MINUTE ITEM
This Calendar Item No. 64
was approved as Minute Item
No. 64 by the State Lands
Commission by a vote of 3
to 0 at its 8/9/88
meeting.

CALENDAR ITEM

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REQUEST FOR AUTHORIZATION TO ENTER AN AGREEMENT SETTING THE BOUNDARY OF STATE LANDS ALONG 1,600 FEET OF THE SACRAMENTO RIVER IMMEDIATELY UPSTREAM OF THE CAPITOL MALL BRIDGE IN YOLO COUNTY; LEASE OF TIDE AND SUBMERGED LAND FOR LEVEE REALIGNMENT, CONSTRUCTION, AND OPERATION

Boundary Line Agreement

APPLICANT: Thomas P. Raley
c/o Robert Cutshaw
Raley's Landing, Inc.
100 West Capitol Avenue
West Sacramento, California 95605

Lease for Protective Structure

APPLICANT: Thomas P. Raley, Trustee
Thomas P. Raley Trust
c/o Robert Cutshaw
Raley's Landing, Inc.
100 West Capitol Avenue
West Sacramento, California 95605

In April of this year, staff of the State Lands Commission was contacted by representatives of Thomas P. Raley (referred to in this calendar item as "PRIVATE PARTY"), record owner of lands along and upland of the Sacramento River just upstream of the Capitol Mall Bridge in Yolo County. The property is shown in

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its general location for reference purposes in Exhibits "A" and "B" attached to this calendar item and will be referred to here as the "SUBJECT PROPERTY". Exhibits "A" and "B" are incorporated by reference as parts of this calendar item. The SUBJECT PROPERTY is the former site of the Marina Inn and its associated facilities. Raley's Landing, the new development proposed for the site, includes office and residential towers and a hotel. As planned, Raley's Landing also makes provision for public access through the center of the development and at both ends. The accessways will serve pedestrians, cyclists, and the handicapped and will provide access to a parcel of land for riparian habitat and public use waterward of the levee.

The PRIVATE PARTY desires to secure a lease or other title interest to proceed with work scheduled for this year to realign the existing levee. Building construction will follow. The PRIVATE PARTY holds permits from the City of West Sacramento and from the Reclamation Board to perform the levee work before October of this year. The work was the subject of a mitigated negative declaration approved by the City of West Sacramento (Notice of Determination dated May 2, 1988). The staff of the State Lands Commission has examined the mitigated negative declaration and believes that it is sufficient to authorize the levee activity for which this calendar item seeks authority.

The PRIVATE PARTY's representatives and Commission staff have worked to resolve the location of sovereign title rights in the Sacramento River along and through the SUBJECT PROPERTY. Research by staff has shown the following:

1. The Sacramento River at the site of the SUBJECT PROPERTY is subject to the tides. Therefore, the River is owned in fee by the State of California as tide and submerged lands to the River's ordinary high water mark along or through the SUBJECT PROPERTY. (See Civil Code sections 670 and 830.)

2. Thomas P. Raley initiated litigation 20 years ago asserting that a portion of the SUBJECT PROPERTY lay entirely landward of State ownership (Thomas P. Raley v State of California, Yolo County Superior Court, Case No. 21087). This litigation was resolved by stipulation between the parties establishing the boundary between State and private ownership. By its terms, the litigation did not settle title to property in Raley's record ownership upstream or downstream of the specific land in question. Therefore,

title to a large part of the SUBJECT PROPERTY remains uncertain.

3. The base title to the SUBJECT PROPERTY derives from Swamp and Overflowed sales made by the State and given numbers 962, 774, 980, and 770, Yolo County. The waterward reaches of these sales varied and resulted in an irregular record base title. The earliest Swamp and Overflowed survey within the SUBJECT PROPERTY, S & O No. 962, meandered the bank of the west levee of the Sacramento River and was the subject of a California State Supreme Court decision entitled Taylor v. Underhill decided in 1871 (40 Cal. 471). The Taylor case held that land waterward of the bank meander to be State sovereign tide and submerged land in the bed of the Sacramento River and subject to no private title interests.

