

**CALENDAR ITEM
C111**

A	10	09/20/13 W26186 AD 516 G06-00
S	2	E. Milstein J. Koepke

CONSIDER A COMPROMISE TITLE SETTLEMENT, EXCHANGE AND BOUNDARY LINE AGREEMENT BETWEEN THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE STATE LANDS COMMISSION; THE STECKLER-PACIFIC CO., INC.; COUNTY OF MARIN, HELEN GALATOLO; THE HONORABLE POLYXENI STEFANIDOU, CONSUL GENERAL OF GREECE AT SAN FRANCISCO, CALIFORNIA AS TRUSTEE OF THE KRATICO NOSOCOMIO A/K/A GENERAL PUBLIC HOSPITAL OF KALMATA TRUST; AND DOROTHY J. STECKLER

PARTIES:

Steckler-Pacific Co., Inc., a California Corporation

Helen Galatolo, an individual

Honorable Polyxeni Stefanidou, Consul General of Greece at San Francisco, CA, as trustee of the Kratico Nosocomio a/k/a General Public Hospital of Kalamata Trust

Dorothy J. Steckler, an individual

County of Marin

State of California, acting by and through the California State Lands Commission

PROPOSED AGREEMENT:

The Steckler-Kappas Marina ("Marina") is constructed on lots within Richardson Bay, which were sold by the state Board of Tide Lands Commissioners in the late 1800's. These water-covered lots are privately owned, but are subject to a public trust easement held by the State of California. (*City of Berkeley v. Alameda County Superior Court* (1980) 26 Cal 3d 515). Portions of the docks and many of the houseboats within the Marina extend onto water-covered streets reserved to the State, subsequently granted to the County of Marin ("County"), in trust for the people of the State of California.

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Under the proposed Compromise Title Settlement, Exchange and Boundary Line Agreement (referred to collectively hereinafter as the Agreement), the State Lands Commission will exchange approximately 2.33 acres of State-owned tidelands, which would still be subject to the public trust easement (referred to in Exhibit A as "Private Fee Lands Subject to the Public Trust"), and all of its interest in approximately 2.47 acres of privately owned uplands free of the public trust easement ("Private Fee Lands Free of the Public Trust") in return for approximately 2.32 acres of tidelands and approximately 19.44 acres of unfilled Board of Tideland Commissioners Lots, all to be held as sovereign lands subject to the public trust easement ("State Fee Lands Subject to the Public Trust"). The locations of the proposed exchange parcels are depicted on Exhibit A.

The Agreement also establishes a boundary line between the privately-held upland, which is free of the public trust easement, and sovereign tide and submerged land subject to the public trust easement. In addition to the lands that will be received in the exchange, the State will also receive a pedestrian easement on the private upland along the shoreline adjoining the agreed upon boundary line (Exhibit B).

BACKGROUND:

Upon its admission to the United States of America on September 9, 1850, the State, by virtue of its sovereignty, received in trust for the purposes of commerce, navigation and fishery, all rights, title, and interest in ungranted tidelands and submerged lands and beds of navigable waterways within its borders.

Under Article X, section 3 of the California Constitution, the State may sell tidelands within two miles of any incorporated city, city and county, or town in the State, and fronting on the water of any harbor, estuary, bay, or inlet which were reserved to the State solely for street purposes, to any town, city, county, city and county, municipal corporations, private persons, partnerships or corporation, subject to such conditions as the Legislature determines are necessary to be imposed in connection with any such sales in order to protect the public interest, if the Legislature finds and declares that such tidelands are not used for navigation purposes and are not necessary for such purposes.

Pursuant to the provisions of Division 6 (commencing with Section 6001) of the Public Resources Code, the State Lands Commission is vested with jurisdiction and authority as to all right, title, and interest in tidelands and submerged lands held by the State in trust for the benefit of all the people of the State. The State, acting through the State Lands Commission, is authorized by Section 6357 of the

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Public Resources Code to establish by agreement the ordinary high water mark whenever it is deemed expedient or necessary.

