. 32 by the State Lands
Commission by a vote of 2
to 0 at its 5/23/87
meeting.

CALENDAR ITEM

A 20
S 11

35

05/28/87
W 21028 Ad 61
Stevenson
Rusconi

APPROVAL OF A COMPROMISE TITLE SETTLEMENT AGREEMENT
AFFECTING A 9.27-ACRE PARCEL OF LAND, CITY OF REDWOOD
CITY, COUNTY OF SAN MATEO; \$40,000 CONTRIBUTION TO THE
KAPILOFF LAND BANK (P.R.C. SECTION 8600 ET SEQ.)

PRIVATE PARTY: Browning-Ferris Industries
of California, Inc.,
a California Corporation

A title dispute exists between the State of California acting in its sovereign capacity and Browning-Ferris Industries of California, Inc., a California Corporation (Browning-Ferris). This dispute regards sovereign title interests which are asserted in a 9.27-acre parcel of land in Redwood City, San Mateo County, which is in the record ownership of Browning-Ferris. This parcel, which will be referred to throughout this item as the TRUST TERMINATION PARCEL, is described in Exhibit "A" to this item and is shown for reference purposes only on Exhibits "B" and "C" to this item. Exhibits "A", "B", and "C" are attached and are incorporated by reference.

The staff of the State Lands Commission has conducted a study of the evidence which bears on title to the TRUST TERMINATION PARCEL, including information relating to its historic physical condition. The evidence indicates that:

1. The TRUST TERMINATION PARCEL was included within the perimeter description of Swamp and Overflowed Lands Patents Nos. 82 and 4 for San Mateo County.
2. The TRUST TERMINATION PARCEL consists of filled and reclaimed historic wetlands which formerly consisted of marshes and sloughs.

(ADDED 05/21/87)

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(Non-Substantial Revision 08/09/88)

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3. As it last naturally existed, all or a portion of the TRUST TERMINATION PARCEL was below the line of ordinary high tide, the precise extent of coverage by the tides being subject to dispute. The TRUST TERMINATION PARCEL is now filled above the tides and is removed from San Francisco Bay.

The staff is of the legal opinion that the title evidence and applicable legal principles lead to the conclusion that some or all of the TRUST TERMINATION PARCEL was not capable of sale as swamp and overflowed land and remains subject to a sovereign fee and/or public trust easement administered by the State Lands Commission. The exact extent of their interest, however, is subject to uncertainty and dispute.

On several grounds, Browning-Ferris contends that no State sovereign interests ever existed or remain in the TRUST TERMINATION PARCEL. Among these arguments are that the TRUST TERMINATION PARCEL, in its natural condition, lay above the tides of San Francisco Bay; that the property was sold by the State without any reservation of sovereign interests; and that the TRUST TERMINATION PARCEL has been reclaimed as required by law and has been put to a variety of private uses as if it were private property subject to no remaining State interest.

The State and Browning-Ferris have successfully negotiated a settlement of the title dispute regarding the TRUST TERMINATION PARCEL. This settlement has been formalized in a settlement agreement which is now on file in the Commission's offices. The staff of the State Lands Commission recommends approval of the settlement in substantially the form of the agreement now on file with the Commission.

While the agreement sets forth all the specific terms and conditions of the settlement, a brief summary of some of its principal terms and conditions is set forth below, as follows:

1. The private party will deposit the sum of \$40,000 into the Kapiloff Land Bank Fund which is administered by the State Lands Commission as trustee pursuant to P.R.C. 8600 et seq;
2. In exchange for the above transfer of funds by Browning-Ferris to the State, the State will convey to Browning-Ferris all its right, title, and interest existing by virtue of its sovereignty and will terminate the public trust in the TRUST TERMINATION PARCEL; and

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3. The agreement provides for an escrow and will be effective upon its recordation. Escrow fees and any title insurance will be without cost to the State.

Staff has appraised the Settlement Parcel and has evaluated the law and the evidence bearing on the title dispute, and is of the opinion that the sum of \$40,000 is equal to or greater than the value of the State's interest in the TRUST TERMINATION PARCEL.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from the requirements of the CEQA because it falls within the statutory exemption for settlements of title and boundary problems.

Authority: P.R.C. 21080.11.