4. The PRIVATE PARTY has an existing lease (PRC 6002) for docks at the site of Raley's Landing to onload and offload passengers from excursion vessels. The dock as built extends waterward of the area leased. As will be discussed below, the Commission will have the opportunity to amend that lease to include the improvements which are now in place.

Complicating the boundary location problem is the unique history of this portion of the Sacramento River. The mouth of the American River was relocated by man for flood control purposes in 1862 to a point one mile upstream from the Raley property. Extensive 19th century hydraulic mining along the Yuba, Feather, and American rivers resulted in a substantial raising of the bed of the Sacramento River in this vicinity. The River shoreline along the Raley property has both accreted and eroded due to the effect of these and possibly other artificial causes. The parties recognize the complexity and difficulty involved in obtaining a precise determination of the proper boundary between sovereign and private land within the SUBJECT PROPERTY.

After several meetings to discuss State title within the SUBJECT PROPERTY, the parties have arrived at a settlement which protects State title in the area and which permits the levee realignment work planned by the PRIVATE PARTY to proceed this year. The work will not begin until after the proposed Boundary Line Agreement and lease take effect.

The basic terms of the Boundary Line Agreement are as follows:

1. The parties will establish an ordinary high water mark through the SUBJECT PROPERTY, excepting the area of prior litigation between the State and the PRIVATE PARTY. This ordinary high water mark will follow the waterward top line of the reconfigured levee and is landward of meander lines set by Swamp and Overflowed Survey Nos. 980, 774, and 770. The land waterward of this described line will be deeded to the State as tide and submerged land. Property landward of that line shall be deeded by the State to the PRIVATE PARTY free of sovereign title interests. The State Lands Commission is authorized by the P.R.C. (Section 6301 and following sections and particularly Section 6357) to enter title settlement agreements such as the Agreement proposed here.

2. In the reach which was the subject of litigation 20 years ago, the PRIVATE PARTY will donate to the State the land lying between the boundary as described in the stipulated judgment from that case and the top of the reconfigured levee. This will create a consistent boundary through the SUBJECT PROPERTY at the top of the levee. The gift of this parcel will be made by the PRIVATE PARTY and accepted by the State as tide and submerged land pursuant to P.R.C. Section 6219.

3. The land from the top of the reconfigured levee to the toe will be leased to Thomas P. Raley, Trustee of the Thomas P. Raley Trust for a term of 49 years pursuant to 2 Cal Adm Code 2002(b)(2), 2003(4)(B), and 2004(b)(1). The public shall have access on and across the levee during the term of the lease. No rent will be charged because the levee will protect public and private property in West Sacramento.

4. The PRIVATE PARTY will maintain the levee within the SUBJECT PROPERTY in good condition by the terms of the Boundary Line Agreement and the new lease. The PRIVATE PARTY will pay assessments, if any are due, to levee maintenance, flood control, or other districts, or the Reclamation Board. This requirement shall pass as a covenant running with the land to subsequent purchasers of the UPLAND PARCEL or any part of it or possible successors to the levee lease.

5. The PRIVATE PARTY will deed to the State public accessways for non-motorized use at each end of the SUBJECT PROPERTY to connect the nearest public street with land along the Sacramento River cleared in the State. The accessway at the south end of the property may be relocated once Raley's Landing is constructed if an equivalent accessway is available. The accessway at the north end may be over the existing dedicated "E" Street.

