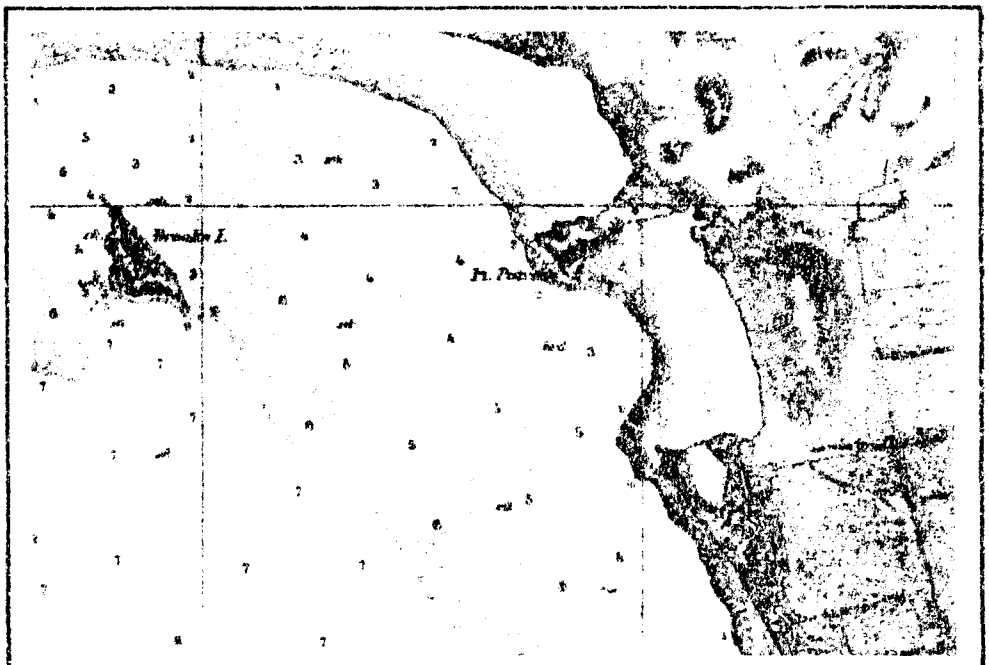
Public Trust Rights and Needs in the

ALBANY TIDE and SUBMERGED LANDS

- a portion of San Francisco Bay at Albany, California



Albany Baylands -
- from U.S. Coast Survey navigation chart of 1859.

Staff Report
Prepared by:

STATE LANDS COMMISSION

1807 13th Street
Sacramento, CA 95814

June 1985

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A Portion of
San Francisco Bay
at Albany, California

ALBANY

Rights of the public in the waters of San Francisco Bay at Albany, California are discussed in relation to the ecology of the area, needs of the public and plans for a proposed East Bay Shoreline Park. A 1980 ruling by the Supreme Court of California applicable to these tidelands is briefly described as are local and regional plans for the area. Existing and historic physical conditions and land title considerations are also treated. It is concluded that Public Trust rights exist in all areas subject to tidal action in a specified study parcel of the Albany tidelands, and that formal exercise of these rights in conformance with plans for the proposed Shoreline Park would be justified.

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I. INTRODUCTION

The purpose of this report is to set forth evidence bearing on the public trust needs and appropriate trust uses at the Albany Tide and Submerged Lands, City of Albany and Submerged Lands, Alameda County, and to make recommendations for Commission action. The study was authorized by the State Lands Commission at its meeting on November 29, 1984. The study area is bounded on the north by the Albany-Richmond city limit line, on the east by the Grant to the City of Albany and the line of highest tidal action, on the south by the Albany-Berkeley city limit line, and on the west by the Albany-San Francisco city limit line (as depicted on Figure 1).

In order to gather the information contained in this report, staff reviewed various studies and plans touching on appropriate uses of the tidelands and submerged lands comprising the study area. A public meeting was held in the City of Albany on December 14, 1984 and written comments were solicited in order to secure local opinions on this topic. Finally, staff examined current and historic physical conditions and the status of title of the lands subject to the study area.

On May 17, 1982 the State Coastal Conservancy requested that the State Lands Commission study the matter of the existence of the public trust for commerce, navigation and fisheries in the baylands included within the proposed area for an East Bay Shoreline Park. The Albany City Council, by cover letter dated October 30, 1984, reaffirmed their resolution No. 82-78, passed on November 15, 1982, requesting that the State Lands Commission "determine the location and extent of the public trust easement or other interests in the Albany Tidelands . . . and whether the public trust interests can be exercised to provide for the restoration and use of this area as recommended by the California Coastal Conservancy's 'East Bay Shoreline Plan'." Attention to the public trust needs in this area is also in recognition of the central role played by public access and use of San Francisco Bay's shoreline in the growth and development of the heavily populated Bay Area. As was

noted during the 1964 hearings before the San Francisco Bay Conservation and Development Commission, "... there must be breakthroughs along its entire shoreline so the public may reach the Bay in order to enjoy it."1/

This study is one in a series of such examinations into the special public trust needs in localities of the Bay Area. The goal of such studies is to identify and, where possible, to limit or eliminate those uses of the Bay shoreline, tidelands and submerged lands which are demonstrably inconsistent with proven public trust needs.

II. LAND TITLE

Present Ownership

Staff's study revealed the following information:

The underlying fee to a significant portion of the study parcel is owned by the Santa Fe Land Improvement Company, having been sold in the last century by the State Board of Tide Land Commissioners (BTLC) Assessor Parcel Numbers 0066-2663-001; 0066-2674-001; 0066-2675-003; 0066-2679-001; 0066-2680-003 appear in record ownership of Santa Fe Land Improvement Company.2/

The State of California is the record owner of Assesors Parcel Number 0066-2671-001.

The State in its sovereign capacity is the owner of the public trust easement over that part of the Study Parcel in which the underlying fee was conveyed by BTLC deeds. The State also holds as sovereign lands all underwater lands westerly of the BTLC lots out to the Albany-San Francisco city limit lines. See Figure 2.

