

MINUTE ITEM

This Calendar Item No. 50
was approved as Minute Item
No. 50 by the State Lands
Commission by a vote of 3
to 0 at its 12-12-90
meeting.

CALENDAR ITEM

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PRC 2860

12/12/90
WP 2860
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**DENIAL OF MARINA APPLICATIONS FROM THE MARINA GROUP
(AND) THE CITY OF FOSTER CITY, AND AMENDMENT OF
PRIOR AUTHORITY REGARDING THE ISSUANCE
OF A PUBLIC AGENCY PERMIT TO THE
CALIFORNIA DEPARTMENT OF FISH AND GAME**

PARTIES:

The Marina Group
1240 Bayshore Boulevard, Suite 779
Burlingame, California 94010

City of Foster City
Attn: Mr. Richard D. Wykoff, City Manager
610 Foster City Boulevard
Foster City, California 94404

California Department of Fish and Game
Attn: Brian Hunter, Regional Manager
Region 3
P. O. Box 47
Yountville, California 94599

AREA, TYPE LAND AND LOCATION:

A 33.401-acre parcel of filled and unfilled
sovereign lands, Belmont Slough, Foster City,
San Mateo County.

LAND USE:

For purposes consistent with the Public Trust,
including recreation, protection and
enhancement of the environment, and other uses
not inconsistent with wildlife and
environmental values.

CALENDAR ITEM NO. 50 (CONT'D)

TERMS OF ORIGINAL AUTHORIZATION: (Minute Item C7, September 30, 1976)

Initial period: Sixty-six (66) years beginning October 1, 1976.

Consideration: The statewide public use and benefit in the management of the parcel for purposes consistent with the public sovereign trust, including preservation of the status quo, protection of the environment, and public recreation; and with the Commission reserving the right, at any time, to set a monetary rental if the Commission finds such action to be in the State's best interest.

TERMS OF PROPOSED AMENDMENT TO THE FOREGOING AUTHORIZATION:

Revision of land description to conform with Boundary Line Agreement No. 159, approved by the Commission under Minute Item 18, July 26, 1977.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that, with regard to the denial of applications, the activity is exempt from the requirements of the CEQA as a statutorily exempt project. The project is exempt because CEQA does not apply to projects which a public agency rejects or disapproves; and with regard to the approval and amendment of a public agency permit to the Department of Fish and Game, the activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

CALENDAR ITEM NO. 50 (CONT'D)

Authorities: (1) P.R.C. 2180(b)(5) and 14 Cal Code Regs. 15270; (2) P.R.C. 21065 and 14 Cal. Code Regs. 15378.

2. On September 30, 1976, Minute Item C7, the Commission approved the issuance of 66-year public agency permit to the Department of Fish and Game, covering approximately 33.40 acres of sovereign land at Belmont Slough, City of Foster City, San Mateo County, for purposes consistent with the public sovereign trust, including recreation, protection and enhancement of the environment and other uses not inconsistent with wildlife and environmental values.
3. At the time of the above approval, the Commission also found that a lease term of 66 years would be in the best interests of the State and necessary for the protection and preservation of the lands which were the subject of the permit. Minute Item C7 additionally contains the following statement:

"During consideration of Calendar Item C7, attached, Mr. N. Gregory Taylor, Assistant Attorney General, stated that an insertion is going to be put into the lease to the Department of Fish and Game to retain the right to fix the common boundary between this parcel and West Bay parcel, so that we don't have to obtain the approval of the Department of Fish and Game at a subsequent time. We just retain the right to fix the boundary."
4. The authorized permit was never issued. Shortly after the Commission meeting, representatives of the City of Foster City met with Fish and Game, the United States Fish and Wildlife Service, and Commission staff, relative to a possible use of the subject property as a marina site. By letter dated July 5, 1977, the Department of Fish and Game requested Commission staff to start the processing of a marina

development for the benefit of the City of Foster City. Such request was later annulled, as described in Paragraph 7 below.

