

MINUTE ITEM

This Calendar Item No. 48  
was approved as Minute Item  
No. 48 by the State Lands  
Commission by a vote of 3  
to 0 at its 5/27/82  
meeting.

CALENDAR ITEM

48

5/27/82  
W 503.1091  
A. Scott  
Fossum  
Collins  
G 09-01

LEGAL PROCEEDINGS - 9th STREET BEACH  
AT THE FOOT OF 1000 STEPS  
IN SOUTH LAGUNA BEACH, ORANGE COUNTY

The Commission's staff has received a number of inquiries relating to the State's possible interest in certain beach areas known as the 9th Street Beach in South Laguna Beach. (Ownership of these lands is presently claimed by 40 adjoining upland property owners who have homes and other improvements on subdivided lots located on overlooking bluffs some 150 feet above the beach.) These inquiries have related to, among other things, the following matters: (a) the seaward boundaries of the upland properties; (b) whether or not the State has a sovereign claim to portions of the beach as a result of artificial accretion under Carpenter v. City of Santa Monica, 63 Cal. App. 2d 772; and (c) whether or not the public has implied easement rights over the beach or portions thereof for recreational and access purposes under Gion v. City of Santa Cruz (1970) 2 Cal. 3d 29. In addition to the above inquiries, for many years there has also been the related question as to the public's rights to use that stairway known as "1000 Steps" which leads from the bluff top along Pacific Coast Highway to the beach. The County of Orange claimed fee and easement interests in those Steps while the upland property owners denied those claims.

In a recent decision, South Laguna Coves Association v. Board of Supervisors, et al., OCSC No. 29-72-81 the court upheld the County's claim to the Steps, found that the mean high tide line along the 9th Street Beach has never been determined and ruled that this beach was not subject to public recreational and access easements arising by virtue of implied dedication. The State was not informed that the boundary and implied dedication issues were part of this lawsuit until after judgment. The judgment is on appeal; staff recommends that the Commission authorize staff and the Office of the Attorney General to take appropriate action to protect public rights in the area including but not limited to determining the location of the ordinary high water mark, intervening in the aforementioned appeal

A 74

S 36

CALENDAR PAGE	<u>202</u>
MINUTE PAGE	<u>1410</u>

CALENDAR ITEM NO. 48 (CONTD)

and seeking a new trial therein. Such action will also include staff endeavoring to see if grounds exist for a resolution of the matter by negotiated agreement of affected parties.

BACKGROUND:

1000 Steps in South Laguna Beach was built in the 1920's by the developer of the subdivision of the two upland tracts of land involved. One tract is situated landward of the Pacific Coast Highway, comprised of approximately 500 lots; the other tract is between Pacific Coast Highway and the ocean, comprised of approximately 40 lots. All parcels within the subdivision were granted easements for ingress and egress in 1000 Steps; the underlying fee remained in the Three Arch Investment Company. Early in the 1970's the company quitclaimed its interest in 1000 Steps to Orange County. The County also acquired interests in the Steps from some of the homeowners. The County declared the Steps to be a public and private nuisance due to their dilapidated condition and applied for a coastal permit to repair them. This permit was granted. The County, using Coastal Conservancy funds, intended to repair the Steps and open them to public use, the Steps having been recently blocked by a locked gate allowing only the tract owners to use them. The homeowners brought an action against the County and the Coastal Commission to enjoin the repair of the Steps and opening to the public. Two years lapsed since the permit's issuance and therefore it expired. The suit became moot regarding the coastal permit and so the Coastal Commission was dismissed out of the lawsuit. The suit proceeded against the County who also cross-complained. At the pretrial conference the court ordered the issue of implied dedication of the beach and the beach boundary line be tried along with the issues relating to ownership of the Steps. The State was not apprised of the fact that these issues were added

CALENDAR ITEM NO. 48 (CONTD)

to the lawsuit and only learned of this fact after judgment.

The court found that the County had a fee interest in the 1000 Steps and could open them for public access to the tidelands. The court also found insufficient public use to give rise to implied dedication of the beach above the mean high tide line. The court noted, however, that the public could use the beach below the mean high tide. The County disagrees with the trial court's conclusion and is appealing the implied dedication issue.

Earlier this year, staff of the Coastal Commission asked that the Attorney General's Office take appropriate action to protect the public's interest in the area. That office's review of the situation has revealed that the implied dedication issue may be overturned on appeal (this is subject to a review of the Reporter's Transcript which is still being prepared). Irrespective of that, there is a question as to whether the trial court decision should be vacated and a new trial ordered on grounds that the State was an indispensable party and, independently of the foregoing, it is important to determine the location of the ordinary high water mark so that the public will know the area which it may use. At least as to the last item, the Commission is the public agency which has authority to make such a determination by litigation or agreement.