III. SUMMARY OF THE PUBLIC TRUST DOCTRINE AND CITY OF BERKELEY V. BERKELEY COURT

As an incident of its status as a sovereign state, California took ownership of the lands underlying tidal waters within its borders upon its entry into the Union. These lands were and are to be held in public trust for the people of the State. This public trust doctrine is rooted in the ancient Roman civil law and in the English common law. It has been reiterated in the California Constitution.3/ Notwithstanding this trust, large areas of San Francisco Bay were sold to private parties by the State Board of Tide Land Commissioners pursuant to legislative authorization. (Stats. 1867-1868, Chapter 543; Stats. 1869-1870, Chapter 388.) The Board sold virtually the entire Albany waterfront without provision for public access. See Figure 3.

In City of Berkeley v. Superior Court, 26 Cal. 3d. 515 (1980) the State Supreme Court considered whether BTLC deeds issued pursuant to the 1870 statute terminated all public trust interest in the lands conveyed. The Court ruled that submerged lands and tidelands conveyed by Board deeds under the 1870 act were conveyed subject to the public trust easement.

The Court, however, declined to give its decision full retroactive effect. Citing possible reliance by private parties on one of its earlier decisions, which reached a contrary result, the Court determined that those BTLC parcels that were filled and reclaimed on the effective date of the decision would not be subject to the existence of the trust. Those lands which remained unfilled and subject to tidal action, however, were found to be subject to a Public Trust Easement. This case, then, confirmed the existence of the public trust easement over those portions of the Albany shoreline which were not filled and reclaimed as of the date of the Berkeley decision.

Administration of the public trust is committed to the Legislature. City of Long Beach v. Mansell, 3 Cal. 3d 462, 482 (1970). The Legislature has by statute delegated jurisdiction and authority over these public trust lands to the State Lands Commission. Public Resources Code, §6001, et seq. "The power of the State to control, regulate and utilize its navigable waterways and the lands lying beneath them, when acting within the terms of the trust, is absolute ...". (Citation omitted.) Marks v. Whitney, 6 Cal. 3d 251, 260 (1971). Where, as in the case of the Albany Tidelands, there has been no action by the State "terminating, altering or relinquishing" the public trust easement over tidelands, the State may do as is dictated by the best interest of the trust. In short, when an exercise of the trust is for a valid trust purpose, the State must neither seek nor secure concurrence of adjoining or underlying fee owners. Newcomb v. Newport Beach, 7 Cal. 2d 393, 401, 402 (1936). Nor is it necessary after exercise of the trust for the State to compensate the private fee owner for diminution in the number of uses to which the underlying fee can be put. Here, as in Colberg, Inc. v. State of California ex rel. Department of Public Works, 67 Cal. 2d 408, 420 (1967), exercise of the trust is not a "taking" of property and, therefore, the "property owner must, for the sake of the general welfare, yield uncompensated obedience." Gray v. Reclamation District No. 1500, 174 Cal. (1917) 622, 636. The State's obligation in situations in which the public trust easement has been exercised for a particular trust purpose is set forth in Public Resources Code §6312. It requires that the owners of the underlying fee must be compensated for improvements made on the property in good faith reliance on a valid patent. Section 6312 is, of course, inapplicable to all portions of the Study Parcel. Examples of the scope of recognized trust uses is set forth in Marks v. Whitney, supra, 6 Cal. 3d 251, 259-260.

IV. LITERATURE REVIEW

Introduction

As part of the investigation of the Study Parcel, the Commission staff carried out a review and synthesis of relevant available literature, including published articles, formal and informal government agency reports, and various unpublished documents. This review is presented in narrative form with literature citations given as appropriate. The material reviewed was gathered from Commission files, submitted from several agencies, or found by standard literature search techniques. Neither the text nor the bibliography is intended to be exhaustive, but represents a general review of the facts, with examples of major supporting evidence.

While relatively few site-specific reports have been done for the Study Parcel, there is an extensive body of literature on similar sites in the San Francisco Bay area and on the Bay as a whole. Such material is pertinent to this study and in fact its review is necessary for completeness. The literature review is presented in two parts: a regional overview, followed by a description of the Study Parcel and environs. Supplemental information obtained by SLC staff from field reconnaissance visits to the site is included in certain sections for continuity.

A. Regional Overview

The study parcel is situated within San Francisco Bay, the largest (435 square miles) estuarine ecosystem on the California coast (Jones and Stokes 1980a). The San Francisco Bay estuary is a resource of recognized state and national importance, possessing significant ecological, social and economic values. The Bay waters, lands and surrounding shorelines are inseparably linked together in a large and complex ecosystem. This ecosystem includes natural physical, chemical, and biotic components, and various non-natural components added by modern man. The concept of the Bay as a single ecosystem is well-known to scientists who study this estuary as well as to the planners and decision-makers charged with its management (BCDC 1983). Thus, evaluation of

any portion of the Bay, such as the Study Parcel, must be made in the context of a study of the whole Bay ecosystem.

An estuarine ecosystem is characterized by the transitional environment created in a coastal body of water when salt water from the ocean mixes with freshwater run off from the lands (Prichard, 1967). The physical forces of tides and river flows, and the difference in density between saltwater and freshwater combine to create unique and complex circulation patterns in estaurine waters. Circulation is also influenced by the physical estuarine basin and shoreline features, and wind (Biggs and Cronin 1981, Jones and Stokes 1980a).

Estuarine circulation patterns are important because they influence movements of dissolved and suspended substances. This affects major ecosystem properties such as salinity gradients, sedimentation rates, dissolved oxygen content, nutrient cycles and the fate of pollutants (Jones and Stokes 1980a and b). All these in turn directly and indirectly affect living organisms in the ecosystem, and human environmental quality.

In San Francisco Bay two daily tide cycles through the narrow Golden Gate provide seawater to the estuary system, and water flow from the Sacramento-San Joaquin Delta into the north Bay provides most of the freshwater input. Tidal exchange replaces about one quarter of the Bay waters with each cycle (BCDC 1969). The strength of the tides and therefore circulation and flushing of materials is dependent upon the total volume of water in the Bay subject to tidal action (BCDC 1983). Freshwater inflow from the Delta has historically varied greatly over the seasons, and from year to year (Chadwick 1982). Delta flows have ranged from very low summer levels, allowing saltwater inland into the Delta, up to peak flood flows which have sometimes completely flushed the Bay with freshwater (OPR 1979). Freshwater flows determine the salinity gradients upon which so many estuarine organisms depend, and play a role in flushing the Bay.