As Raley's Landing is developed, the PRIVATE PARTY and/or the City of West Sacramento are expected to return to the State Lands Commission seeking a lease for the berm area between the realigned levee and the present edge of water. The purpose of such a lease will be for the preservation of riparian habitat and public recreation. The staff and landscape architect for the PRIVATE PARTY are now working on a landscape plan. It is the intention of the City of West Sacramento to create a corridor for public use along the River from the Capitol Mall Bridge upstream to the Interstate 80 crossing. In conjunction with any lease for the berm area, the staff will seek modification of PRC 6002 to comport with the dock as built. It may be possible at that time to bring the lease for the berm area and the lease proposed by this calendar item into a single lease with a common term for easier administration of the area. Commercial activities of the lessee on any part of the lease premises are and will be subject to rent under provisions of the California Administrative Code. If the property is leased by the City of West Sacramento and used for public facilities without generating net revenue, the Commission will have the option of waiving rent. Regardless of whether the lessee is public or private, the protection of riparian areas and unrestricted public access to sovereign properties will be assured.

Commission staff and the Office of the Attorney General support the resolution of title issues in the SUBJECT PROPERTY through the Boundary Line Agreement now on file with the Sacramento office of the Commission. It will define the boundary of public property in the Sacramento River along a 1,600-foot stretch of river in West Sacramento between the Capitol Mall and I Street bridges. It also is the first step in establishing improved public access and use of the Sacramento River waterfront with a landscape plan approved by the 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 CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that the Boundary Line Agreement for which authority is sought is exempt from the requirements of the CEQA as a statutorily exempt project. The project is exempt because it involves settlements of title and boundary problems.

   Authority: P.R.C. 21080.11.

2. A Negative Declaration was prepared and adopted for the proposed levee realignment by the City of West Sacramento. The State Lands Commission's staff has reviewed such document and believes that it complies with the requirements of the CEQA.

EXHIBITS:

A. Site map for reference.
B. Location Map for reference.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE BOUNDARY LINE AGREEMENT 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 NEGATIVE DECLARATION WAS PREPARED AND ADOPTED FOR THE LEVEE REALIGNMENT PROJECT BY THE CITY OF WEST SACRAMENTO AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.

3. DETERMINE THAT THE PROJECT AS APPROVED WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT.

4. AUTHORIZE THE EXECUTIVE OFFICER OR HER DESIGNEE TO EXECUTE AND TO DELIVER INTO ESCROW FOR RECORDATION AT THE OFFICE OF THE COUNTY RECORDER OF YOLO COUNTY THE SUBJECT BOUNDARY LINE AGREEMENT IN A FORM SUBSTANTIALLY SIMILAR TO THAT NOW ON FILE IN THE OFFICES OF THE STATE LANDS COMMISSION AND INCLUDING ACCEPTANCE OF A GIFT DEED FROM THE PRIVATE PARTY.

5. AUTHORIZE THE EXECUTIVE OFFICER OR HER DESIGNEE AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS SHE/THEY DEEM NECESSARY OR APPROPRIATE TO EFFECTUATE THIS AGREEMENT, INCLUDING REPRESENTATION OF THE COMMISSION IN ANY LEGAL ACTION TO DETERMINE THE LEGALITY OF THIS AGREEMENT.

6. AUTHORIZE THE EXECUTIVE OFFICER OR HER DESIGNEE TO EXECUTE A 49-YEAR LEASE FOR LEVEE REALIGNMENT, CONSTRUCTION, AND OPERATION IN THE FORM OF LEASE SUBSTANTIALLY SIMILAR TO THAT NOW ON FILE IN THE COMMISSION'S SACRAMENTO OFFICE.

7. THE LEVEE REALIGNMENT WORK APPROVED BY THIS CALENDAR ITEM SHALL NOT BEGIN UNTIL THE BOUNDARY LINE AGREEMENT AUTHORIZED HEREIN HAS BEEN FULLY EXECUTED AND RECORDED AND THE LEASE AUTHORIZED HEREIN HAS BEEN EXECUTED BY THE PARTIES.

