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(1924-1987)

† CIVIL TRIAL LAW
* FAMILY LAW
†† COMMERCIAL REAL ESTATE LAW
†† RESIDENTIAL REAL ESTATE LAW

January 27, 1997

VIA HAND DELIVERY

Mr. Kenneth Berry
President
BAY, LTD.
1414 Corn Products Road
Corpus Christi, Texas 78409

Re: *Purchase of Ingleside Point Property from
Ingleside Holdings*

Dear Mr. Berry:

At your request, I have reviewed certain title issues in connection with your purchase of the Ingleside Point island property from Ingleside Holdings. Of particular concern is the status of title to certain dry lands, once submerged and which now constitute accretions to the originally patented lands.

The subject property was a part of a peninsula platted in 1912 as part of the Ingleside Townsite. In 1952, a 48.33-acre portion of the peninsula was deeded from the Ingleside Land Company to the Nueces County Navigational District No. 1 for the purposes of creating a channel right-of-way. At the same time, a spoil disposal easement was granted to the Army Corp of Engineers allowing the disposal of dredged spoil from the channel onto what would become the island property. The La Quinta channel was dredged shortly thereafter, transforming the peninsula into a 125.72-acre island.

It is my understanding that over the past 40 years, the dredged spoil material which was deposited on the island has migrated and settled, creating additional dry land and expanding the size of the island from 125.72 acres to well over 300 acres. The questions is, who owns title to the additional dry lands?

Mr. Ken Berry
January 27, 1997
Page 2

The Corpus Christi Court of Appeals, in *Natland Corp. v. Baker's Port, Inc.*, 865 S.W.2d 52 (Tex. App.--Corpus Christi 1993, writ denied), addressed very similar facts. In 1991, Baker Marine Corporation ("Baker") purchased from Natland Corporation ("Natland") approximately 2,800 acres of coastal land near the City of Ingleside. In 1988, Baker sued Natland over certain title defects and claims concerning the property. The State of Texas intervened seeking a declaratory judgment that it owned approximately 36 acres of dry land that had been added to the shoreline by the gradual migration of soil deposited along the shoreline by the United States Army Corp of Engineers while dredging the adjacent Intracoastal Waterway. The trial court granted a partial summary judgment denying the State's claim and declaring that Natland had title to the 36 acres, which was subsequently conveyed to Baker.

On appeal, the State contended that Natland's property should be the shoreline as it existed in 1958, before the dredging of the canal. It was undisputed that the 36 acres were dry land that had been submerged prior to the dredging of the Intracoastal Waterway. The dredging was done in 1959 and 1960. As a result of a spoil disposal easement granted by Natland's predecessor in title, the spoil dredged in creating the canal was piled on dry land inland from the shore. In subsequent years, by the action of rain, wind and gravity, some of the spoil gradually was washed toward the sea, thus extending the land seaward. The Court discussed the concept of accretion "*which is the natural process of increasing real property by the gradual and imperceptible disposal of solid material to the shoreline.*" Id. at 57. The general rule is that such accretion would be owned by the upland owner, not the State.

However, the State argued in this case that the upland owner should not benefit from the accretion because (1) the accretion was created by the artificial (as opposed to natural) process of dredging the canal, and (2) the upland owner should not gain title when it was the upland owner's predecessor who granted the spoil disposal easement that led to the accretion. The Court disposed of both of these arguments by holding: (1) that title to artificially-induced accretions vest in the upland owner "*when that owner has not caused or directly participated in the artificial process*", Id. at 58; and (2) "*The mere granting of an easement by the upland owner, allowing the Corp of Engineers to place spoil material on dry land, was not sufficient participation by the owner to require forfeiture of his right to the resulting accretions*" Id. at 58. As a result, the Court of Appeals affirmed the summary judgment against the State and held that title to the 36 acres of accretive land was vested in the upland owner.

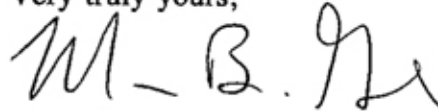
Based upon the holding in the *Natland* case and the similar fact situation on the Ingleside Point property, it is my opinion that the additional dry lands on the Ingleside Point island property are owned by the current upland owner.

Mr. Ken Berry
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Page 3

I understand a current on-the-ground survey is being performed by a licensed state land surveyor. When it is completed, you should contact the General Land Office and discuss the possibility of executing a Boundary Agreement similar to one (copy enclosed) entered into between the State and Nueces County concerning the William Bryan Survey L.S. 64, thereby establishing the channel boundary between the privately owned island property (including the accretive lands) and the coastal public land owned by the State of Texas (Permanent School Fund). In the event a current survey reveals that some of the accretive lands are within the bounds of the 48.33 acres now owned by the Port of Corpus Christi, the Port should be a party to the Boundary Agreement.

If you have any questions or need additional information, please do not hesitate to call me.

Very truly yours,



Mark B. Gilbreath

MBG/csj
Enclosures
0127971:\BAY\INGLESID.BER/csj:6

cc: Mr. Charles Vanaman

DOCH 1996047207

STATE OF TEXAS §
 §
COUNTY OF NUECES §

BOUNDARY AGREEMENT

This Boundary Agreement ("Agreement") is made and entered into by, between, and among the State of Texas, acting by and through Garry Mauro, Commissioner of the Texas General Land Office and Chairman of the School Land Board, on behalf of the Permanent School Fund (the "State"), and Nueces County, Texas, a political subdivision of the State of Texas (the "County").

WHEREAS, the State is the owner, by sovereignty, of coastal public lands in Nueces County, Texas; and

WHEREAS, the State and the County assert claims of title to portions of land in Corpus Christi Bay along or near the boundary between the western boundary of the William Bryan Survey, L. S. 64, Nueces County, Texas (the "Bryan Survey") and coastal public lands in Corpus Christi Bay; and

WHEREAS, the State and the County deem it to be in their respective best interests to resolve the dispute and conflict regarding the boundary between the western boundary of the Bryan Survey, and coastal public lands in Corpus Christi Bay without the necessity of protracted and costly litigation; and

WHEREAS, a legal description of the boundary between coastal public land owned by the Permanent School Fund in Corpus Christi Bay and the Bryan Survey is attached hereto as Exhibit "A" and included herein by reference for all purposes; and

WHEREAS, the State and the County have agreed to evidence the boundary by entering into a written agreement to be recorded by the County in the Real Property Records of Nueces County, Texas; and

WHEREAS, pursuant to TEX. NAT. RES. CODE ANN., §33.060 (Vernon Supp. 1996), the School Land Board, on behalf of the Permanent School Fund, has the authority to locate a boundary separating coastal public land from other land; and

WHEREAS, the State has agreed not to assert a claim of title to lands located east of the east right-of-way line of Park Road 53 as depicted on the map attached hereto and incorporated herein by reference as Exhibit "B";

NOW, THEREFORE, the parties being in agreement that each is receiving a benefit and value equal to that being received by the other, in consideration of the mutual agreements herein contained, the parties mutually agree as follows:

1. The common boundary between certain State-owned coastal public land in Corpus Christi Bay, Nueces County, Texas, and the western boundary of the Bryan Survey is hereby mutually agreed to be the boundary line depicted on and described in Exhibit "A" hereto.