The biological component of the bay estuarine ecosystem is clearly the property which is of most concern to managers and policy makers. The most visible living organisms of the Bay are the waterfowl and commercial and sports fish species. However, these are merely part of the total diversity

of estuarine life present. The fish and wildlife which are so valued as resources are dependent upon other less conspicuous organisms, related to one another in complex food chains and networks (Jones and Stokes 1980a; U.S. Fish and Wildlife Service 1975).

The foundation of all ecosystem food chains is the producers--the green plants which use the sun's energy to create organic matter required by all life. In the Bay estuary the most important producers are the higher plants found in surrounding marshes; attached algae which grow on mudflats and shallow bottoms; and phytoplankton, free-floating microscopic algae (Jones and Stokes 1980a, U.S. Fish and Wildlife Service 1975).

The primary production rates found in estuarine systems are among the highest for any ecosystem in the world (Whittaker 1975). Primary production rates can give an indication of the numbers of total living things an ecosystem can support. It is no surprise that estuaries have traditionally yielded rich harvests of fish and shellfish, and support abundant populations of waterbirds and other wildlife.

The high rates of production found in estuaries are due in good measure from the presence of large areas of warm shallow waters, and typically strong nutrient mixing from the complex estuarine circulation patterns which produce optimal conditions for algae growth (Nixon 1981). Marshlands around estuarine embayments also contribute to productivity (Atwater et al. 1979, Josselyn 1983).

In San Francisco Bay, productivity of the total estuary has not been well-studied, although it appears to fit in with other highly productive estuarine systems (Atwater et al. 1979, Cloern 1979, and Josselyn 1983). However, from 1850 to the present, the Bay's total production has seriously been affected by losses in tidal marshlands, which have decreased by about 75%, and losses of productive shallow waters, which have decreased by about 20% (BCDC 1983).

Primary production by green plants in an estuarine ecosystem supports the rest of the organisms, the animals. These vary from tiny zooplankton, microscopic organism afloat in the

waters, up to large fish, birds or mammals. Some animals gain nutrition by feeding directly on algae or other plant material and some feed upon other animals.

Different life stages of certain animal species may prey or feed upon quite different parts of the food web. For example, the familiar large dungeness crab when very young is part of the plankton community and feeds upon phytoplankton, mostly diatoms (Cloern 1979).

Of the hundreds of species of fish and shell fish in the Bay many have been utilized in once enormous commercial and recreational fisheries (Skinner 1962). The major species harvested in the Bay were salmon, sturgeon, flatfish and smelt, and various shellfish such as shrimp, clams and oysters (Skinner 1962). While the fisheries have severely declined, the Bay is still home to about thirty species of common shrimp, crabs, clams, mussels and oysters, and over forty species of common fish including surf perch, flatfish, sharks and rays, and a diversity of other estuarine and marine species (CDFG 1980).

The other major group of estuarine animals are the birds. Avian life in the Bay includes various shorebirds, which feed and nest on the edge of the water, birds which use the open water to feed such as brown pelicans and gulls, and various waterfowl such as diving ducks, grebes and cormorants (Jones and Stokes 1980a). In San Francisco Bay, diving ducks in particular are common: greater and lesser scaups, canvasbacks, ruddy ducks, scoters, buffleheads, common goldeneyes, red-breasted mergansers and redheads. Over 20% of all such diving ducks in the Pacific Flyway overwinter in San Francisco Bay (Delisle 1968). San Francisco Bay waters and marshes are very important to the Pacific Flyway as a whole, being the site of a large part of the suitable wetlands remaining anywhere in the wintering grounds (BCDC 1969).

Estuaries are not homogeneous systems. The physical and chemical environmental factors and the organisms are not distributed uniformly throughout. Estuarine study and management usually proceeds from a classification of the ecosystem into habitats--the particular environment types we see associated with particular biotic communities.

In San Francisco Bay, the major natural habitats include the following: open water, subtidal benthic (bottom) habitats; intertidal habitats, and marshlands (adapted from Jones and Stokes et al., 1979). Open water is the largest habitat type in the Bay (Jones and Stokes et al. 1979). Open waters in the Bay support a variety of large important fish and provides feeding ground for marine birds and diving waterfowl. Subtidal benthic habitats are where many inconspicious organisms live such as filter feeders, decomposers, and various scavengers. These are extremely important in estuarine food chains and nutrient cycling. Intertidal zones fluctuate between shallow water and exposed shores and mudflats. This habitat type is an area of high rates of primary and secondary production. High light, warm temperatures and constant nutrient exchanges characteristic of intertidal habitats encourage abundant algae growth. High primary productivity and concentration of organic material in the intertidal zones in turn encourage abundant numbers and species of invertebrates and fish, which are fed upon by various water birds (Jones and Stokes 1980a). The San Francisco Bay intertidal mudflats are regarded as the single most important habitat on the coast of California for millions of wintering shorebirds (Jones and Stokes et al. 1979). Marsh habitats include tidal marshes and diked off seasonal or managed wetlands. As previously stated, very little tidal marsh remains in its former extent. Tidal marshes may be the most productive habitat in the state (Jones and Stokes et al. 1979). This diminishing resource supports a number of threatened and endangered species such as the California Clapper Rail and the salt marsh harvest mouse (Jones and Stokes et al. 1979). Non-tidal marshes are still valuable bird and mammal habitat, although their value to other ecosystem functionings are much reduced.

Overlain on the natural estuarine ecosystem is a human social system consisting of related and sometimes conflicting uses of the various Bay resources, and other human activities which can cause significant unnatural changes in the ecosystem. Human uses of the estuary include recreational boating, commercial shipping, recreational and commercial fishing, water-contact sports, nature study and observation, and scenic appreciation. Pollution from sewage, industrial waste and urban and agricultural runoff and filling in of Bay waters and marshes are other human activities which can affect

the natural system. Dams upstream on all major valley rivers and diversions out of the Delta have reduced freshwater flow into the Bay by half (Jones and Stokes et al. 1979) and have reduced natural fluctuations (Chadwick 1982).

The impacts to the Bay system from human activities vary tremendously. Impacts such as losses in habitats and organisms may be systemwide or localized and may be due to interactions among many natural and human factors. The natural ecosystem of San Francisco Bay is, surprisingly, still not well-understood; however, certain gross changes in Bay habitats are clearly recognized as resulting from the human actions noted above.