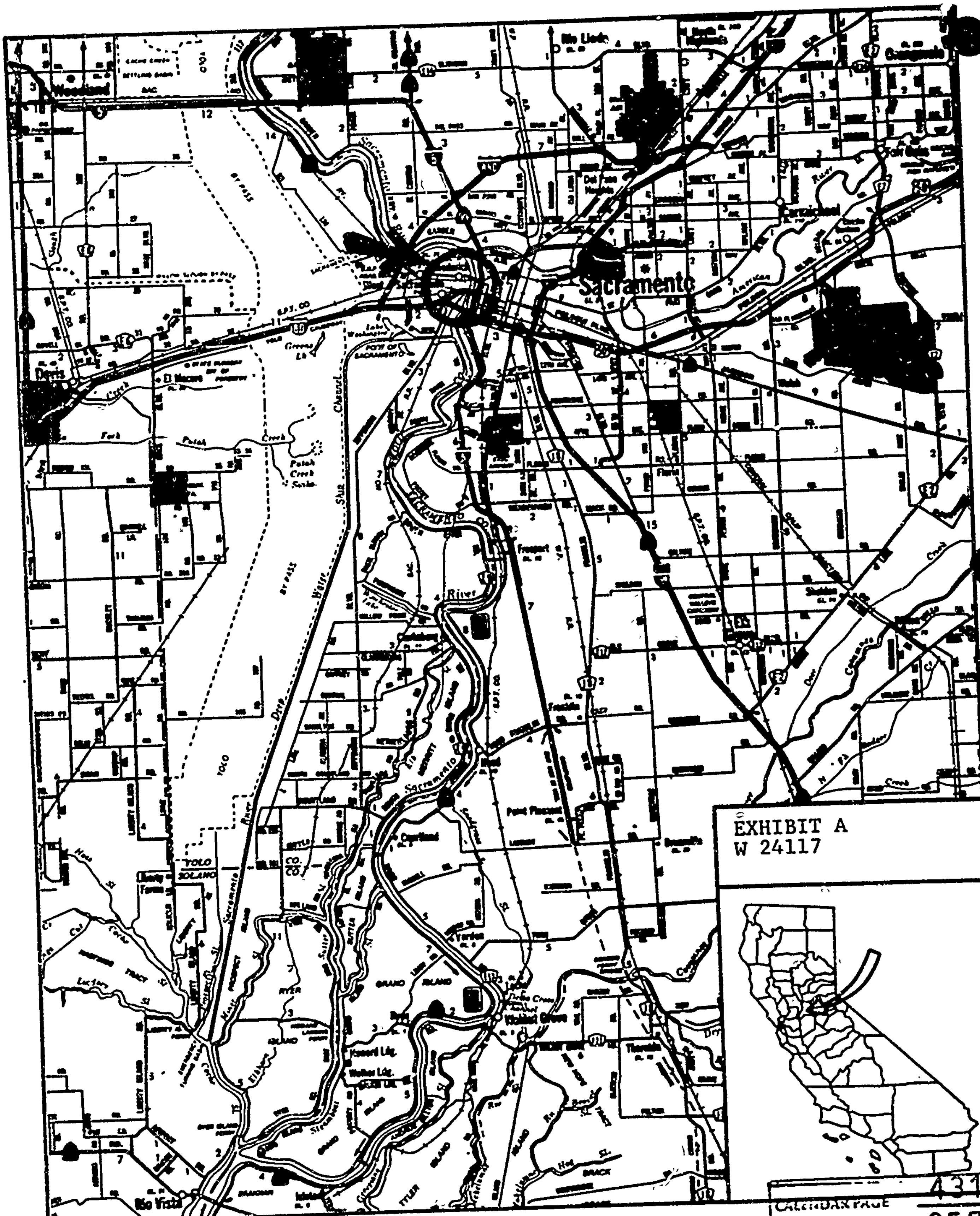

EXHIBIT A
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