2. This Agreement, with Exhibits "A" and "B" attached, upon execution by the respective parties hereto shall be filed for record in the Real Property Records of Nueces County, Texas, within five (5) days of final execution of this Agreement on behalf of the State. The recording of this Agreement shall be at the sole cost and expense of the County. Within ten (10) days of recording, the County shall provide the State with a certified copy of such recorded Agreement.

3. This Agreement is executed by the State, acting by and through Garry Mauro, Commissioner of the Texas General Land Office and Chairman of the School Land Board, on behalf of the Permanent School Fund, by virtue of and under the authority of TEX. NAT. RES. CODE ANN., §33.060 (Vernon Supp. 1996).

4. Upon the effective date of this Agreement, the State has agreed not to assert a claim of title to lands located east of the east right-of-way line of Park Road 53 as depicted and described in Exhibit "B" attached hereto, the northern boundary of which area is the north line of the Bryan Survey, and the southern boundary of which is the south line of the north 280 acres of the William Bryan Survey, L. S. 64, as said line is described in Tracts 1 and 4 in the Judgement of the District Court, 28th Judicial District, in Cause No. 115340-A styled, The State of Texas, et al vs. Padre Island Investment Corporation.

5. This Agreement shall be binding on and inure to the benefit of the successors, heirs, representatives, and assigns of the parties hereto, but is limited to the specific areas described in Exhibits "A" and "B" hereto. Nothing in this Agreement shall be deemed nor construed as being an admission or a recognition of, or constitute a bar to the assertion of, a different basis for the determination of a boundary between the parties hereto, or any of the parties hereto and any other party, at any other place or location.

IN WITNESS WHEREOF, this Agreement is executed under Seal of Office this 4th day of DECEMBER, 1996, effective November 8, 1996.

STATE OF TEXAS



Richard M. Borchard
 Commissioner,
 Board of Commissioners, Office, and
 Chairman, School Land Board

Richard M. Borchard
 Richard M. Borchard
 Nueces County Judge

STATE OF TEXAS

COUNTY OF NUECES

§
§
§

This instrument was acknowledged before me on Nov. 20, 1996, by
Richard M. Borchard.

Mary Louise Leal
 Notary Public in and for
 the State of Texas



Commission expires: 2/10/99

San Patricio sk. F. 54-6

counter 41774

EXHIBIT "A"

The boundary between certain privately owned uplands and coastal public lands owned by the Permanent School Fund is the east right-of-way line of the State Highway designated as Park Road No. 53 as it presently exists adjacent to lands designated as the north 280 acres of the William Bryan Survey, L. S. 64, in Nueces County, which right-of-way is more particularly described as follows:

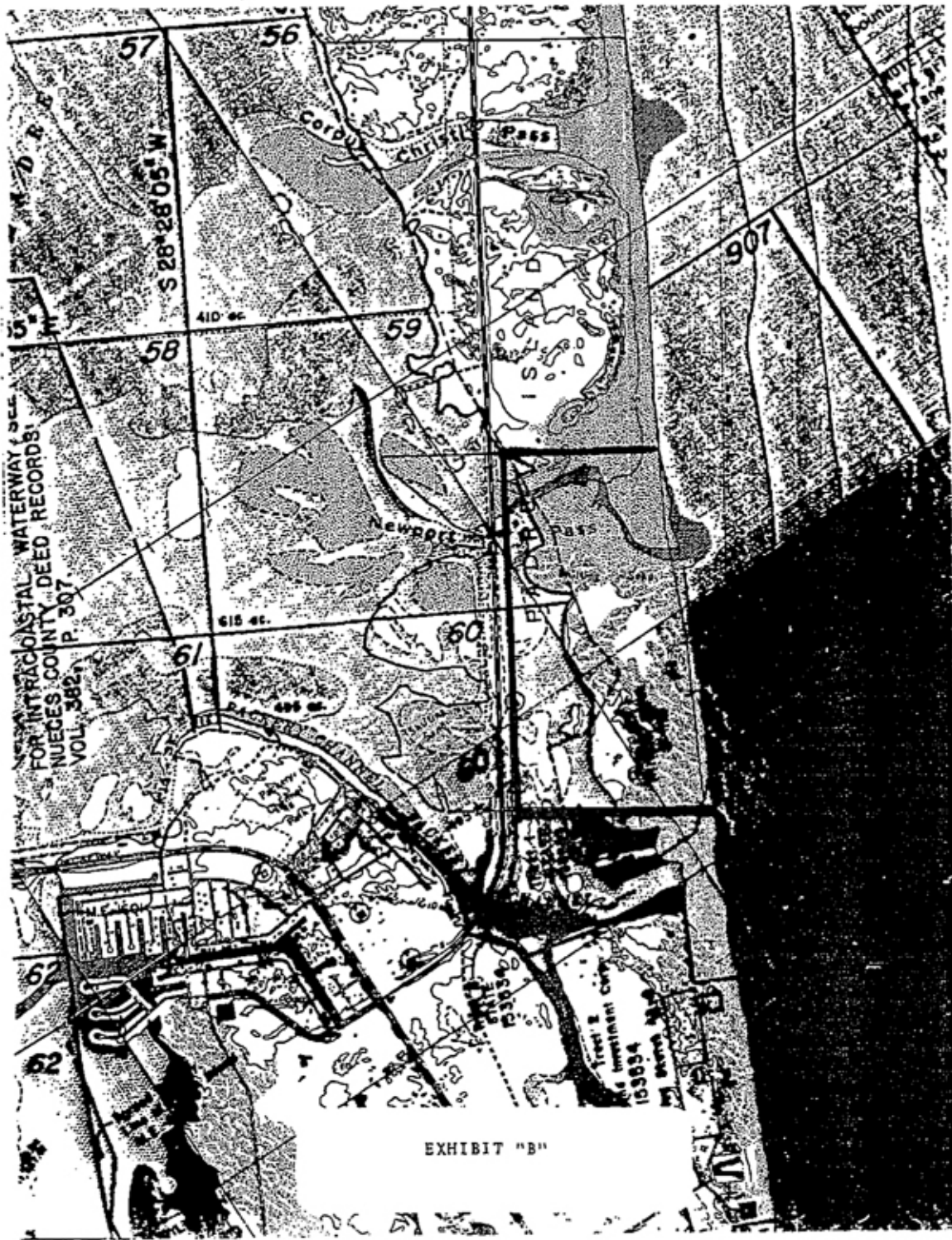
BEGINNING at the intersection of the east right-of-way line of Park Road No. 53 with a westerly extension of the south line of the north 280 acres of the William Bryan Survey, L. S. 64, as said line is described in Tracts 1 and 4 in the Judgement of the District Court, 28th Judicial District, in Cause No. 115340-A styled, The State of Texas, et al vs. Padre Island Investment Corporation;

THENCE in a northeasterly direction with the east right-of-way line of Park Road No. 53, at all times 200.00 feet easterly from and parallel with the centerline of said road, to the intersection of said right-of-way line with a westerly extension of the north line of the William Bryan Survey, L. S. 64.