A major impact from human activities has been filling in and diking of marshes, mudflats and shallows. Over 40% of the Bay's water surface has been lost since 1850 (BCDC 1983). This decreases tidal flushing and circulation, dissolved oxygen content, and fish and wildlife habitat (Kelley 1964). Reduction in the size of the Bay estuary also decreases the ability of the system to absorb and break down pollutants and reduces the ameliorating effects the Bay has on air pollution and climate (BCDC 1983).

Structures such as docks and piers placed in Bay waters have the potential for adversely affecting circulation and the biota (BCDC 1983, Turner 1982). Ports and marinas, while beneficial to commerce and recreation, thus also can be harmful to the estuarine ecosystem, not only from physical effects on circulation, but through addition of pollutants and effects associated with dredging. Maintenance dredging of ports, marinas and channels can increase water turbidity and thus decrease primary productivity of the ecosystem, as well as cause sedimentation problems elsewhere in the Bay (Jones and Stokes 1980b, Jones and Stokes et al. 1979).

From the foregoing it can be seen that actions taken regarding this individual discrete Bay parcel must be in the context of the larger estuarine system of which it is an important part. Having reviewed this system, its wildlife, habitat types, production differentials and general circulation patterns, however, we now turn our attention to the specific study parcel.

B. Study Parcel

The study parcel is located on the eastern side of the Central Bay (see Figure 1). The area is mostly open water of shallow depths, ranging from 2 to 6 feet deep. The nearshore zone is bounded on the north by landfill, which was placed from 1960 to 1982 (Turner 1982), and on the south by the Berkeley/Albany city limits. The eastern shoreline of the parcel is a combination of artificial and natural features. The shore at the southern end of the parcel is the edge of a landfill placed over marshland, dating from around the 1920's (Turner 1982). The present water's edge here is a gradual slope of riprap. The central shore lies at the base of a native sandstone outcrop, Fleming Point (Albany 1976b). Historically there has always been a beach of some kind in this area (Turner 1982), and small clean beaches are present currently in pockets at the base of the cliff. Two rock pile spits were built westward from the Fleming Point bluff many years ago, and each has an old broken down pier at the end. The north shoreline consists of sloping riprap up to the corner where the landfill peninsula makes a right angle to the main shore. In the corner, sand has been deposited due to the landfill interupting littoral sand transport, creating a new sandy beach (Albany 1976b).

The study parcel at present provides three major estuarine habitat types: subtidal benthic, intertidal and open water. The subtidal and intertidal habitats include unstable sandy bottoms, subject to constant shifting by the tides and waves; mud type bottoms; and hard surface substrates such as rocks or old pilings. Although intertidal habitat on the study parcel is relatively small in area, the solid substrates found on the southern shore of the landfill peninsula and at Fleming Point are sites of important algae production. Various animals may be abundant in these areas as well, such as crabs and mussels (Jones and Stokes 1980b). Narrow zones of mud-bottomed intertidal areas are found along parts of the eastern shoreline. Primary producers here are mainly diatoms, which support various filter feeder and scavenging invertebrates.

The intertidal mudflats are used by various shorebirds (Albany 1976b, Jones and Stokes 1980a, Wooster 1968). The rock rip-rap in the study parcel provides intertidal foraging habitat for shorebirds

such as turnstones, sanderlings, willets, killdeer, and spotted sandpipers (Zablackis, pers com.).

Most of the parcel consists of subtidal bottom habitat with shallow open water over it. The invertebrates found in the subtidal zone of the parcels are typical of similar areas throughout the Bay, with species composition dependent upon the specific bottom characteristics. Primary production comes from various algae, and depends partly upon amount of light which reaches the bottom. There is significantly less primary and thus secondary productivity in deeper waters. Relatively less abundant flora and fauna is found on the study parcel at greater depths (Albany 1976b)

Although the intertidal and subtidal habitats have changed significantly since 1850, today there are still important shellfish resources in the study parcel. These include the Japanese littleneck, soft-shell clam, baltic clam and Bay mussels (Wooster 1982). Their exact distribution on the site depends on specific local substrate conditions. The clams may be gathered for food, depending upon current health regulations and water quality conditions, and for bait. The Baltic clams are valuable as a shorebird food source (Wooster 1982).

The open waters of the study parcel are habitat for many common Bay fish including the following sport fish: Jack smelt, striped bass, pile perch, starry flounder, leopard shark, dogfish shark and bat ray; and these other species: staghorn sculpin, Pacific herring, Northern anchovy, brown rockfish, surf smelt, and long-finned smelt (Albany 1976b).

The most important group of birds which utilize the area of the study parcel are those which dive for food in open water including loons, cormorants, grebes, brown pelicans, and the diving ducks--canvasbacks, greater and lesser scaups, ruddy ducks and scoters (Albany 1976b, Jones and Stokes 1980a, Zablackis, pers. com.).

At present, the parcel is not subject to intensive human use. Recreational boating and fishing occur, but access is limited and there are no formal shore facilities. Major human influences operating now are a low-grade but constant influx of garbage, primarily from the nearby closed landfill,

and water pollution impacts from waste runoff and landfill leaching. The potential use of the site has been studied over the years by many local, regional and state agencies and other interested parties (Albany 1976a and b, BCDC 1983, CHNMB 1982, DPR 1982, Hagman 1982, Sierra Club 1984). The consensus among all these reports is that open space, recreation, and nature study are highly desirable uses of the study parcel and a park is favored for the surrounding shorelands.

Water-based recreational resources of the Bay are quite valuable (Wooster 1968, DPR 1982). Needs for water-related recreation are expected to increase 10-30% by the year 2000, and there is no doubt the study parcel can add measurably to meeting these needs locally and regionally (DPR 1982).

The City of Albany has proposed a marina on their granted lands, constructed out from the bulb at the end of the landfill (Albany 1976a). Environmental analysis for this showed there would be significant impacts on the parcel from such a project. Some impacts would be adverse--water quality could decrease, but others could be beneficial--new habitats would be created, and recreational opportunities would be increased (Albany 1976b). The City selected the proposed marina site and orientation to be in the deepest water possible. The marina basin will have to be dredged 3-4 feet below the existing bottoms, because the water depth presently is only 5-6 feet. It is thought that not much maintenance dredging will be required in the future (Albany 1976b). Habitat losses from this marina will be less than from one built in the shallower waters to the east since intertidal and shallow water-subtidal habitats are generally more productive than deeper water-subtidal habitats (Albany 1976b).