Pursuant to Chapter 543 of the Statutes of 1867-1868, as amended by Chapter 388 of the Statutes of 1869-1870, the Board of Tide Land Commissioners sold tideland lots in various areas around San Francisco Bay. In the area that is the subject of the Agreement, the streets surrounding tidelands lots were reserved to the State solely for street purposes. The State also retained title to an area designated as "Rosedale Canal."

In 1959, the State Legislature granted to the County, pursuant to Chapter 497 of the Statutes of 1959 (the "Grant"), all the right, title, and interest in these streets, the Rosedale Canal, and other designated areas in Marin County held by the State by virtue of its sovereignty (herein the "Granted Lands"). The Grant provides that these streets shall "be forever held by said county and its successors, in trust for the uses and purposes and upon the express conditions following." The Grant lists specific authorized uses including the conduct of a harbor and establishes the landward limit of the Grant. The Grant also permits the County to lease the Granted Lands "for purposes consistent with the trust upon which said lands are held by the State of California and with the requirements of commerce and navigation at said harbor." The Grant was amended in 1969 pursuant to Chapter 1375 of the Statutes of 1969. This 1969 amendment required that the lands be used "for purposes in which there is a statewide interest." This requirement was followed by a list of potential uses, including a harbor, airport, construction of highways, public buildings, a small boat harbor, preservation of land in its natural state and a marine biological reserve.

On May 8, 1984, the County entered into a lease with Steckler-Pacific Co., Inc. for a portion of the Granted Lands. Those portions of the Granted Lands are now, and have been for many years, used for the permanent mooring of houseboats. The use of the Granted Lands for the permanent mooring of houseboats is neither a purpose or use that is consistent with the Public Trust Doctrine nor in which there is a statewide public interest, but moving the houseboats would require the construction of new docks and other facilities followed by vessel relocation which would have potentially significant adverse impacts to San Francisco Bay.

Pursuant to legislation enacted on January 1, 2007, California, Stats. 2006, Ch. 403, (the "Act"), the Commission is vested with jurisdiction and authority to enter into an exchange and sale of right, title, and interest in certain tidelands and submerged lands located in Richardson, Bay, County of Marin, California, which the State holds in trust for the benefit of all the people of the State.

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LEGAL REQUIREMENTS:

Pursuant to the Act, the Commission is authorized to enter into, "one or more agreements with the county and with the lessees of the (G)ranted (L)ands who also own privately owned tidelands subject to the public trust in Richardson Bay for the sale or exchange of lands, the settlement of boundaries, confirmation of title, and the establishment of an agreed ordinary high water mark provided the commission finds and declares that any such agreement and underlying sale or exchange, boundary settlement, confirmation of title, and agreed ordinary high water mark meet all of the following criteria:

- The agreement is consistent with the findings and declarations in Section 2 of this Act.
- The commission has independently conducted a review and analysis of the pertinent information bearing upon the relevant parcels and water bodies, including a review of all documents, surveys, and deed descriptions of record. The commission has also physically inspected and investigated the parcels included in any such agreement, and has concluded, based on its findings, that the boundary lines, including without limitation any agreed ordinary high water mark, are supported by fact and law.
- The agreement provides the public with a significant public benefit because it will modify the existing pattern of state ownership to consolidate the state's sovereign ownership in this property in a pattern that will enhance the state's use of this property for public trust purposes.
- The agreement provides that lands not needed for navigation, not providing statewide public trust benefits, and currently used for private residential purposes will be sold or exchanged for privately owned open water areas that will be used for purposes providing statewide public trust benefits, including fisheries, recreation, and open space.
- The agreement provides the public with a significant public benefit by establishing an agreed ordinary high water mark along the affected shoreline of Richardson Bay.
- A sale or exchange pursuant to such an agreement will not diminish the amount of property potentially available for public trust uses because the lands conveyed to a private party pursuant to the agreement which are bayward of the agreed ordinary high water mark shall remain subject to the public trust.
- The agreement to sell or exchange property provides the public with a significant public benefit because the property which the state will receive pursuant to a sale or exchange provided for in the agreement will be held by the State as state-owned sovereign tide and submerged lands, and the monetary value of the interests in property that the state will receive pursuant to the agreement and sale or exchange will be equal to or greater than the

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monetary value of the property being sold or exchange to a private party to the agreement.”