San Patricio SK. F. 54-7

counter 41775



San Patricio Sk.F. 54-8

counter 71776

Any provision herein which restricts the Sale, Rental or use of the above described REAL PROPERTY because of Race, Color, Religion, Sex, Handicap, Familial Status or National Origin is hereby held Unenforceable under FEDERAL LAW, 3/18/88.

Doc# 1996047207
Pages: 6
Date : 12-09-1996
Time : 02:30:39 P.M.
Filed & Recorded in
Official Records
of NUECES County, TX.
ERNEST M. BRIONES
COUNTY CLERK
Rec. \$ 19.00

STATE OF TEXAS
COUNTY OF NUECES

I hereby certify that this instrument was FILED in File Number
[redacted] on the date and at the time stated herein by me, and
was duly RECORDED, in the Official Public Records of
Nueces County, Texas



Ernest M. Briones
COUNTY CLERK
NUECES COUNTY, TEXAS

13/6

AFTER RECORDING RETURN TO:

Texas General Land Office
Kay Molina, Legal Services Division
Stephen F. Austin Bldg.
1700 N. Congress Ave. Rm. 626
Austin, Texas 78701-1495



San Patricio sk.F. 54-9

counter 41777

noting the ratio of punitive damages to actual damages, we consider 1) the nature of the wrong, 2) the character of the defendant's conduct, 3) the degree of the defendant's culpability, 4) the situation and sensibility of the parties, and 5) the extent to which the conduct offends the public sense of justice and propriety. *Id.*; *Alamo Nat'l Bank v. Kraus*, 616 S.W.2d 908, 910 (Tex.1981).

[13] We conclude, when considering the above factors and the evidence presented, that factually sufficient evidence supports the jury's award. We note that the jury awarded Clemons \$38,000 as compensatory damages. We do not find the award of exemplary damages in the sum of \$50,000 to be excessive when compared with the compensatory damages sum. We will not disturb the jury's finding. We overrule points nine and ten. We affirm the trial court's judgment.



NATLAND CORPORATION,
et al., Appellants,

v.

BAKER'S PORT, INC., and Baker
Marine Corporation, Appellees.

No. 13-90-483-CV.

Court of Appeals of Texas,
Corpus Christi.

June 30, 1993.

Opinion Overruling Motion for
Rehearing Oct. 14, 1993.

Rehearing Overruled Nov. 30, 1993.

Purchaser sued vendor for fraud, violations of Deceptive Trade Practices Act (DTPA) and breaches of warranty. State entered suit seeking declaratory judgment that it owned some of the land in dispute and that another part of the land was subject to restrictions for benefit of the public under "public trust doctrine." The 36th District

Court, San Patricio County, Ronald Yeager, J., entered summary judgment against state on its claims, and awarded damages to purchaser for title defects and for fraud and DTPA violations. State and vendor appealed. The Court of Appeals, Dorsey, J., held that: (1) title to dry land that had been added to shoreline by gradual migration of soil deposited along shoreline by Army Corps of Engineers while dredging adjacent waterway vested in upland owner; (2) state's patent for submerged lands was not encumbered with implied trust for benefit of public; (3) statute allowing state to sell submerged land to navigation districts for "purposes" authorized by law did not limit uses of submerged land to purposes related to navigation or business of navigation district; (4) reservation to public for recreational purposes in state's patent did not constitute true encumbrance; (5) charge regarding damages due to any encumbrances on property aided jury and did not misstate the law; (6) there was no evidence to support award of damages for difference between property valued with encumbrances and its value without encumbrances; (7) evidence did not support amount awarded to purchaser on its breach of title claim for state-owned submerged land mistakenly incorporated in deed; and (8) evidence was sufficient to support finding of fraud.

Affirmed in part, reversed in part and remanded.

1. Navigable Waters \S 36(3)

Title to land covered by bays, inlets and arms of Gulf of Mexico within tidewater limits is in the state, and those lands constitute public property that is held in trust for use and benefit of the people.

2. Navigable Waters \S 36(2), 44(3)

Generally, riparian or littoral owner acquires or loses title to land gradually or imperceptibly added to or taken from his shoreline.

3. Navigable Waters \S 44(2, 3)

Right to accretion does not allow littoral, or upland, owner to increase holdings by

artificially building up submerged land into land on his shoreline; manmade or artificial additions of this kind by upland owner do not change boundaries between his land and state's.

4. Navigable Waters ⇨44(3)

Title to artificially induced accretions vests in upland owner, when that owner has not caused or directly participated in the artificial accretions.

5. Navigable Waters ⇨44(3)

Title to dry land that had been added to shoreline by gradual migration of soil deposited along shoreline by Army Corps of Engineers while dredging adjacent waterway vested in upland owner, where artificial condition merely facilitated process of natural forces carrying soil to build up land in question; mere granting of easement by upland owner, allowing Corps to place spoil material on dry land, was not sufficient participation by owner to require forfeiture of his right to resulting accretions.

6. Navigable Waters ⇨36(1)

State's patent for submerged lands was not encumbered with implied trust for benefit of public.

7. Covenants ⇨14

Statutory covenant against encumbrances is implied from use of words "grant" or "convey" in transfer of fee simple estate, unless express terms of conveyance negate that implication. V.T.C.A., Property Code § 5.023(a)(2).

8. Covenants ⇨42(1)

Statutory covenant against encumbrances is distinct from warranty of title and protects grantee against interests in third persons which, though consistent with fee being in grantor, will diminish value of estate conveyed. V.T.C.A., Property Code § 5.023(a)(2).

9. Covenants ⇨96(1)

Statutory covenant against encumbrances is breached, if at all, upon execution and delivery of deed. V.T.C.A., Property Code § 5.023(a)(2).

10. Statutes ⇨206

It is proper to look at all parts of legislative act, and not merely isolated portion thereof, to ascertain its proper construction and meaning, and thereby determine legislative intent.