Only the City of Albany has proposed a marina for the area, and additionally has planned a fishing pier west off the end of the landfill bulb (Albany 1976a). The Coastal Conservancy workshop report has recommended a fishing pier off Fleming Point (CHNMB 1982). The rest of the studies and plans for the East Bay shoreline show the waters kept open. The owner of an underlying fee ownership, subject to a public trust easement, the Santa Fe Land Improvement Company, has, at least up to now, designated most of the area as open space also (Victor Gruen Associates 1968).

There is universal agreement over the potential scenic values of the study area (DRP 1982). The Albany waterfront lands and waters offer unrestricted views of San Francisco, Angel Island, Mount Tamalpais, the Golden Gate, open Bay waters and the East Bay Hills (DRP 1982). At present the shoreline is unattractive in most areas due to garbage from the landfill and the aesthetically undeveloped nature of the site. The natural shoreline at the foot of Fleming Point is clean and reminiscent of pristine condition. In fact, this small stretch of beach and rock is virtually the only existing natural shoreline left in the East Bay region (Turner 1982).

As has been previously noted, the Study Parcel has widely recognized potential for use by the public for open space, public viewing, water-dependent recreation and as wildlife habitat and ecological units for scientific study. In this way the Study Parcel could help satisfy important needs of the human population in a manner consistent with the uses for which these lands and waters are uniquely suited.

V. PUBLIC MEETING AND REVIEW OF WRITTEN COMMENTS OF THE PUBLIC TRUST NEEDS AND USES AT THE ALBANY TIDELANDS

Pursuant to Calendar Item Number 43 approved by the Commission at its regularly scheduled meeting on November 29, 1984, staff held a public meeting on December 14, 1984 at the Albany City Council Chambers. The purpose of the meeting was to receive comment from all interested members of the public, governmental entities and others as to the public needs and uses of any public trust interest existing at the Albany Tidelands. Notice of the hearing was mailed to interested persons, agencies and elected bodies in advance of the hearing.

The hearing was conducted by Michael R. Valentine, Staff Counsel of the State Lands Commission, and was recorded by both a certified shorthand reporter and on tape. Presentations were received by staff at the meeting or were submitted later in writing. The primary point made by those who addressed the meeting or subsequently submitted written testimony are summarized as follows[4]:

THE STATE LANDS COMMISSION SHOULD DETERMINE THE "LOCATION AND EXTENT OF THE PUBLIC TRUST INTEREST" IN THE ALBANY TIDELANDS.

> (William E. Haden, Administrative Officer for the City of Albany, RT 8:6-10; Kim McDonald, Save San Francisco Bay Association, RT 13:12-14.)

IT IS IMPORTANT THAT THE STATE LANDS COMMISSION FINDINGS GUARANTEE PUBLIC ACCESS OVER THE STUDY AREA.

> (Ken Collier, State Department of Parks and Recreation, RT 10:18-19)

SUBJECT PARCEL IS WITHIN THE EAST SHORELINE STATE PARK STUDY AREA WHICH RUNS FROM THE CONTRA COSTA-ALAMEDA COUNTY LINE DOWN TO SOUTHERN BOUNDARY OF THE CITY OF EMERYVILLE.

(William E. Haden, Administrative Officer for the City of Albany, RT 8:11-16; Ken Collier, State Department of Parks and Recreation, RT 9:22-10:7.)

FLEMING POINT AREA AND THE BEACH HAS A SHORELINE FOR PUBLIC USES FOR RECREATION.

(Ken Collier, State Department of Parks and Recreation, RT 10:20-25; Dario Meniketti, RT 11:20-12:7; William Haden, Albany City Administrative Officer, RT 8:23-25; written comments, Ted Wooster, State Department of Fish and Game.)

IF THE STATE LANDS COMMISSION DOES EXERCISE THE PUBLIC TRUST AT THE ALBANY TIDELANDS, THE AREA SHOULD BE PRESERVED FOR RECREATION, OPEN SPACE AND WILDLIFE HABITAT.

(Kim McDonald, Save San Francisco Bay Association; Phyllis Faber, RT:36:21-24; William E. Haden, Administrative Officer, RT 8:11-25; written comments, Dario Meniketti; written comments, Susan Parker; written comments, Norman La Force, Chair, San Francisco Bay Chapter Sierra Club.

THE SUBJECT PARCEL IS VALUABLE TO MARINE RESOURCES IN SEVERAL MAJOR WAYS: (1) PRIMARY HABITAT WHERE MOST LIFE HISTORY FUNCTIONS OCCUR; (2) AS A SOURCE OF FOOD ITEMS (PRIMARILY BY TRANSIENT SPECIES); (3) AS SPAWNING AND/OR NURSERY HABITAT FOR SOME SPECIES OF

COMMERCIAL AND RECREATIONAL IMPORTANCE. ALSO, THIS AREA IS EQUALLY AS VALUABLE TO THE PUBLIC FOR UTILIZATION OF THOSE RESOURCES IN (4) RECREATIONAL AND (5) COMMERCIAL FISHERIES.

(Written comments, Theodore Wooster, State Department of Fish and Game.)

SHOULD THE STATE LANDS COMMISSION MAKE A DECISION ON THE USE OF TIDE AND SUBMERGED LANDS BEFORE THE CITY OF ALBANY HAS COMPLETED THEIR PLANNING PROCESS?

(Bert Bangsberg, Santa Fe Land Improvement Company, RT 34:16-20.)

ISN'T IT TRUE THAT THE PUBLIC ALREADY HAS USE OF THE SUBJECT AREA FOR RECREATIONAL USES? WHAT MORE RIGHTS WILL THE PUBLIC HAVE AFTER THE TRUST IS EXERCISED?

(Bert Bangsberg, Santa Fe Land Improvement Company, property owner, RT 24:1-25:25.)

IS THERE ANYTHING CRITICAL ABOUT EXERCISING THE PUBLIC TRUST AT THIS TIME?

(Bert Bangsberg, Santa Fe Land Improvement Company, property owner, RT 24:3-4.)

THE SAN FRANCISCO BAY IS AN EXTRAORDINARILY IMPORTANT UNIT IN PACIFIC FLYWAY.

(Phyllis Faber, RT 38:10-15.)

THERE ARE MAJOR RECREATIONAL USES THAT ARE UTILIZED ON THE WATERFRONT SUCH AS FISHING, JOGGING, HIKING AND PICNICING.

