

CALENDAR ITEM

40

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S 10

04/09/09
W 26034
E. Milstein
M. Hays

CONSIDER AUTHORIZATION OF
LITIGATION FOR TRESPASS AND EJECTMENT

PARTY:

Blue Whale Sailing School, Inc.
PO Box 7435
San Jose, CA 95150

AREA, LAND TYPE, AND LOCATION:

State-owned in Simonds Canal and Alviso Slough, adjacent to 1490 Hope Street in the town of Alviso, Santa Clara County.

UNAUTHORIZED USE:

Facilities used to dock vessels.

BACKGROUND INFORMATION:

This item involves the Blue Whale Sailing School, Inc. (BWSS), and various docking facilities and vessels that have been placed on State-owned lands in Simonds Canal and Alviso Slough, without a lease from the Commission. It is Commission staff's understanding that the two upland parcels, identified as Assessor's Parcel No.(APN) 015-01-013 and 015-02-007, which are adjacent to the State-owned lands, were acquired by BWSS in June 2000. An additional parcel (APN 015-01-37) located at the terminus of Catherine Street and located between the parcels owned by BWSS, is owned by the Santa Clara Valley Water District (SCVWD).

While conducting a site visit at a nearby property in the Guadalupe River in 2003, Commission staff became aware that BWSS was docking sail boats in Alviso Slough and Simonds Canal without a lease from the Commission. Between 2003 and 2007, Commission staff sent numerous letters and had many conversations with BWSS representatives to advise that BWSS was occupying the State's lands without authorization and that a lease was required in order to continue operations.

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On October 27, 2007, BWSS finally submitted a lease application, but incomplete and inadequate information was provided and neither the statutory filing fee or the required minimum expense deposit to process the application were provided as required. Since receiving the application in 2007, staff has sent several letters to BWSS outlining the additional information that needs to be provided in order for staff to process the application, as well as the filing fee and minimum expense deposit, but a response has not been received. As is outlined in the Commission's application, should an applicant fail to provide a complete application within a reasonable period of time, the file may be closed. Additionally, the application also states that submittal of the application will not be considered an application unless it is accompanied by the filing fee and appropriate minimum expense deposit.

On March 14, 2008, BWSS was notified that a reply to staff's incomplete letters must be provided no later than April 2, 2008, or the application would effectively be withdrawn. Due to the lack of response of BWSS by the deadline, another letter, dated May 22, 2008, was sent to BWSS serving formal notification that the application had been withdrawn and that the unauthorized docking facilities and vessels continue to be in trespass. The May 22nd letter advised that BWSS must contact Commission staff prior to May 30, 2008, or staff would make a recommendation to the Commission to take legal action to eject BWSS from State-owned lands. Another letter was sent, dated July 1, 2008, again advising that BWSS to contact Commission staff before July 11, 2008, but with no response.

On December 21, 2008, BWSS sent an electronic message to Commission staff requesting a lease of lands lying in the Alviso Slough, Simonds Canal and the Guadalupe River, including both those occupied by the BWSS and those to the south, portion of which are under lease from the Commission to the South Bay Yacht Club (SBYC); however no application was submitted by BWSS. Staff responded by letter on February 4, 2009, with a final request to BWSS to submit an application for those State-owned lands adjacent to BWSS with a deadline of March 1, 2009 to comply. Since no response or application has been received from BWSS to staff's most recent requests and after many years and attempts by Commission staff to bring the BWSS under lease, staff is now requesting that the Commission consider authorizing Commission staff and the Office of the Attorney General to take all necessary steps, including litigation, for trespass, ejectment, and removal of all unauthorized facilities and improvements.

OTHER PERTINENT INFORMATION:

1. It is staffs understanding that BWSS has placed fill and other improvements on State-owned lands and the adjacent uplands without benefit of permits from other required public agencies. On January 13,

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2006, the San Francisco Bay Conservation and Development Commission (BCDC) sent BWSS an enforcement letter; although several items have been resolved, an application for a permit has reportedly not been received by BCDC.

2. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

EXHIBIT:

- A. Location Map

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

AUTHORIZATION:

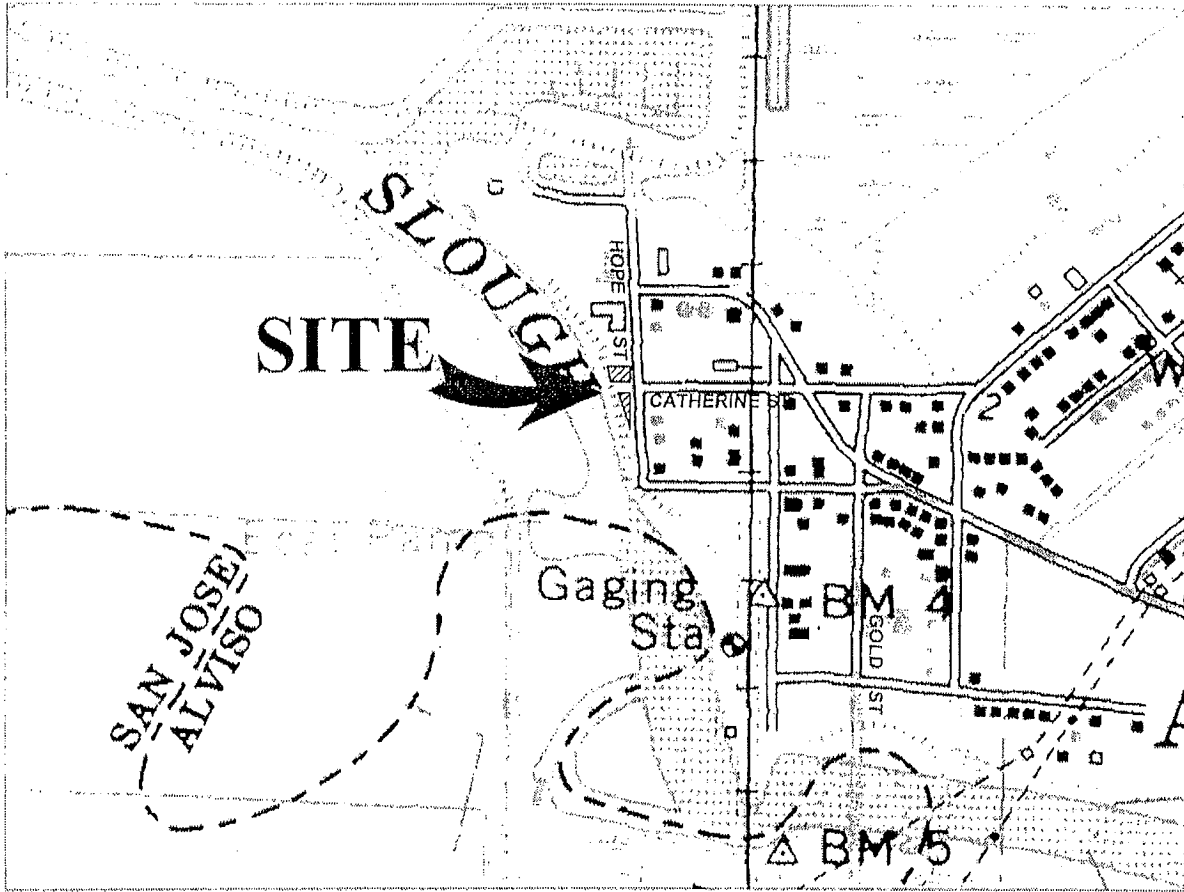
1. FIND THAT BLUE WHALE SAILING SCHOOL, INC., IS UNLAWFULLY OCCUPYING AND IN TRESPASS ON STATE-OWNED LAND LOCATED IN SIMONDS CANAL AND ALVISO SLOUGH AS SHOWN ON THE ATTACHED EXHIBIT A.
2. AUTHORIZE STAFF OF THE STATE LANDS COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY, INCLUDING LITIGATION, TO EJECT BLUE WHALE SAILING SCHOOL, INC.; TO REMOVE THE DOCKING FACILITIES AND ALL OTHER IMPROVEMENTS FROM STATE LANDS IN THE BED OF ALVISO SLOUGH AND SIMONDS CANAL AS SHOWN ON THE ATTACHED EXHIBIT A (FOR REFERENCE PURPOSES ONLY) AND LYING ADJACENT TO

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ASSESSOR'S PARCEL NOS. 015-01-013, 015-01-037 AND 015-02-007, TOWN OF ALVISO, SANTA CLARA COUNTY; TO RESTORE THE STATE-OWNED LANDS AT THESE LOCATIONS TO THEIR CONDITION PRIOR TO PLACEMENT OF DOCKING FACILITIES; AND TO RECOVER THE COMMISSION'S DAMAGES AND COSTS.

NO SCALE

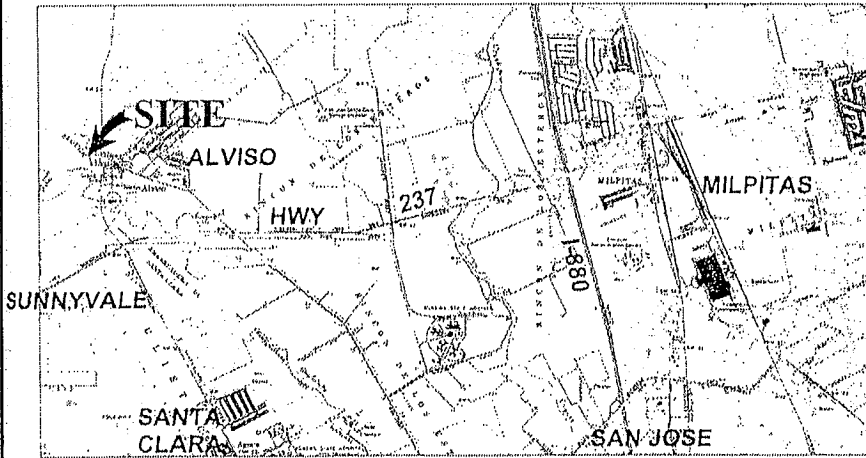
SITE



CATHERINE St. and HOPE St., ALVISO SLOUGH/SIMONDS CANAL

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

W 26034
 BLUE WHALE
 SAILING SCHOOL
 APN 015-01-013, 015-02-007
 ALVISO AREA
 SANTA CLARA COUNTY



This Exhibit is solely for purposes of generally depicting the area, is based on unverified information provided by various parties and in-house information, and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.