11. Navigable Waters ⇨37(2)

Statute allowing state to sell submerged land to navigation districts for "purposes" authorized by law did not limit uses of submerged land to purposes related to navigation or business of navigation district; clause was merely descriptive and did not act as limitation or encumbrance upon estate conveyed or restrict use of land to these purposes alone. Vernon's Ann.Texas Civ.St. art. 8225.

12. Deeds ⇨144(1)

Words in deed merely showing purpose of grant and use to which property is to be put do not change fact of conveyance or limit the grant.

13. Deeds ⇨144(1)

Generally, reservations for public purposes in grant will be liberally construed to give full effect to such reservation; however, when terms of grant appear to reserve nothing more than what state law generally reserves in all lands similarly situated, courts are reluctant to find such reservation to be true encumbrance which may diminish value of estate.

14. Deeds ⇨144(1)

Reservation in state's patent to public for recreational purposes did not constitute true encumbrance, but rather was merely descriptive of rights public already had.

15. Waters and Water Courses ⇨153

Generally, natural stream or watercourse on land sold is not an encumbrance, nor are riparian rights in a river.

16. Waters and Water Courses ⇨40, 153

Right of proprietor to flow of water on his property is not an easement, but rather is inseparably connected with, and inherent in, the land, part and parcel to it.

17. Damages ⇨217

Charge regarding damages due to any encumbrances on property aided jury and did not misstate the law.

18. Trial ⇨182

So long as instructions serve to aid jury and are not clear misstatements of law, trial court has not abused its discretion when including them.

19. Vendor and Purchaser ⇨350

There was no evidence to support award to purchaser of damages for difference between property valued with encumbrances and its value without encumbrances, absent evidence of breach of covenant against encumbrances on which purchaser relied.

20. States ⇨89

Evidence did not support amount awarded to purchaser on its breach of title claim for state-owned submerged land mistakenly incorporated in deed; question remained as to whether tract was included in another tract.

21. Fraud ⇨3

Fraud requires material misrepresentation, made by one knowing of its falsity or with reckless disregard for its truth, with intent that statement be relied on by another who does so rely to its detriment.

22. Fraud ⇨13(2)

Vendor's knowing failure to convey fee title to land, particularly submerged lands, supported finding of fraud.

23. Appeal and Error ⇨1079

Defendant waived point of error that plaintiff's fraud defense to counterclaim was barred by waiver or ratification, where defendant did not argue those affirmative defenses in its brief. Vernon's Ann. Texas Rules Civ. Proc., Rule 94.

24. Trial ⇨358

Jury's findings that vendor committed fraud, but that it did not knowingly violate Deceptive Trade Practices Act (DTPA) or engage in unconscionable conduct, were not fatally conflicting, since acts of fraud and

knowing violation of DTPA possessed different elements. V.T.C.A., Bus. & C. § 17.41 et seq.

On Motion for Rehearing

25. Fraud ⇨20

One who seeks to rescind agreement because of fraudulent representation must show that he relied upon representation and that same induced him to execute agreement.

26. Fraud ⇨20

Absent evidence that purchaser relied on absence of encumbrances or representations that state's submerged lands were in the tract, rescission was not a proper remedy. V.T.C.A., Bus. & C. § 17.50(b)(3).

Charles R. Porter, Jr., Rick Foster, Porter, Rogers, Dahman, Gordon & Lee, Corpus Christi, Linda Broocks, Stephen Krebs, Baker & Botts, Houston, Liz Bills, Asst. Atty. Gen., Energy Div., Dan Morales, Atty. Gen., Joe R. Greenhill, Bob E. Shannon, Baker & Botts, Austin, Peter M. Oxman, Baker & Botts, Houston, Ken Cross, Asst. Atty. Gen., Environmental Protection Div., Ed Salazar, Asst. Atty. Gen., Nancy Lynch, Asst. Atty. Gen. Chief, Environmental Protection Div., Austin, for appellants.

Richard B. Stone, Law Offices of Stone & Stone, Corpus Christi, Richard A. Schwartz, Richard A. Schwartz & Associates, Houston, for appellees.

Charles Butler, Corpus Christi, for intervenor.

Lawrence A. Dio, Port Lavaca, Eli Mayfield, Palacios, Kathryn F. Green, Kleberg & Head, J. Michael Mahaffey, Kleberg & Head, Corpus Christi, for other interested parties.

Before NYE, C.J.,* and DORSEY and FREDERICO G. HINOJOSA, Jr.

* Former Chief Justice retired April 30, 1993.

OPINION

DORSEY, Justice.

This appeal concerns title to 2,800 acres of coastal land sold by Natland Corporation, National Steel Corporation and NS Land Company (collectively "Natland") to Baker's Port, Inc. and Baker Marine Corporation (collectively "Baker"). Baker did not develop the property as planned, claiming that defects of title and encumbrances against the land prohibited the intended uses. Baker sued Natland for fraud, violations of the Texas Deceptive Trade Practices—Consumer Protection Act,¹ and breaches of warranty. The State became a party, seeking a declaratory judgment that it owned 36 acres of the land in dispute and that another part of the 2,800 acres, consisting of 229 acres, was subject to restrictions for the benefit of the public under the "public trust doctrine."

The trial court entered a partial summary judgment against the State on both claims, from which it appeals. After a jury trial, Baker took judgment against Natland for \$360,000 for certain title defects and \$22,000,000 for fraud and DTPA violations in connection with the sale of the property.² We affirm the summary judgment against the State, but reverse and remand the remainder of the judgment for new trial.

In 1981, Larry Baker, Sr., of Baker Marine Corporation, approached Natland about purchasing 2,800 acres of coastal land in San Patricio, Aransas, and Nueces Counties, near the City of Ingleside. Mr. Baker had leased one end of this property for a shipyard business for many years. He intended to use the 2,800 acres to develop a private shipbuilding community of both homes and businesses, to be called Baker's Port, with four private channels controlled by Baker, and with access to public waters—the Corpus Christi Ship Channel, the Intracoastal Waterway, and the Gulf of Mexico. In the summer of 1981, Natland sold the property to Baker, subject to certain restrictions and encumbrances, for \$31,668,000, consisting of cash and notes.

1. Tex.Bus. & Com.Code Ann. §§ 17.41, *et seq.* (Vernon 1987).

In early 1988 Baker learned of title defects and other encumbrances and claims against the property not reserved or excepted in the deed. Mr. Baker complains that Natland showed him an inaccurate 1962 survey, the Huston map, which Natland represented to show the property that it owned, but which incorrectly identified its boundaries. In particular, the Huston map incorrectly represented that Natland owned the Garrett, Brashear, and Overbid tracts of land along the northern border of the property, as well as approximately 29 acres of State-owned submerged lands off the eastern shoreline and parallel to the Intracoastal Waterway. Baker alleges that Natland's attorney persuaded Baker's attorney to accept an inaccurate metes and bounds description derived from the Huston map and to include it in the General Warranty Deed conveying the property.