5. Concurrent with actions taken by various parties regarding a possible marina at Belmont Slough, the Commission and West Bay Community Associates concluded a boundary line agreement which fixed the common boundary between the 33.40-acre parcel herein and the adjacent West Bay property. The Commission approved the settlement, BLA 159, on July 26, 1977, Minute Item 18. The boundary determination necessitates the amendment of the land description previously adopted by the Commission on September 30, 1976, Minute Item C7; as revised, and as shown on Exhibit "A" herein, the new land description, for use in the permit to be issued to the Department of Fish and Game, is now consistent with BLA 159.
6. Two applications were later received by the Commission for a marina at the Belmont Slough site: The first was received from The Marina Group of Burlingame, California, under a letter dated March 21, 1986. That application was declared incomplete by the staff on June 25, 1986 and remains so to this day; the second application was submitted by the City of Foster City under letter dated February 24, 1987. The application was declared incomplete on March 13, 1987 and remains so to this day.
7. Environmental objection to a marina development at the Belmont Slough site has been vigorous and consistent. Steady opposition from public agencies and private individuals is a matter of record and the City of Foster City, as Lead Agency, has been unable to overcome objections filed by those opposing such development. In addition, the Department of Fish and Game has specifically withdrawn its previous

CALENDAR ITEM NO. 50 (CONT'D)

support for the marina, and has requested, under letter dated September 13, 1990, that the earlier authorized lease to Fish and Game be finalized. A copy of the letter is attached as Exhibit "C".

8. In view of the factual situation, the staff believes that the permit to Fish and Game should be issued as originally authorized, excepting a rescission of the land description adopted in 1976, and replacement thereof with the land description shown on Exhibit "A" and that the marina applications by The Marina Group and the City of Foster City should be denied.

EXHIBITS:

- A. Land Description.
- B. Location Map.
- C. Letter dated September 13, 1990 from the California Department of Fish and Game.

IT IS RECOMMENDED THAT THE COMMISSION:

1. AS TO THE RECOMMENDED ACTION RELATIVE TO THE APPLICATIONS FOR A MARINA DEVELOPMENT SUBMITTED BY THE MARINA GROUP AND BY THE CITY OF FOSTER CITY, FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. 21080(A)(5) AND 14 CAL. CODE REGS. 15270, PROJECTS WHICH A PUBLIC AGENCY REJECTS OR DISAPPROVES.
2. DENY THE APPLICATIONS FOR A MARINA DEVELOPMENT SUBMITTED BY THE MARINA GROUP AND BY THE CITY OF FOSTER CITY.
3. AS TO THE RECOMMENDED ACTIONS ON THE PUBLIC AGENCY PERMIT TO THE STATE DEPARTMENT OF FISH AND GAME, FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. CODE REGS. 15378.
4. RESCIND EXHIBIT "A", LAND DESCRIPTION, PREVIOUSLY ADOPTED UNDER MINUTE ITEM 18, ON SEPTEMBER 30, 1976.

CALENDAR ITEM NO. 50 (CONT'D)

5. APPROVE NEW EXHIBIT "A", LAND DESCRIPTION, ATTACHED HERETO AND BY REFERENCE MADE APART HEREOF.
6. DIRECT STAFF TO PROCEED WITH THE ISSUANCE OF PERMIT PRC 2860 TO THE STATE DEPARTMENT OF FISH AND GAME, COVERING THE LAND DESCRIBED IN SAID ATTACHED NEW EXHIBIT "A" UNDER THE TERMS OTHERWISE SET OUT IN MINUTE ITEM C7, DATED SEPTEMBER 30, 1976.

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EXHIBIT "A"

WP 2860

LAND DESCRIPTION

PARCEL "A"

A parcel of tide and submerged land in the bed of Belmont Slough, San Mateo County, being a portion of Section 25, T4S, R4W, MDM, more particularly described as follows:

COMMENCING at the southwest corner of said Section 25; thence along the southerly line of said section, S 88° 57' 12" E 1,976.48 feet to the southeast corner of lands described as Parcel 4 in the deed from Schilling Estate Company to T. Jack Foster, recorded September 2, 1960 in Volume 3854 at page 507 of Official Records of San Mateo County; thence leaving said lands and continuing S 88° 57' 12" E 148.06 feet along said southerly section line to the POINT OF BEGINNING; thence N 32° 38' 30" E 1,605.69 feet; thence N 62° 28' 00" E 661.61 feet; thence N 46° 50' 58" E 270.60 feet; thence N 25° 25' 07" W 386.88 feet; thence N 04° 10' 57" E 415.99 feet to an angle point on the easterly line of said Parcel 4; thence along said easterly line S 38° 57' 12" E, said line also being the most southwesterly line that 64.94 acres parcel of land described as Parcel C-3 in the Record of Survey recorded in July, 1977 in Volume 8 at page 81 of Official Records of San Mateo County, 659.96 feet to the southerly corner of said Parcel C-3; thence leaving said corner of Parcel C-3 and the abovementioned easterly line of Parcel 4, N 23° 19' 00" E 691.84 feet, said line also being the easterly line of said Parcel C-3, to a point on the edge of marsh land at the westerly bank of Belmont Slough; thence along said westerly bank the following courses: S 07° 10' E 286.18 feet; S 18° 35' W 391.97 feet; S 28° 40' W 652.96 feet; S 44° 20' W 489.97; S 53° 25' W 793.96; S 43° 30' W 671.96 feet and S 35° 02' 48" W 236.98 feet to the southerly line of said Section 25; thence along said line N 88° 57' 12" 222.23 feet to the POINT OF BEGINNING.

LAND DESCRIPTION

PARCEL "B"

A parcel of tide and submerged land in the bed of Belmont Slough, San Mateo County, being a portion of Section 25, T4S, R4W, MDM, more particularly described as follows:

COMMENCING at the southwest corner of said Section 25; thence along the southerly line of said section, S 88° 57' 12" E 1,976.48 feet to the southeast corner of lands described as Parcel 4 in the deed from Schilling Estate Company to T. Jack Foster, recorded September 2, 1960 in Volume 3854 at page 507 of Official Records of San Mateo County; thence leaving said lands and continuing S 88° 57' 12" E 370.29 feet along said southerly section line to the POINT OF BEGINNING and the following 16 courses:

1. N 35° 02' 48" E 236.98 feet;
2. N 43° 30' 00" E 671.96 feet;
3. N 53° 25' 00" E 793.96 feet;
4. N 44° 20' 00" E 489.97 feet;
5. N 28° 40' 00" E 652.96 feet;
6. N 18° 35' 00" E 391.97 feet;
7. N 07° 10' 00" W 286.18 feet;
8. N 79° 02' 48" E 75.16 feet;
9. S 07° 10' 00" E 308.28 feet;
10. S 18° 35' 00" W 415.72 feet;
11. S 28° 40' 00" W 669.89 feet;
12. S 44° 20' 00" W 506.25 feet;
13. S 53° 25' 00" W 793.41 feet;
14. S 43° 30' 00" W 659.91 feet;
15. S 35° 02' 48" W 232.55 feet;
16. N 54° 06' 34" W 75.01 feet to the POINT OF BEGINNING.

END OF DESCRIPTION

REVISED OCTOBER, 1990 BY LLB.