OTHER PERTINENT INFORMATION:

1. The State, acting by and through the Commission, is authorized under Chapter 403, Statutes of 2006, to enter into the subject Agreement.
2. The County of Marin is the State’s trustee of the legislatively granted sovereign tide and submerged lands pursuant to, *inter alia*, Chapter 497, Statutes of 1959 and as amended.
3. The County will terminate existing restrictive covenants agreements with Steckler-Pacific and will quitclaim its interest in the certain parcels to the State.
4. The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a statutorily exempt project. The project is exempt because it involves settlement of title and boundary problems.

Authority: Public Resources Code section 21080.11 and California Code of Regulations, Title 14, section 15282, subdivision (f).

STAFF ANALYSIS:

Commission staff has reviewed information including appraisals, surveys, title reports, and other studies conducted for the proposed Agreement, as well as physically inspecting and investigating the parcels included in the Agreement. Approval of the Agreement will, by exchanging parcels, eliminate inconsistent trust uses on sovereign trust lands and allow residential uses only on water-covered land in which the fee title is privately owned. Furthermore, the Agreement will set a boundary between privately-owned upland free of the public trust easement and sovereign land subject to the public trust easement for commerce, navigation, and fisheries. In addition to the lands that will be received in the exchange, the State will also receive a pedestrian easement on the private upland adjoining the agreed upon boundary line that will provide access for the public to and along the San Francisco Bay.

Through the terms of the Agreement, the required findings under Section 3 of the Act and the California Constitution, Article X, may all be made. The Agreement is in the statewide public interest for several reasons:

- It will provide the public with a significant benefit because it will modify the existing pattern of state ownership to consolidate the state’s sovereign ownership

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in this property in a pattern that will enhance the state's use of this property for public trust purposes;

- It will provide that lands not needed for navigation, not providing statewide public trust benefits, and currently used for private residential purposes will be exchanged for privately owned open water areas that will be used for purposes providing statewide public trust benefits, including fisheries, recreation, and open space;
- It will provide the public with a significant public benefit by establishing an agreed ordinary high water mark along the affected shoreline of Richardson Bay;
- It will not diminish the amount of property potentially available for public trust uses because the lands conveyed to a private party pursuant to the Agreement which are bayward of the agreed ordinary high water mark shall remain subject to the public trust; and
- It will provide the public with a significant public benefit because the property that the state will receive pursuant to the exchange provided for in the agreement will be held by the state as state owned sovereign tide and submerged lands, and the monetary value of the interests in property that the state will receive pursuant to the Agreement will be equal to or greater than the monetary value of the property being sold or exchanged to a private party to the Agreement.

Additionally, through BCDC's permit and permit conditions, the construction of shoreline improvements at private expense for public access and viewing will be required.

Commission staff and the Office of the Attorney General have reviewed the proposed Agreement and believe all necessary legal elements have been met.

EXHIBITS:

- A. Location and Site Map of the Trust Parcels and Trust Termination Parcels
- B. Location and Site Map of the Pedestrian Easement Parcel

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080.11 and California Code of Regulations, Title 14, section 15282, subdivision (f), settlement of title and boundary problems.