Baker also contends that Natland failed to disclose certain other title defects and encumbrances against the property. The first, a 229 acre tract of partially submerged lands in the center of the property, was allegedly encumbered by a right of the public to use it for public recreation and by an implicit restriction that the land could only be used for navigation purposes. This tract is referred to as Patent 198. Baker also complained of the existence of a perpetual spoil easement in favor of the United States, and a claim by the State of Texas to 36 acres of dry land along the shore that would make the Baker's Port channels inaccessible to the water.

These defects and encumbrances allegedly hindered development of the Baker's Port project, and the company abandoned it. Baker sued Natland for breach of warranty, fraud, and violations of the DTPA, based on the title defects and undisclosed encumbrances against the property.

The State entered this suit seeking a declaratory judgment (1) that it owned 36 acres of dry land that had been added to the shoreline by the gradual migration of soil deposited along the shoreline by the United

2. The \$22,000,000 was labelled an off-set against Baker's remaining \$19,000,000 debt due to Natland on the purchase price of the property.

States Army Corps of Engineers while dredging the adjacent Intracoastal Waterway, and (2) that a public trust encumbrance attached to the 229 acre tract. The trial court granted a partial summary judgment disposing of the State's claims, declaring that Natland had title to the 36 acres, and that the 229 acre tract was free of any public trust encumbrance.

The central issues at trial between Natland and Baker were the effect of the encumbrances and title defects on Baker's ability to develop the land in accordance with its plans, and the damages flowing from such defects. (See appended map) Specifically, Baker alleged breaches of the warranty against encumbrances with regard to the Patent 198 reservations on the 229 acre tract and with regard to the spoil disposal easement. Baker alleged breaches of the warranty of title with regard to the tracts of land incorrectly included in the Huston map. Baker also alleged violations of the DTPA, and fraud with regard to Natland's misrepresentation of the property conveyed and failure to disclose the various defects and encumbrances.

The jury returned a verdict generally in favor of Baker. On the claims for breach of the warranty against encumbrances, the jury found \$6,330,000 in damages resulting from the Patent 198 reservations on the 229 acre tract, but no damages resulting from the spoil disposal easement. On the claims for breach of the warranty of title, the jury found breaches with regard to the Garrett, Brashear, and State-owned submerged-land tracts, but not the Overbid Tract. It found damages in the amount of an \$8,800 fair market value for the Brashear Tract and a \$360,000 fair market value for the State-owned submerged lands, but found no damages were proximately caused by the breach of title with regard to the Garrett Tract. On the DTPA and fraud claims, the jury found \$22,000,000 as the difference between the

3. We note that the judgment failed to award Baker damages for breach of title based on the Brashear tract, and that the jury finding of \$6,330,000 in damages for breach of the warranty against encumbrances concerning the 229 acre tract was apparently subsumed within the award of \$22,000,000 for fraud and DTPA violations. Baker does not complain about either action of the trial court.

value of the property as it was received and as represented. The trial court granted final judgment, generally in accordance with the jury's verdict in favor of Baker, against Natland for \$360,000, and ordered that Baker's \$19 million dollar debt to Natland was fully offset by \$22,000,000 in damages.³

I. STATE'S APPEAL

We first address the State's appeal from partial summary judgment rendered in favor of Natland, both (1) that 36 acres of land along the shore of Redfish Bay adjacent to the westerly right-of-way line of the Intracoastal Canal belonged to Natland under the doctrine of accretion, and (2) that 229 acres of partially submerged lands granted to Natland's predecessor in title under Patent 198 were conveyed in fee simple, subject only to the specific reservations therein, and that no implied "public trust" restriction applied to the land.

A. The Creation of Dry Land

By its first point of error, the State contends that the trial court erred in holding that 36 acres of land along the shoreline belonged to Natland and not the State. The State argues that the eastern boundary of Natland's property should be the shoreline as it existed in 1958, before the additional 36 acres of dry land was created.

The undisputed facts are that the 36 acres at issue are presently dry land that had been submerged prior to the dredging of the intracoastal waterway. The dredging was done by the U.S. Army Corps of Engineers and its contractors in 1959 and 1960. The spoil dredged in the process of creating the canal was piled on dry land inland from the shore during those years, pursuant to a spoil disposal easement granted by Natland's prede-

In addition, however, a portion of the judgment does award damages to the Jimmie C Brashear Trust and the Brashear Life Trust, parties below not subject to the present appeal. We do not disturb the judgment rendered in favor of these parties, about which none of the parties on appeal have complained.

cessor in title.⁴ In subsequent years, by the action of rain, wind and gravity, some of the spoil gradually was washed from the piles toward the sea, extending the land seaward. The State argues that it still owns this 36-acre extension which had formerly been submerged lands.

[1] Title to land covered by the bays, inlets, and arms of the Gulf of Mexico within tidewater limits is in the State, and those lands constitute public property that is held in trust for the use and benefit of the people. *Lorino v. Crawford Packing Co.*, 142 Tex. 51, 175 S.W.2d 410, 413 (1943); *City of Corpus Christi v. Davis*, 622 S.W.2d 640, 643 (Tex. App.—Austin 1981, writ ref'd n.r.e.); *Buller v. Sadler*, 399 S.W.2d 411, 415 (Tex.Civ. App.—Corpus Christi 1966, writ ref'd n.r.e.).

[2] However, the general rule is that a riparian or littoral owner acquires or loses title to the land gradually or imperceptibly added to or taken from his shoreline. Erosion is the process of wearing away the land, while accretion is the process of gradual enlargement. *Coastal Indus. Water Auth. v. York*, 532 S.W.2d 949, 952 (Tex.1976); *State v. Balli*, 144 Tex. 195, 190 S.W.2d 71, 100-01 (1944). Specifically, accretion denotes the natural process of increasing real property by the gradual and imperceptible disposal of solid material to the shoreline. *Butler*, 399 S.W.2d at 421. Shoreline property owners' rights, littoral rights, thus include the right to any accretions. *Davis* at 646; *Gibson v. Carroll*, 180 S.W. 630, 632 (Tex.Civ.App.—San Antonio 1915, no writ).

[3] This right to accretions, however, does not allow the littoral, or upland, owner to increase his holdings by artificially building up submerged land into dry land along his shoreline. Man-made or artificial additions of this kind by the upland owner do not change the boundaries between his land and the State's. In *Lorino*, for instance, the owner of an offshore oyster house gradually built up a dry-land connection to the shore by continually dumping oyster shells into the water. The Texas Supreme Court held that

title to the dry land created by artificial means did not pass to the upland owner as an accretion, but remained in the State. *Id.* at 414.