The Coastal Commission and the County of Orange have each requested that the State Lands Commission become involved in this case. (The Coastal Commission may also become a party.) Both believe that continued public access to this outstanding beach in highly populated Orange County must be maintained and that the State Lands Commission is the most appropriate agency with authority to assert the public rights due to its ownership of the adjacent tide and submerged lands.

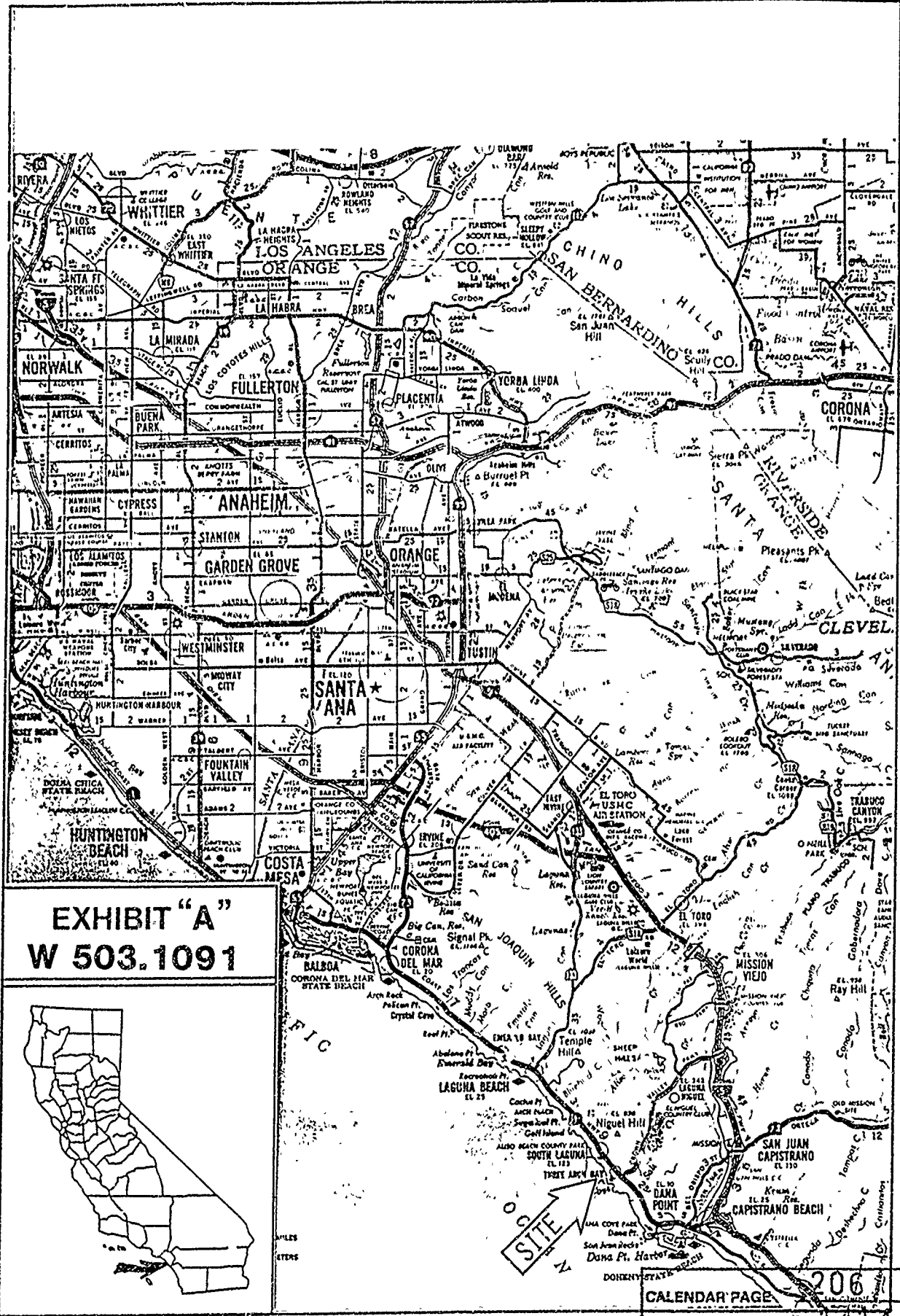
CALENDAR ITEM NO. 48 (CONTD)

AB 884: N/A.

EXHIBITS: A. Site Map.  
B. Area of Potential Litigation.