(Phyllis Faber, RT 37:8-11.)

THE SUBJECT PARCEL IS ALSO USED FOR RECREATIONAL ACTIVITIES SUCH AS FISHING AND BOATING.

(Written comments, Barbara Salzman, Chair, Conservation Committee; written comments, Theodore Wooster, State Department of Fish and Game; written comments, Norman La Force, Chair, San Francisco Bay Chapter Sierra Club.

THESE LANDS PROVIDE HABITAT FOR DUCKS, OTHER WATER BIRDS, FISH AND OTHER SPECIES WHICH ARE PART OF, AND CONTRIBUTE TO, THE ESTUARY SYSTEM OF SAN FRANCISCO BAY.

(Written comments, Barbara Salzman, Chair, Conservation Committee, Marin Audubon Society; written comments, Theodore Wooster, State Department of Fish and Game; written comments, Norman La Force, Chair, San Francisco Bay Chapter Sierra Club.)

ANY USES OF THESE BAYLANDS MUST BE CONSISTENT WITH THE MCATEER ACT AND THE BAY PLAN.

(Written Comments, Steve McAdam, San Francisco Bay Conservation and Development Commission, Assistant Executive Officer.)

POSSIBLE USES OF THE SUBJECT TIDE AND SUBMERGED LANDS HAVE THE POTENTIAL TO SIGNIFICANTLY REDUCE THE HABITAT VALUES OF ADJACENT LANDS.

(Written comments, Barbara Salzman, Chair, Conservation Committee, Marin Audubon Society.)

THESE LANDS ARE A UNIQUE BAY AREA RESOURCE, BOTH IN TERMS OF THE MAGNIFICENT VIEWS FROM THE ADJACENT SHORE AND AS A WILDLIFE REFUGE.

(Written comments, Susan Parker.)

IT WOULD BE COSTLY TO KEEP THE BEACH CLEAN FROM DEBRIS AND OIL.

(Vince Nicora, Land Fill Operator, RT 14:23-25; RT 15:1-10.)

FEW PIECES OF ORIGINAL SHORELINE EXIST IN THE BAY. FLEMING POINT IS ONE.

(Bruce Chisholm, RT 22:11-18.)

WETLANDS IN THE SAN FRANCISCO BAY HAS BEEN DIMINISHED BY 90 PERCENT. WETLANDS SHOULD BE PRESERVED; ANY LOSS OF WETLANDS IS SERIOUS.

(Phyllis Faber, RT 39:6-11.)

VI. WRITTEN COMMENTS RECEIVED ON THE PRELIMINARY STAFF REPORT

"We hope that the staff will recommend that the Commission exercise a Public Trust Easement over the study parcel to protect the natural, scenic, recreational and habitat values of the parcel. We would wholeheartedly support such a position and welcome an affirmative decision by the Commission."

"The wildlife values of the mudflats are far too great to allow any further degradation through human activity in the tidelands study parcel."

Jon Zablackis
for the Conservation
Committee
Golden Gate Audubon Society

We hope that the staff will recommend that the Commission exercise a Public Trust Easement over the study parcel to protect the natural, scenic, recreational and habitat values of the parcel.

We believe that now is the time for a positive decision by the Commission for a Public Trust Easement over the Tidelands study parcel.

I hope the wetlands of the San Francisco Bay and the Delta Area will be reserved for aquaculture.

Jan Brown Baye
The Brown Library

The Albany Tidelands should be protected to the maximum extent possible. To reach this goal, the State Lands Commission staff should recommends the State exercise the Public Trust Rights over the subject area.

CONCLUSION AND RECOMMENDATIONS

The majority of public comments received and the many studies reviewed have led staff to the conclusion that the tidelands and submerged lands in Albany subject to this study are a valuable wetlands resource which should be preserved for open space, wildlife habitat and public recreation. To that end, activities or developments on these lands which are inconsistent with those identified public trust needs should be eliminated to the maximum extent feasible. Therefore, staff recommends that the State's public trust ownership in the study area be exercised for open space, as a unit for environmental study, for wildlife habitat and public recreation including recreational navigation. The specific Commission findings recommended by the Commission staff are as follows. The Commission:

1. FINDS that the property over which the trust is being exercised was at the time of statehood and continuously thereafter has been and is now unfilled and subject to tidal action.

2. FINDS that the State of California, in its sovereign capacity as public trustee, is the owner of the public trust easement over part of the trust exercise parcel and is the fee owner of part of the parcel.

3. FINDS that it is in the Statewide public interest and that it is appropriate that uses of the Trust Exercise Parcel be restricted to the public purposes of preservation of said lands in their natural state so that they may serve an ecological units for scientific study, as open space, and environments which provide food and habitat for birds and marine life, favorably affect the scenery and climate of the area, and, further, that public fishing and recreational navigation, public access and recreation be encouraged at the trust exercise parcel.

4. FINDS that it is in the best interests of the people of the State of California that the trust exercise parcel be protected for the future by restricting its uses as stated above by way of a formal exercise of the Public Trust Easement by the Commission.