Some language in *Lorino* might suggest that any addition to the shoreline that has been influenced in the slightest by artificial means is not an accretion passing title to the upland owner. However, later Texas cases suggest that the artificial nature of additions to, or subtractions from, the shoreline is not necessarily determinative of the question of whether title shifts under the doctrines of accretion and erosion. In *York*, for instance, the court held that the subsidence of land along a channel due to artificial underground drainage did not divest the upland owner of title to the newly-submerged portion of his lands. 532 S.W.2d at 952. The court stated, with regard to the causes of the subsidence, that "[w]e place no significance upon the relation between artificial and natural causes of this phenomenon," and cited *Lorino* for the narrow rule that the upland owner may not acquire title through self-help by filling and raising the land level. *York*, 532 S.W.2d at 952.

In *State v. Baxter*, the upland owner's shoreline had been extended over a number of years by the accumulation of sediment at the mouth of the Colorado River. 430 S.W.2d 547 (Tex.Civ.App.—Waco 1968, writ ref'd n.r.e.). This accumulation was accelerated after the destruction of a huge logjam of floating debris, a public works project. Nevertheless, the court of appeals found sufficient evidence that the accumulation was an accretion belonging to the upland owner. *Id.* at 548.

In *Davis*, the City reclaimed an eroded beach, title to which was then claimed by the upland owners. Central to the court's decision in *Davis* was that the upland owners had initially been divested of title by the process of erosion. *Id.* at 643. However, the evidence suggested that this erosion process was not entirely natural. Without human intervention, the process of erosion by periodic storm damage would have been balanced

4. The federal government had a right to dredge the submerged lands in question by virtue of its dominant navigational servitude over all naviga-

ble waters. See *United States v. Rands*, 389 U.S. 121, 88 S.Ct. 265, 19 L.Ed.2d 329 (1967).

by the slow natural replacement of the beach through accretion. However, artificial structures had been erected which interfered with the process of accretion. As a result of these artificial structures, unchecked erosion was unnaturally allowed to divest the upland owners of their property.

The holdings in *Baxter* and *Davis* would be inconsistent with an analysis of accretion or erosion that asked merely whether the process was uninfluenced by artificial means. Although the direct causes of the accretion in *Baxter* and of the erosion in *Davis* were the natural forces of the waters and currents on sediment and soil, those natural forces had themselves been influenced by artificial means, such that but for man's intervention nature would not have changed the shoreline in this way.

In the modern world, purely natural phenomena wholly uninfluenced by man and his works are rare if not non-existent. This is especially evident where water reacts with land. Every dam upstream creating a reservoir affects the building of a stream's delta, as every jetty into the Gulf of Mexico influences the currents traveling the shoreline carrying sand from one beach to the other. The distinction between wholly natural and artificially-influenced changes in the shoreline is unworkable as the sole criterion to determine the ownership of land along the shore.

The majority of our sister states hold that title to formerly submerged land that has been built up by artificially-induced means outside the upland owner's control vests in the upland owner, unless the State has an independent navigational or other public purpose to justify its continued ownership. See *Bonelli Cattle Co. v. Arizona*, 414 U.S. 313, 94 S.Ct. 517, 38 L.Ed.2d 526 (1973); *Michaelson v. Silver Beach Improvement Ass'n*, 342 Mass. 251, 173 N.E.2d 273 (1961); *State v. Gill*, 259 Ala. 177, 66 So.2d 141 (1953). According to this line of authority, unless the upland owner himself somehow caused the additions to his land at the State's expense, the fact that the submerged land is now dry extinguishes the State's interest in it, absent some other public purpose for which the State may claim continued title to the land.

Bonelli, 414 U.S. at 322-23, 94 S.Ct. at 524-25; see also 78 AM.JUR.2D *Waters* § 410 (1975).

[4] We believe that the principles followed in the out-of-state authorities and suggested by *York*, *Baxter*, and *Davis* apply to vest title to artificially-induced accretions in the upland owner, when that owner has not caused or directly participated in the artificial accretions.

[5] In the present case, the artificial process of dredging the channel and placing the spoils on land near the shore was followed by the natural drift of this material on to the submerged lands along the shore. Here, as in *Baxter* and *Davis*, an artificial condition merely facilitated the process of natural forces carrying soil to either build up or erode the land in question. The action of the Corps of Engineers of depositing spoil material upland does not prevent the upland owner from gaining title to land created by the gradual run-off of that material.

The mere granting of an easement by the upland owner, allowing the Corps of Engineers to place the spoil material on dry land, was not sufficient participation by the owner to require forfeiture of his right to the resulting accretions under the principles of *Lorino*. Here, the trial court correctly granted summary judgment that Natland had acquired title to the land. We overrule the State's first point of error.

B. The Public Trust Doctrine

In its second point of error challenging the summary judgment against it, the State of Texas argues the trial court erred in holding that 229 acres of submerged lands, when patented to Natland's predecessor in title, was not encumbered with an implied trust for the benefit of the public. The court held that Natland's predecessor in title received title in fee simple absolute encumbered only by those reservations expressed in the patent.

The land at issue consists principally of salt flats and a lagoon. It was conveyed by the State by Patent 198 to the San Patricio Navigation District No. 1 in 1958 under the authority of former Article 8225 (now

Tex. Water Code Ann. §§ 61.115-61.117 (Vernon 1988)). That statute gave navigation districts the right to purchase lands and flats owned by the State that are wholly or partially covered by waters of bays or arms of the Gulf of Mexico. Some of the land was later sold by the navigation district to the city of Ingleside. In 1973 the City and the navigation district conveyed the Patent 198 lands to Natland under the authority of Tex. Rev. Civ. Stat. Ann. art. 8247b § 1(c) (Vernon 1957), which allowed the district to dispose of surplus lands.

The statute allowing the State to sell land to the navigation district required certain reservations, principally concerning minerals and public uses. Those express reservations will be reached later in the opinion, and are not material to the State's claim in this point of error. The State maintains that there is an implicit reservation, created by operation of law, that restricts the development and use of the tract; that, in spite of the grant by the State, the public has rights to the land.

The State argues that in all Western ancient law, both common law and Roman, the sovereign holds title to the lands underlying the bays and offshore waters, as well as the shores, for the benefit of the public at large. All may use these public areas for fishing, maritime commerce, navigation, and related activities. Although the sovereign may hold title to the submerged lands, it holds it as trustee for the people, the public. The State maintains that although it may sell submerged lands, this must be done with specific legislative intent, and the land so sold must be used for purposes that are consistent with the public interests in the land. This imposition of a public trust on such lands has been recognized in some jurisdictions, in certain situations.