2. In taking action on this staff recommendation the Commission is acting as the trustee of the Kapiloff Land Bank Fund created by P.R.C. 8610.

EXHIBITS:

- A. Trust Termination Parcel Description.
- B. Location Map for Reference Purposes Only.
- C. Specific Site Map for Reference Purposes Only.

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 UNDER THE STATUTORY EXEMPTION FOR SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS, PURSUANT TO P.R.C. 21080.11.
2. FIND THAT WITH RESPECT TO THE PROPOSED COMPROMISE TITLE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST IN THE TRUST TERMINATION PARCEL FOR FUNDS WITH WHICH TO BUY AN EXCHANGE PARCEL:

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- A. THE AGREEMENT IS IN THE BEST INTEREST OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION; THE ENHANCEMENT OF THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND THE UPLAND; AND THE PROTECTION, PRESERVATION, AND ENHANCEMENT OF THE TIDELANDS AND SUBMERGED LANDS AND PUBLIC ACCESS THERETO, PURSUANT TO THE PUBLIC TRUST.
 - B. THAT THE \$40,000 RECEIVED BY THE STATE PURSUANT TO THE AGREEMENT IS EQUAL TO OR GREATER THAN THE VALUE OF THE INTERESTS IN THE TRUST TERMINATION PARCEL BEING RELINQUISHED BY THE STATE.
 - C. THE TRUST TERMINATION PARCEL HAS BEEN IMPROVED, RECLAIMED AND FILLED; HAS BEEN EXCLUDED FROM THE PUBLIC CHANNELS; AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE TO BEING USED FOR NAVIGATION AND FISHING AND IS NO LONGER IN FACT TIDELAND OR SUBMERGED LAND.
 - D. THERE EXISTS BETWEEN THE PARTIES A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS WITHIN THE TRUST TERMINATION PARCEL.
 - E. THE PROPOSED AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED.
 - F. THE AGREEMENT IS IN LIEU OF THE COSTS, DELAYS AND UNCERTAINTIES OF TITLE LITIGATION, IS CONSISTENT WITH AND IS AUTHORIZED BY THE REQUIREMENTS OF LAW.
 - G. UPON THE RECORDATION OF THE AGREEMENT AND CONSISTENT WITH ITS TERMS, THE TRUST TERMINATION PARCEL WILL NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THE PUBLIC TRUST INTEREST MAY BE TERMINATED.
3. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGMENT AND RECORDATION ON BEHALF OF THE COMMISSION OF THE COMPROMISE TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION.
 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

(ADDED 05/21/87)

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LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGEMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AND PAYMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE COMPROMISE TITLE SETTLEMENT AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

5. ACTING AS TRUSTEE OF THE KAPILOFF LAND BANK FUND, AUTHORIZE THE DEPOSIT OF \$40,000 INTO THE KAPILOFF LAND BANK FUND FOR THE ACQUISITION OF LANDS USEFUL FOR PUBLIC TRUST PURPOSES PURSUANT TO P.R.C. SECTIONS 8600 ET SEQ.

(ADDED 05/21/87)

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EXHIBIT "A"

LAND DESCRIPTION

W21028

A parcel of real property in Redwood City, San Mateo County, California, said parcel being a portion of that land described in the Grant Deed to San Mateo County Scavenger Company recorded in Volume 5580, Page 466, San Mateo County Official Records, and being more particularly described as follows:

BEGINNING at the most westerly corner of that certain parcel of land conveyed to Leslie Properties, Inc., and described in deed dated April 28, 1965, and recorded July 1, 1965, in Book 4982 of Official Records of San Mateo County, at page 222, said point being also on the common boundary of the corporate limits of the City of Redwood City and the City of San Carlos; thence from said point and along the southwesterly boundary of said parcel, S 40° 57' 43" E 1157.18 feet; thence leaving said boundary, N 47° 51' 36" E 700.45 feet; thence N 44° 32' 43" W 1207.62 feet, more or less, to the intersection of a line that bears N 43° 19' 38" E from the point of beginning; thence along said line S 43° 19' 38" W 627.94 feet, more or less, to said point of beginning.