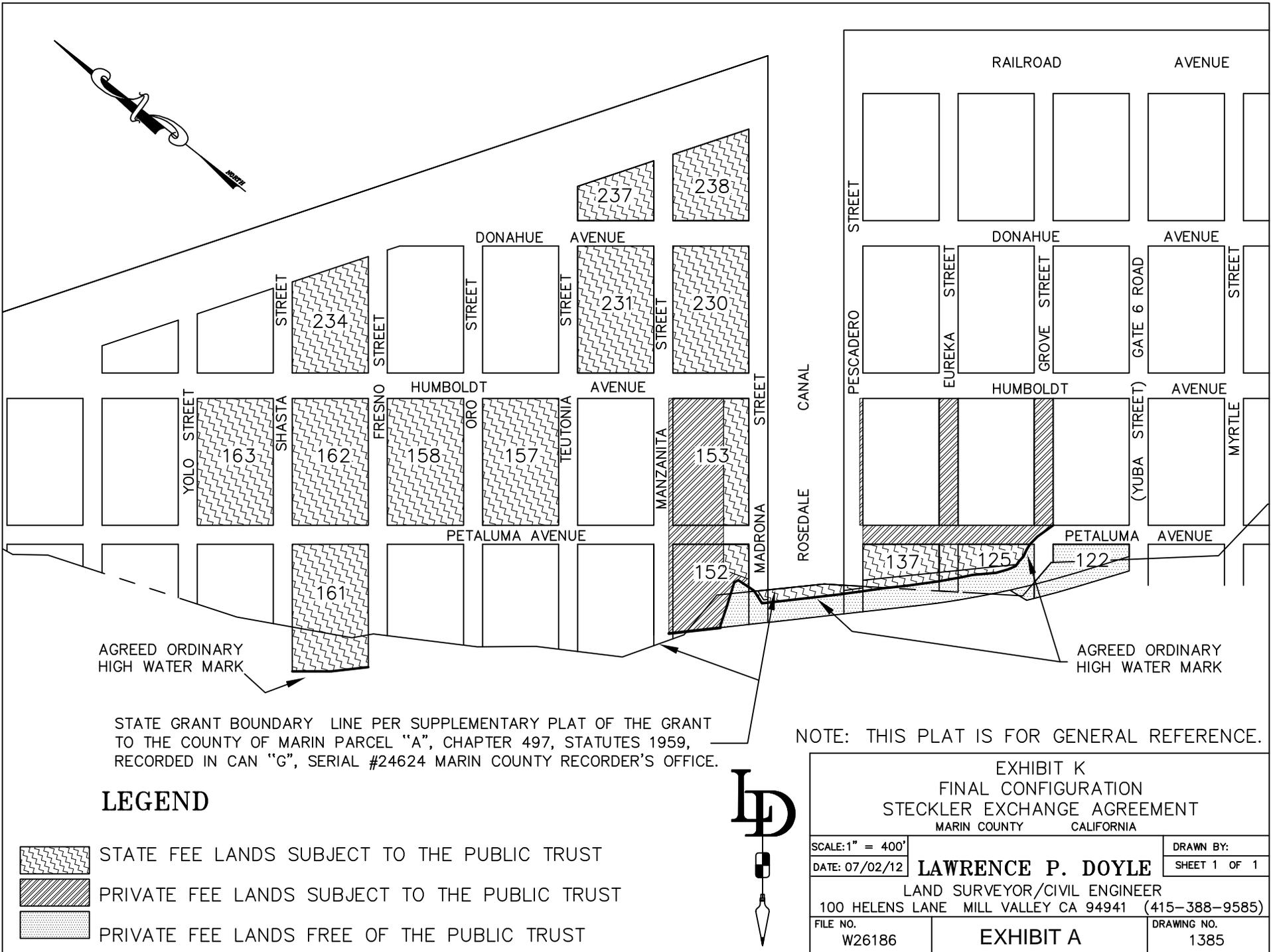
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AUTHORIZATION:

1. Find that, with respect to the Agreement, which findings shall be effective upon recordation as provided in the Agreement:
 - A. The Agreement is consistent with the findings and declarations in Section 2 of Chapter 403, Statutes of 2006.
 - B. The Commission has independently conducted a review and analysis of the pertinent information, including a review of all documents, surveys, and deed descriptions of record. The Commission has also physically inspected and investigated the parcels included in any such agreement, and has concluded, based on its findings, that the boundary lines, including without limitation any agreed ordinary high water mark, are supported by fact and law.
 - C. The Agreement will modify the existing pattern of State ownership to enhance the State's use of this property for public trust purposes.
 - D. The Agreement will provide the public with a significant public benefit because it will increase the amount of sovereign land available for public trust purposes.
 - E. The Agreement provides that lands not needed for navigation, not providing statewide public trust benefits, and currently used for private residential purposes will be sold or exchanged for privately owned open water areas that will be used for purposes providing statewide public trust benefits, including fisheries, recreation, and open space.
 - F. The Agreement provides the public with a significant public benefit by establishing an agreed ordinary high water mark along the affected shoreline of Richardson Bay.
 - G. The exchange pursuant to the Agreement will not diminish the amount of property potentially available for public trust uses because the lands conveyed to a private party pursuant to the Agreement which are bayward of the agreed ordinary high water mark shall remain subject to the public trust.
 - H. The Agreement will not create a substantial interference with public trust uses and purposes.
 - I. The State Fee Lands Subject to the Public Trust have a monetary value equal to or greater than the monetary value of the Private Fee Lands Subject to the Public Trust and the Private Fee Lands Free of the Public Trust.
2. Find that this Agreement shall terminate any and all public trust claims from the Private Fee Lands that are being conveyed by the State to the Parties, reserving the public trust easement on the Private Fee Lands Subject to the Public Trust.

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3. Find that the lands to be conveyed in fee to the State of California, acting by and through the Commission, are to be accepted as public trust lands for the benefit of the people of the State of California, to be held by the County for public trust purposes, with minerals reserved to the State.
4. Approve and authorize the execution, acknowledgement, and recordation of the Agreement and associated patents/deeds and acceptances on behalf of the Commission, in substantially the form of the copy of such agreement on file with the Commission.
5. Authorize and direct the staff of the Commission and/or the California Attorney General to take all necessary or appropriate action on behalf of the California State Lands Commission, including the execution, acknowledgement, acceptance, and recordation of all documents as may be necessary or convenient to carry out the Agreement; and to appear on behalf of the Commission in any legal proceedings related to the subject matter of the Agreement.



AGREED ORDINARY HIGH WATER MARK

AGREED ORDINARY HIGH WATER MARK

STATE GRANT BOUNDARY LINE PER SUPPLEMENTARY PLAT OF THE GRANT TO THE COUNTY OF MARIN PARCEL "A", CHAPTER 497, STATUTES 1959, RECORDED IN CAN "G", SERIAL #24624 MARIN COUNTY RECORDER'S OFFICE.

NOTE: THIS PLAT IS FOR GENERAL REFERENCE.