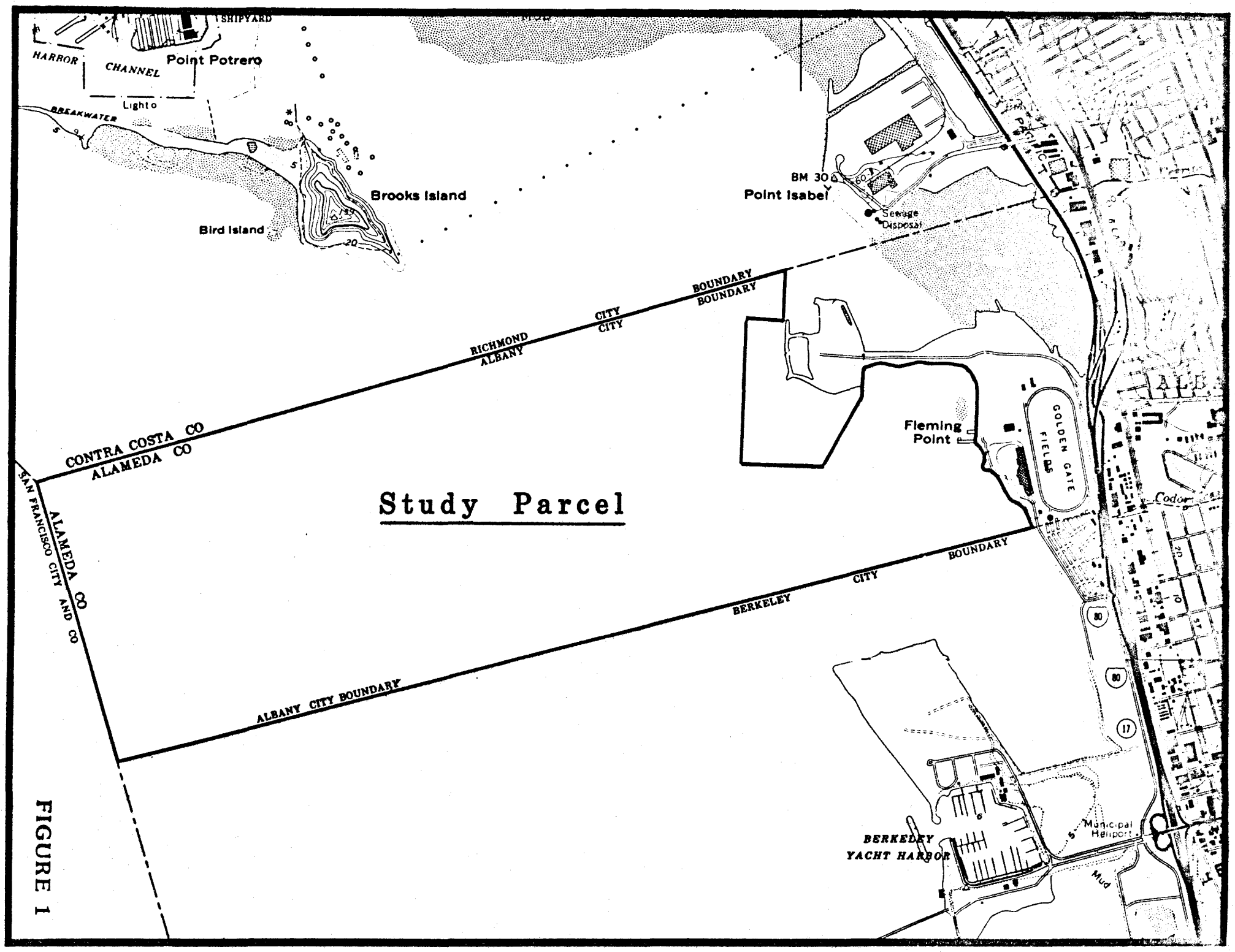
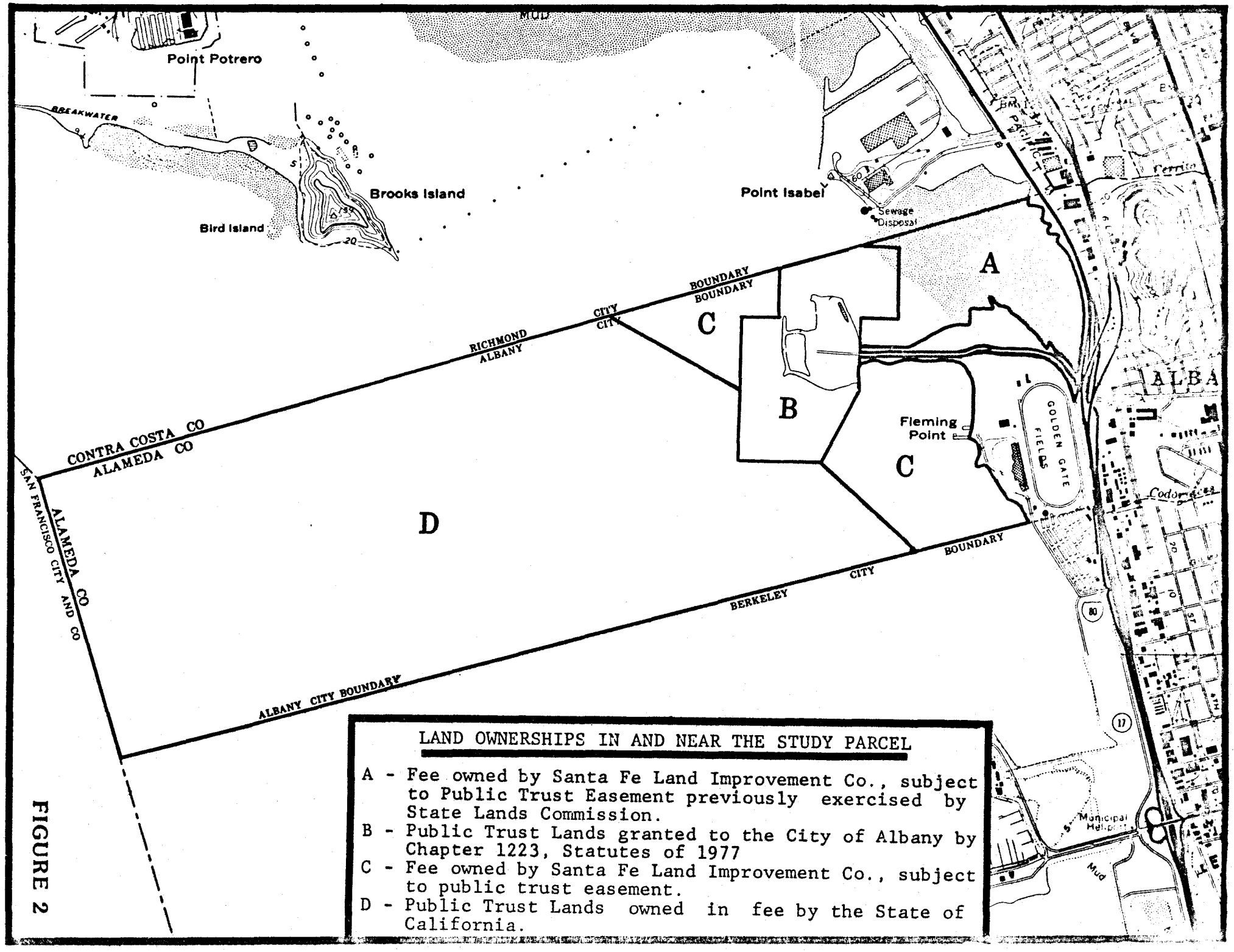