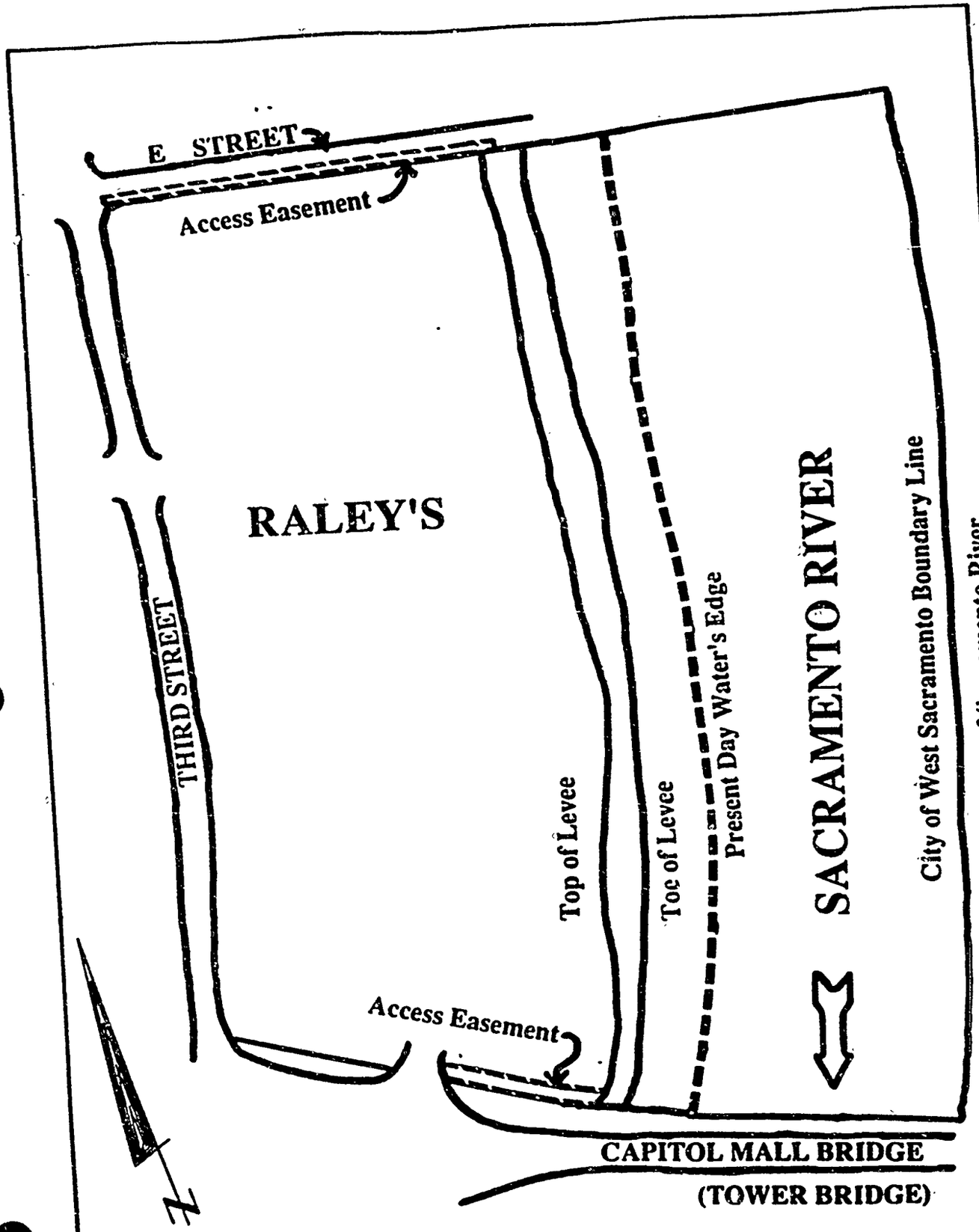

EXHIBIT B
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