EXCEPTING THEREFROM any portion thereof lying within Parcel A as shown on that certain map entitled "Parcel Map No. 83-7, LYING WITHIN THE CITY OF REDWOOD CITY, BEING A SUBDIVISION OF A PORTION OF THE LANDS DESCRIBED IN BOOK 7440 OFFICIAL RECORDS AT PAGE 727, AND BOOK 7983 OFFICIAL RECORDS AT PAGE 651, AND RE-RECORDED IN BOOK 7988 O.R. 605, SAN MATEO COUNTY RECORDS", recorded on November 29, 1983, in Official Records of the County of San Mateo in Book 54 of Parcel Maps at Page 11.

END OF DESCRIPTION

PREPARED MARCH 6, 1987 BY BOUNDARY SERVICES UNIT, M. L. SHAFER, SUPERVISOR.

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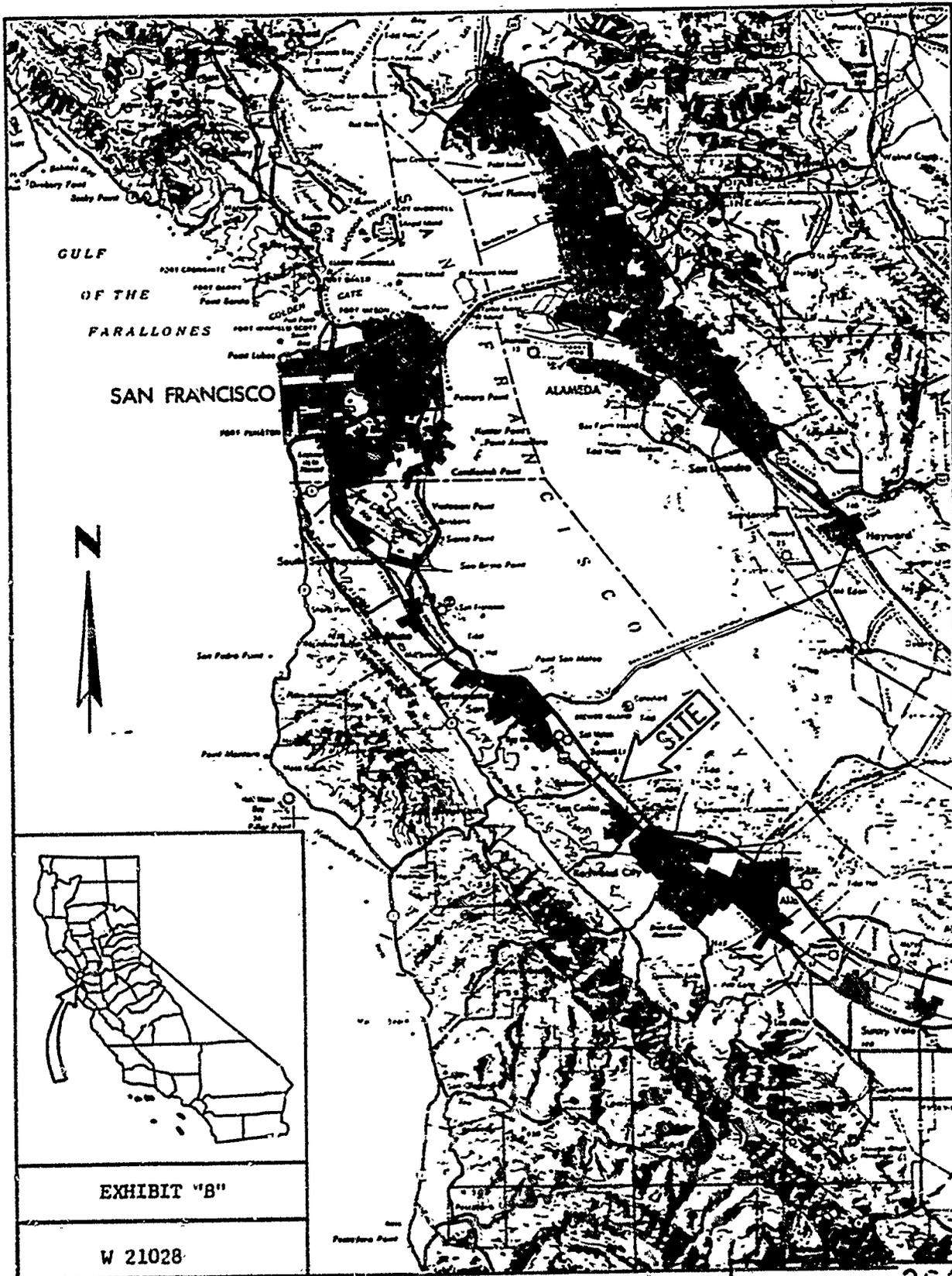