LEGEND

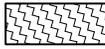
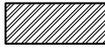
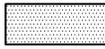
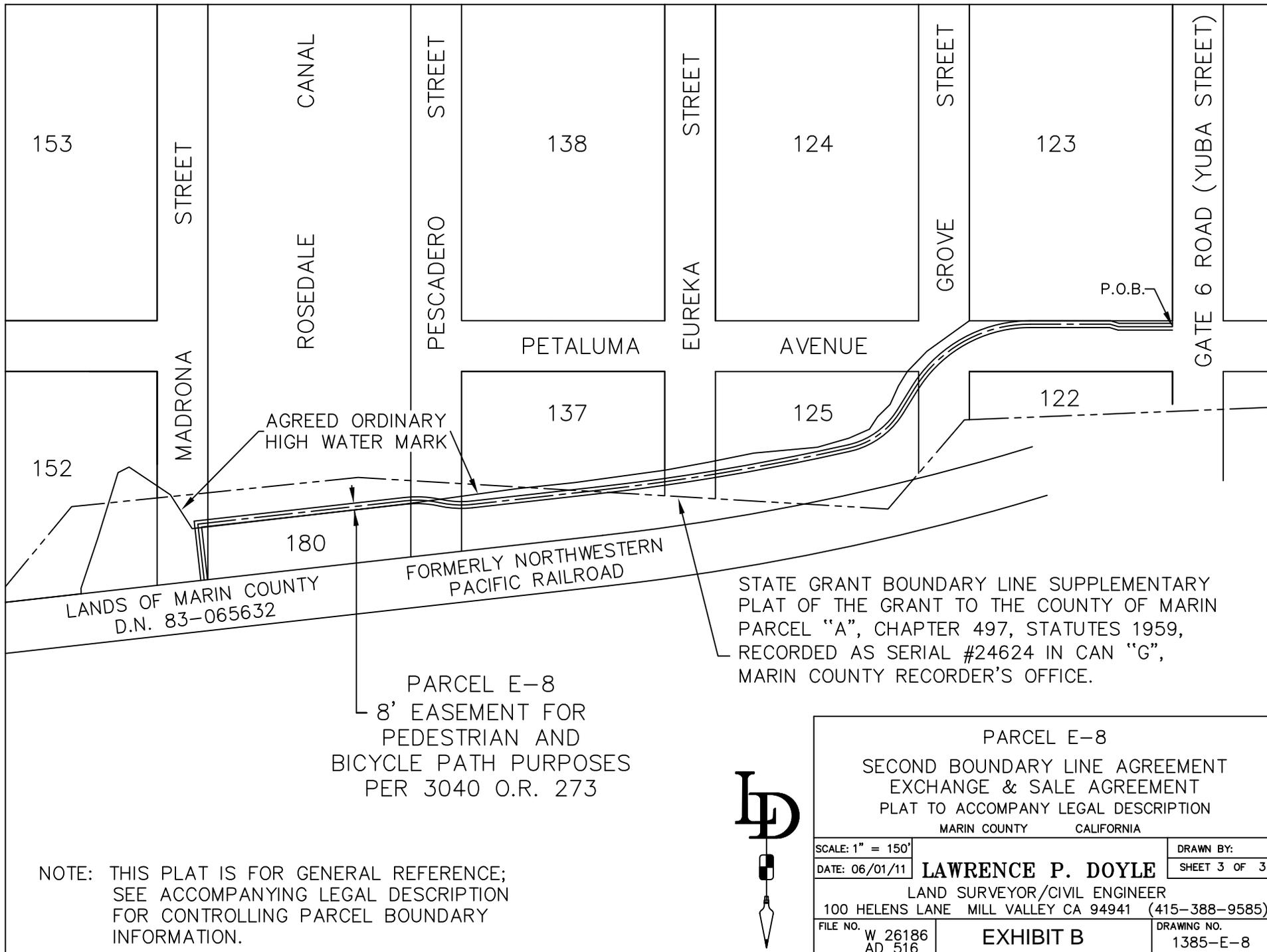
-  STATE FEE LANDS SUBJECT TO THE PUBLIC TRUST
-  PRIVATE FEE LANDS SUBJECT TO THE PUBLIC TRUST
-  PRIVATE FEE LANDS FREE OF THE PUBLIC TRUST

EXHIBIT K FINAL CONFIGURATION STECKLER EXCHANGE AGREEMENT MARIN COUNTY CALIFORNIA		
SCALE: 1" = 400'	LAWRENCE P. DOYLE LAND SURVEYOR/CIVIL ENGINEER 100 HELENS LANE MILL VALLEY CA 94941 (415-388-9585)	DRAWN BY:
DATE: 07/02/12		SHEET 1 OF 1
FILE NO. W26186	EXHIBIT A	DRAWING NO. 1385





NOTE: THIS PLAT IS FOR GENERAL REFERENCE;
 SEE ACCOMPANYING LEGAL DESCRIPTION
 FOR CONTROLLING PARCEL BOUNDARY
 INFORMATION.



STATE GRANT BOUNDARY LINE SUPPLEMENTARY
 PLAT OF THE GRANT TO THE COUNTY OF MARIN
 PARCEL "A", CHAPTER 497, STATUTES 1959,
 RECORDED AS SERIAL #24624 IN CAN "G",
 MARIN COUNTY RECORDER'S OFFICE.

PARCEL E-8 SECOND BOUNDARY LINE AGREEMENT EXCHANGE & SALE AGREEMENT PLAT TO ACCOMPANY LEGAL DESCRIPTION MARIN COUNTY CALIFORNIA		
SCALE: 1" = 150'	LAWRENCE P. DOYLE LAND SURVEYOR/CIVIL ENGINEER 100 HELENS LANE MILL VALLEY CA 94941 (415-388-9585)	DRAWN BY:
DATE: 06/01/11		SHEET 3 OF 3
FILE NO. W 26186 AD 516	EXHIBIT B	DRAWING NO. 1385-E-8