The primary authority in the United States for the public trust doctrine is the United States Supreme Court case of *Illinois Cent. R.R. Co. v. Illinois*, 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1018 (1892). The Court considered Illinois's right to convey title to a large portion of submerged land along the Chicago waterfront on Lake Michigan, to be held by the private owner for railroad purposes as well as for the erection of wharves, piers, and

docks. The Court concluded that the States' title to submerged lands differs in character from their title to dry land, and that the States hold their tidelands and lands beneath navigable waterways within their borders "in trust for the people of the State, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, freed from the obstruction or interference of private parties." The Court held that the State may grant parcels of the submerged land so that commerce may be improved by the erection of docks, wharves, or piers, so long as the conveyance of the public trust lands are made for such public purpose.

The Court held that a disposition of submerged lands by the State for any purpose is not consistent with the exercise of that trust which requires the government of the State to preserve such waters for the use of the public. The trust devolving upon the State for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by a transfer of the property. *The control of the state for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining.* (emphasis added).

Id. at 452-53, 13 S.Ct. at 118.

Based on the discussion of public rights in *Illinois Central R.R. Co.*, many States have developed their own versions of a "public trust doctrine" restriction that follows submerged lands conveyed into private hands by the State. See *State v. Central Vermont Ry., Inc.*, 153 Vt. 337, 571 A.2d 1128 (1989); *Orion Corp. v. State*, 109 Wash.2d 621, 747 P.2d 1062 (1987); *City of Berkeley v. Superior Court of Alameda County*, 26 Cal.3d 515, 162 Cal.Rptr. 327, 606 P.2d 362 (1980); *Boston Waterfront Dev. Corp. v. Commonwealth*, 378 Mass. 629, 393 N.E.2d 356 (1979). The United States Supreme Court later recognized that individual States may define the lands held in public trust and recognize private rights in such lands. See *Phillips Petroleum*

Co. v. Mississippi, 484 U.S. 469, 473, 108 S.Ct. 791, 794, 98 L.Ed.2d 877 (1988); *Shively v. Bowlby*, 152 U.S. 1, 26, 14 S.Ct. 548, 557, 38 L.Ed. 331 (1894). There is no universal, uniform law upon the subject, but each State has dealt with the lands under the tide waters within its borders according to its own views of justice and policy. *Phillips*, 484 U.S. at 481-84, 108 S.Ct. at 798-99; *Shively*, 152 U.S. at 26, 14 S.Ct. at 557.

This doctrine that the sovereign holds submerged lands in trust for the benefit and use of the public, thereby imposing on submerged lands granted by the State implied restrictions on their use and development, has not fared well in Texas jurisprudence.

In the seminal Texas case of *City of Galveston v. Menard*, 23 Tex. 349 (1859), the Texas Supreme Court upheld the validity of a patent of submerged lands existing from the end of Galveston Island to Menard. The court recognized that the State's right in coastal submerged lands is different from its right in uplands, because navigation and fishing rights are to be enjoyed in common by all people of the State. The court said that it is ordinarily best to devote the State's interest in water to public use. However, sometimes the public's use and enjoyment of that type of property can best be fulfilled by allowing portions of it to be used for wharves and docks. The court validated the patent in its entirety, including the submerged lands.

A portion of the Menard tract was the subject of a Supreme Court decision a century later in *State v. Lain*, 162 Tex. 549, 349 S.W.2d 579 (1961). A portion of the Menard tract was still submerged off the northwestern edge of Galveston Island, and the State built a ferry landing on and over it. The State argued that the public had certain rights over the land under the public trust doctrine, but the court stated,

The power and intent of the Republic to grant the submerged area included in the patent to Menard in derogation of public rights of navigation, etc., was fully considered. The court confirmed the existence of both power and intent and recognized the absolute right of Menard and his grantees to fill up and use the submerged areas.... Defendants cite *Illinois Central*

Railroad Co. v. State of Illinois (cite omitted) and *Darling v. City of Newport News* (cite omitted) as reaching results contrary to the result reached by this court in the Menard case. We need not review the cited cases, for we regard our own decision as controlling.

Id., 162 Tex. at 555, 349 S.W.2d at 583.

[6] We view *Lain* as controlling here. See also *Texas Parks & Wildlife Dept v. Champlin Petroleum Co.*, 616 S.W.2d 668 (Tex.Civ.App.—Corpus Christi 1981, writ ref'd n.r.e.). Accordingly, there were no implied reservations for the benefit of the public in the Patent 198 submerged lands. All reservations for the public use and benefit were explicit in the grant, subject to the rules of construction of those reservations. The trial court did not err in denying the State's motion for summary judgment. The State's point of error two is overruled.

II. NATLAND'S APPEAL

We next address Natland's appeal of the judgment rendered in favor of Baker.

A. Breach Of The Warranty Against Encumbrances

By its first through fourth points of error, concerning the 229 acre tract, Natland challenges the legal and factual sufficiency of the evidence to show a breach of warranty against encumbrances causing damages to Baker. Natland contends that the State granted a full fee simple estate to this land, which was conveyed without limitation into private hands in Natland's chain of title.

By Jury Questions 1 & 2, the jury found that Natland breached its warranty against encumbrances with respect to the spoil disposal easement and the Patent 198 reservations, both of which were a producing and proximate cause of damages to Baker. By Jury Question 17, the jury found that Baker suffered damages in the amount of \$6,330,000 due to the Patent 198 reservations, but \$0.00 damages with regard to the spoil easement.

[7-9] The statutory covenant against encumbrances, as provided by Tex.Prop.Code

Ann. § 5.023(a)(2) (Vernon 1984),⁵ is implied from the use of the words "grant" or "convey" in a transfer of a fee simple estate, unless the express terms of the conveyance negate that implication. *City of Beaumont v. Moore*, 146 Tex. 46, 202 S.W.2d 448, 453 (1947). The covenant against encumbrances is distinct from a warranty of title and protects the grantee against interests in third persons which, though consistent with the fee being in the grantor, will diminish the value of the estate conveyed. *Id.* (Moore's mineral royalty interest burdened by the City's use of the surface of the land as an airport); *Texas & Pac. Ry. Co. v. El Paso & N. E. R.R. Co.*, 156 S.W. 561, 565 (Tex.Civ.App.—El Paso 1913, writ ref'd). Such a covenant is breached, if at all, upon the execution and delivery of the deed. *City of Beaumont*, 146 Tex. at 53, 202 S.W.2d at 453; *Texas & Pac. Ry. Co.*, 156 S.W. at 565.

In the present case, Baker alleged that its title to a portion of the land conveyed to it by Natland, the 229 acre tract originally granted by Patent 198, was subject to two specific encumbrances of which Baker was unaware and which diminished the value of the estate.