EXHIBIT "B"

W 21028

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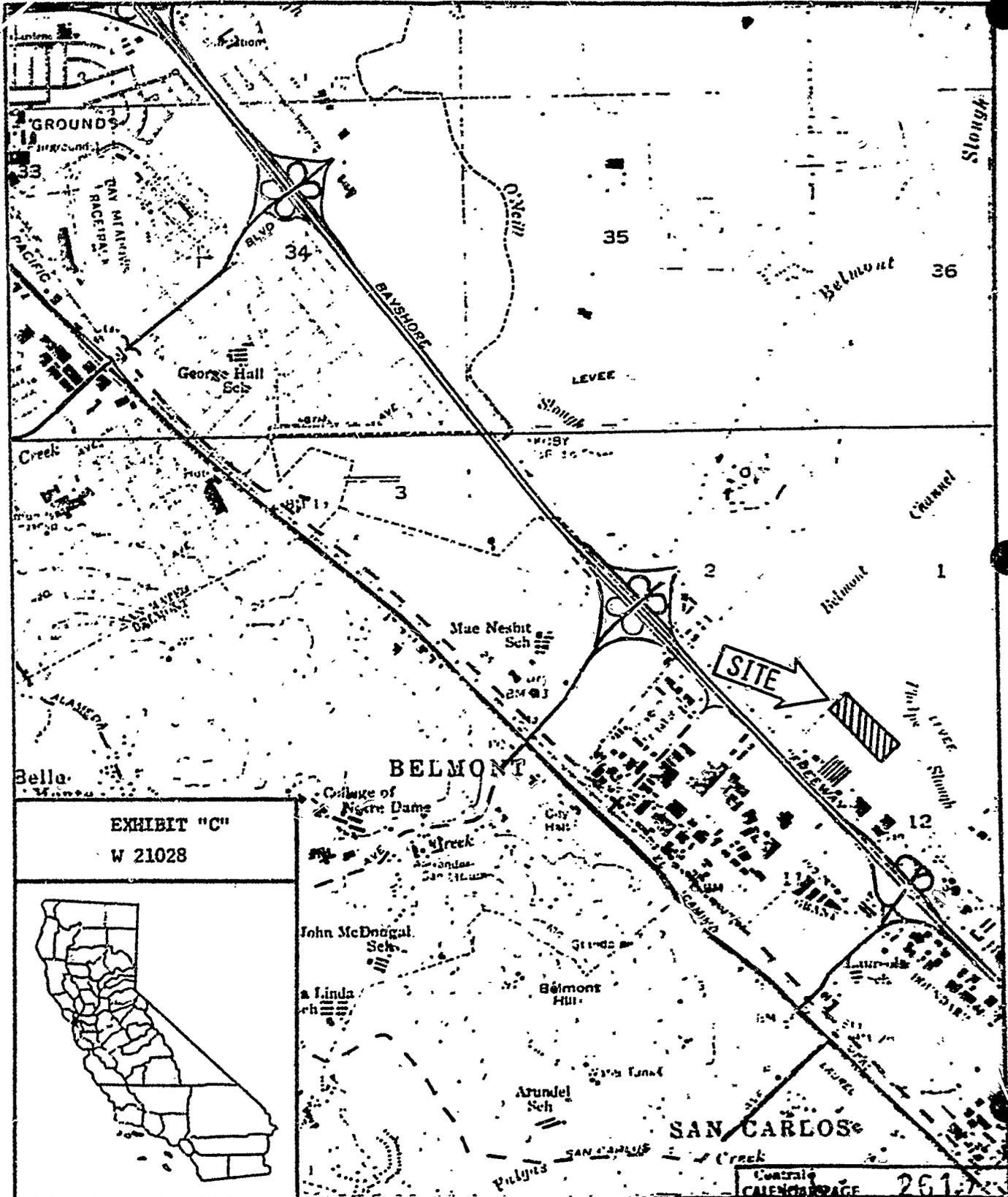


EXHIBIT "C"
W 21028



Central
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