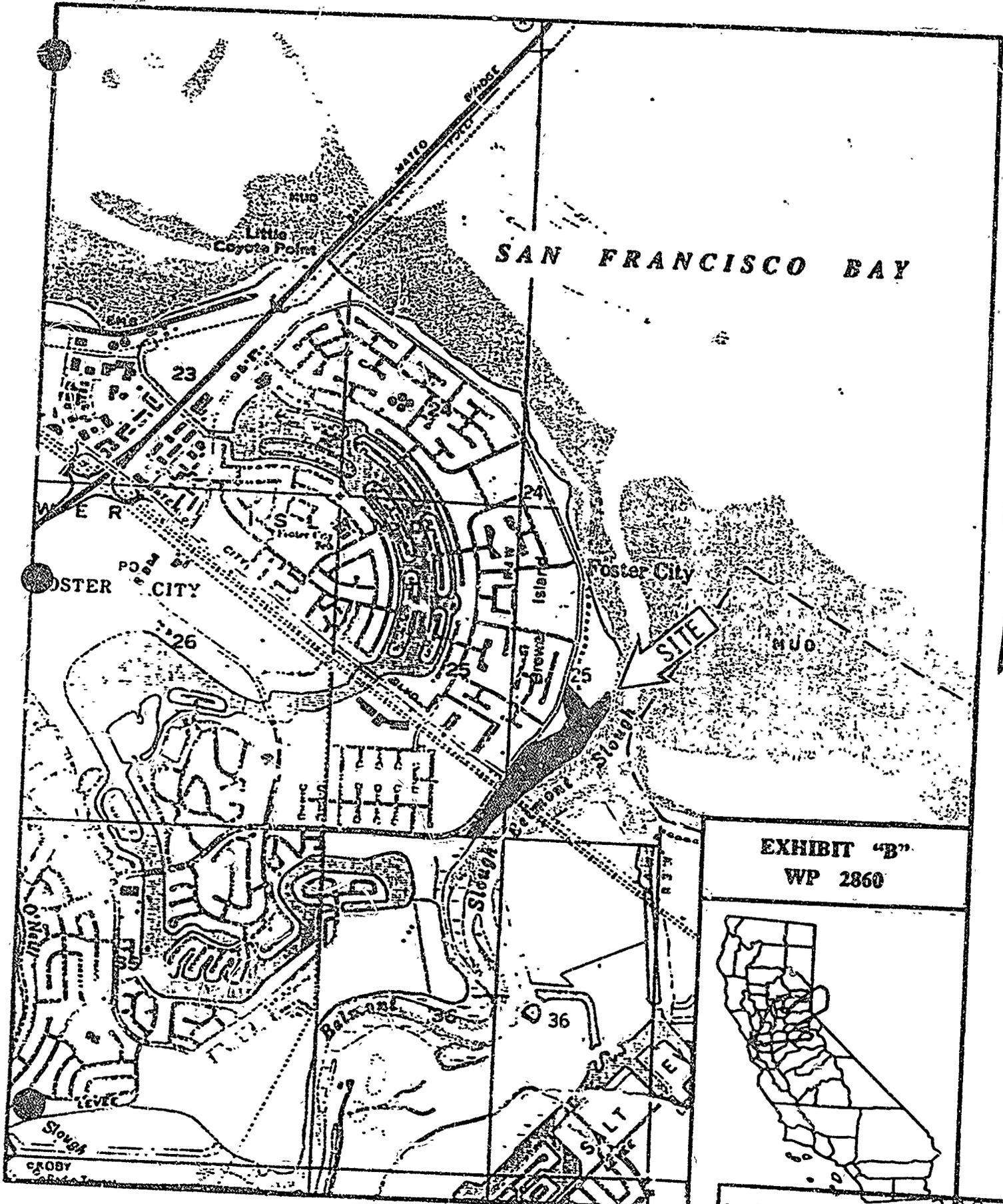


EXHIBIT "B"
WP 2860



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DEPARTMENT OF FISH AND GAME

POST OFFICE BOX 47
YOUNTVILLE, CALIFORNIA 95899
(707) 944-5300

September 13, 1990

EXHIBIT "C"

Mr. Herbert A. Maricle
Associate Land Agent
State of California
1807 - 13th Street
Sacramento, CA 95814

Dear Mr. Maricle:

In our letter of June 22, 1990, the Department of Fish and Game requested finalization of lease 930-76 (File # 2860) for sovereign lands within Belmont Slough, Foster City, San Mateo County. In response, you have raised the fact that in the past the Department has entertained a proposal by Foster City to provide substitute habitat to allow marina development in the area of the lease.

The lease area supports habitat for the state and federally listed California clapper rail and salt marsh harvest mouse. In addition, the area contains extensive intertidal mudflats which provide high value foraging habitat for migratory shorebirds.

The Department has been approached by Foster City in the past to develop suitable compensation for marina development in the lease area. These discussions have resulted in identification of no suitable alternate sites. There are currently no negotiations between the Department and Foster City on this matter. As noted above, no suitable compensation sites have been identified nor do we believe any are available which would conform with the Department's wetland policy. This policy requires that projects result in no net loss of either wetland acreage or habitat value.

Again, we request that lease 930-76 be finalized. Questions concerning this matter should be directed to Carl Wilcox, Associate Wildlife Biologist, at (707) 944-5525.

Sincerely,



Brian Hunter
Regional Manager
Region 3

cc: Georgia Lipphardt, WCB
Diana Jacobs, State Lands Commission
Richard D. Wykoff, City Manager, Foster City

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