IT IS RECOMMENDED THAT THE COMMISSION:

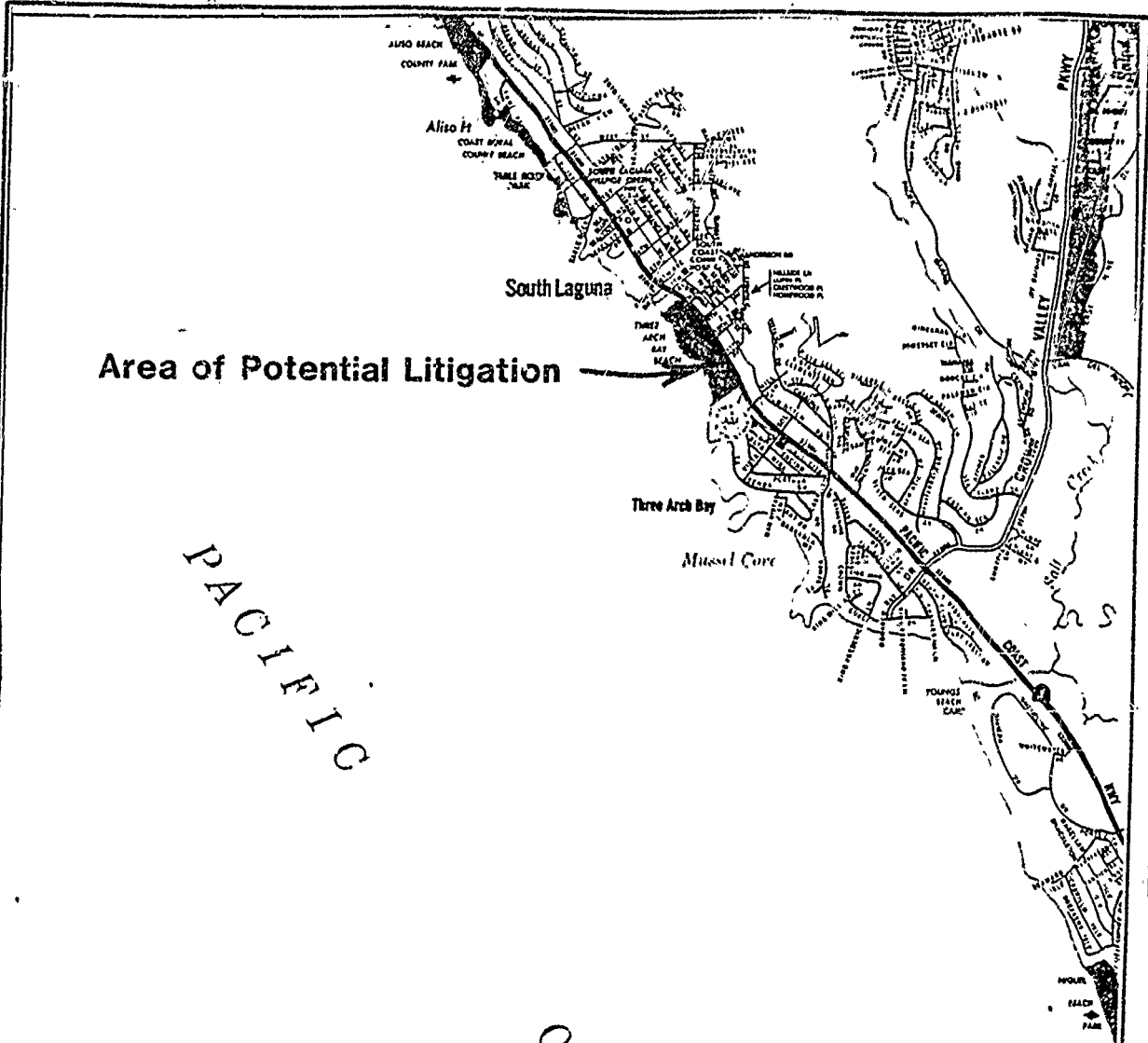
1. AUTHORIZE THE OFFICE OF THE ATTORNEY GENERAL AND THE STATE LANDS COMMISSION STAFF TO TAKE WHATEVER STEPS ARE NECESSARY, INCLUDING THE INITIATION OF LITIGATION, OR THE INTERVENTION INTO CURRENT LITIGATION, TO PROTECT THE PUBLIC'S RIGHTS IN THE 9TH STREET BEACH AT 1000 STEPS IN SOUTH LAGUNA BEACH, COUNTY OF ORANGE.



**EXHIBIT "A"**  
**W 503.1091**



**CALENDAR PAGE 206**  
**MINUTE PAGE 1414**



**EXHIBIT "B"**  
**W 503.1091**