SHIPYARD
HARBOR
CHANNEL
Point Potrero
Light
BREAKWATER
Brooks Island
Bird Island
BM 30
Point Isabel
Sewage Disposal
RICHMOND CITY BOUNDARY
ALBANY CITY BOUNDARY
CONTRA COSTA CO
ALAMEDA CO
SAN FRANCISCO CITY AND CO
ALAMEDA CO
Study Parcel
Fleming Point
GOLDEN GATE FIELDS
BERKELEY CITY BOUNDARY
ALBANY CITY BOUNDARY
BERKELEY YACHT HARBOR
Municipal Heliport
Mud
Codor
80
17

FIGURE 1



LAND OWNERSHIPS IN AND NEAR THE STUDY PARCEL

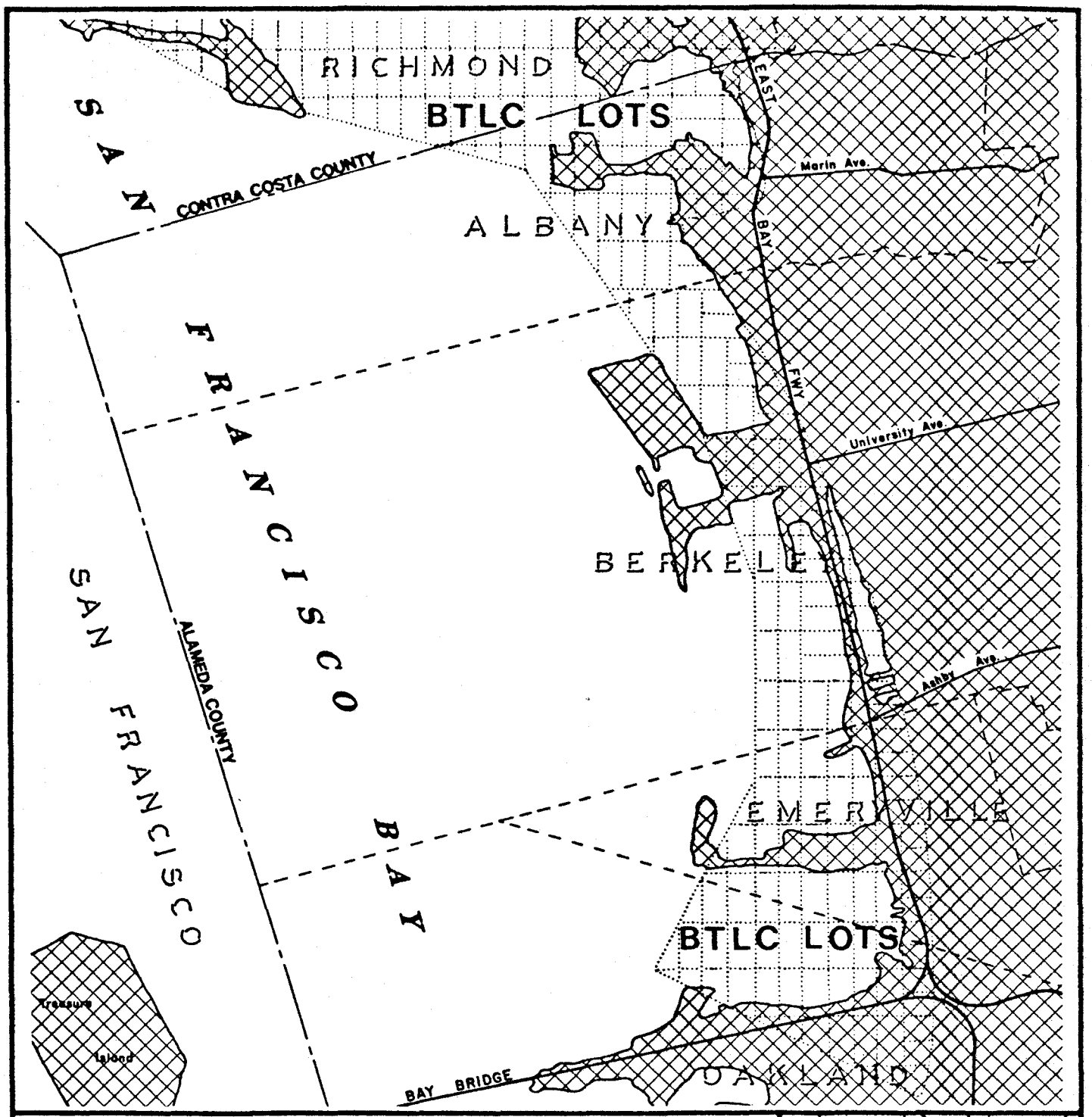
A - Fee owned by Santa Fe Land Improvement Co., subject to Public Trust Easement previously exercised by State Lands Commission.

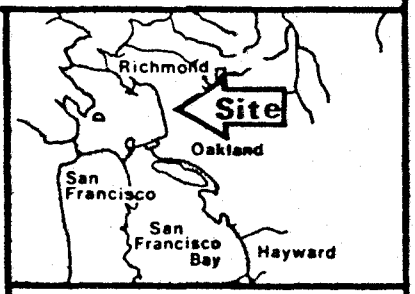
B - Public Trust Lands granted to the City of Albany by Chapter 1223, Statutes of 1977

C - Fee owned by Santa Fe Land Improvement Co., subject to public trust easement.

D - Public Trust Lands owned in fee by the State of California.

FIGURE 2





WATER LOTS sold by the BOARD of TIDE LAND COMMISSIONERS (BTLC) along the East Bay Shoreline.

FIGURE 3

FOOTNOTES

1. San Francisco Bay Conservation Study Commission - A Report to the California Legislature, State of California; J. Eugene McAteer, Chairman (January 7, 1965).

2. Staff is aware that Santa Fe has merged with the Southern Pacific Company and the land management functions of the two Companies have been joined. Record ownership, however, remains in the name of the Santa Fe Land Improvement Company.

3. For a scholarly discussion and analysis of the public trust doctrine and its legal genealogy, see Stevens, "The Public Trust: A Sovereign's Ancient Prerogative Becomes the People's Environmental Right", 14 U.C. Davis L. Rev. 195.

4. Future citations to the record will use the abbreviation "R.T." for Reporter's Transcript. The line numbers will follow the page number and the two will be separated by a colon.

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