First, Baker alleged an encumbrance in the form of an implied navigational use restriction on the submerged portions of the Patent 198 lands. The original grant was authorized to encourage navigation and the creation of navigation districts, and although the property legally passed into private ownership, it is still restricted to navigational purposes.

Second, Baker alleged an explicit reservation for recreational purposes in Patent 198 that is an encumbrance that prevented it from developing the property.

THE NAVIGATIONAL USE RESTRICTION

Title to submerged land owned by the State may only be acquired by grant express-

5. Formerly Tex.Rev.Civ.Stat. Ann. art. 1297 (repealed).

6. A navigation district created pursuant to the Texas Constitution is not merely a department, board or agency of the State, but is a political subdivision, similar to a county, city or other such body politic. See *Guaranty Petroleum Corp. v. Armstrong*, 609 S.W.2d 529 (Tex.1980).

ly authorized by the legislature. *City of Galveston v. Mann*, 135 Tex. 319, 143 S.W.2d 1028, 1034 (1940); *State v. Bradford*, 121 Tex. 515, 50 S.W.2d 1065, 1069 (1932). Tex. Rev.Civ.Stat. Ann. art. 8225 (now Tex. Water Code Ann. §§ 61.115–61.117 (Vernon 1988)) gave navigation districts "the right to purchase from the State of Texas any land and flats belonging to said State, covered or partly covered by the waters of any of the bays or other arms of the sea, to be used by said District for the purposes authorized by law with the right to dredge out or to fill in and reclaim said lands or otherwise improve the same...."⁶ The statute further authorized the Commissioner of the General Land Office to sell such land to the navigation district for the price of one dollar per acre, and to issue a patent "conveying to said District the right, title and interest of the State in the lands," subject to a specific reservation of the mineral interest to the State. Article 8225 thus allowed the State to convey submerged lands by patent in fee simple (except minerals) to a navigation district. *Champlin Petroleum Co.*, 616 S.W.2d at 671–72.

Under the authority of that statute, the State in 1958 patented 229 acres of submerged land to the San Patricio Navigation District No. 1, "to be used by said district for the purposes authorized by law with the rights to dredge out or fill in and reclaim said lands or otherwise improve the same." The patent, Patent 198, specifically reserved the mineral interest to the State and the right of the general public to use submerged portions for recreation.

The Navigation District conveyed some of the land to the City of Ingleside, Texas, in 1959.⁷ In 1973 the Navigation District and the City of Ingleside jointly conveyed all the Patent 198 lands to National Steel Company for \$344,257.50, by a warranty deed which

7. Tex.Rev.Civ.Stat. Ann. art. 8247b § 1(c), as amended in 1957 (55th Leg., p. 170, ch. 77, § 1), in turn gave the Navigation District the authority to "sell or lease all or any part of any lands owned by it ... provided such lands are declared as surplus and are not necessary to be used by such Navigation District...."

generally duplicated the specific mineral interest and recreational reservations to the State.

Baker contends that Article 8225, which authorized the patent, specifies that conveyances were to be made to navigation districts for "purposes authorized by law," which constitutes a limitation on the uses of the submerged land consistent with the statutory powers of, and restrictions on, the Navigation District—in other words, the uses to which the Navigation District itself would be restricted under the Water Code. See *Tex. Water Code Ann.* §§ 60.001, *et seq.* (Vernon 1988); see, e.g., *Tex. Water Code Ann.* § 61-116(b) (Vernon 1988).

[10-12] It is a settled rule of statutory construction that it is proper to look at all parts of the legislative Act, and not merely an isolated portion thereof, to ascertain its proper construction and meaning, and thereby determine the legislative intent. *State v. Terrell*, 588 S.W.2d 784, 786 (Tex.1979); *State v. Aransas Dock and Channel Co.*, 365 S.W.2d 220, 222 (Tex.Civ.App.—San Antonio 1963, writ ref'd). Specifically with regard to the conveyance of State lands by patent, when the apparent purpose and intention of the authorizing statute as a whole is to convey fee simple title, a clause suggesting various specific purposes for which the land may be used is merely descriptive and does not act as a limitation or encumbrance upon the estate conveyed or restrict the use of the land to these purposes alone. See *Aransas Dock & Channel Co.*, 365 S.W.2d at 223. Generally, words in a deed merely showing the purpose of the grant and the use to which the property is to be put do not change the effect of the conveyance or limit the grant. *First Baptist Church of Fort Worth v. Baptist Bible Seminary*, 162 Tex. 441, 347 S.W.2d 587, 591 (1961).

In the present case, the clause providing that the property is "to be used by said District for the purposes authorized by law" is not by its terms a limitation on the uses of the land—nowhere does the statute or patent say that the lands may *not* be used for purposes that are unrelated to navigation or the business of a navigation district. Rather, this clause appears to be merely a recogni-

tion that the land may be used by the Navigation District for any authorized purpose. In other words, the quoted language is merely descriptive, rather than a limitation on title. See *Aransas Dock & Channel Co.*, 365 S.W.2d at 223.

While the Navigation District retained title to the lands, it is axiomatic that it could only use the land in accordance with the laws governing navigation districts. However, when title passed from the Navigation District to a third-party, it would seem awkward for that title to be encumbered by a restriction that would require the third-party to treat the land as if it still belonged to a navigation district. Nothing in the statute suggests that the legislature intended to encumber title in this manner. The statute intends to pass a clear title in fee simple (except minerals) to the navigation district. See *Champlin Petroleum Co.*, 616 S.W.2d at 672. To imply an additional encumbrance of the nature suggested by the State would only frustrate that intent.

THE EXPRESS RESERVATION FOR RECREATION

The second encumbrance the jury found to cause damage to Baker was the reservation in Patent 198 to the public for recreational purposes. Patent 198 reserved mineral rights and also provided:

There is further reserved to the State for the benefit of the general public the right to use that portion of the above described land which shall actually be covered by water for hunting, fishing or other recreational purposes, insofar as such use does not interfere with the function of the grantee navigation district as provided by law....

When, under the authority of article 8247b, the Navigation District and the City of Ingleside later conveyed the land to National Steel Company, the warranty deed contained a similar provision in substantially the same terms.

[13, 14] Generally, reservations for public purposes in a grant will be liberally construed to give full effect to such reservation. *State v. Bradford*, 121 Tex. 515, 50 S.W.2d

1065, 1077 (1932). However, when the terms of the grant appear to reserve nothing more than what the laws of this State generally reserve in all lands similarly situated, we are reluctant to find such reservation to be a true encumbrance which may diminish the value of the estate. In the present case, the so-called "public use" reservation applies to the entire tract of Patent 198 lands that are or may become submerged, whether the submerged lands are in the form of an inland pond or are connected to the navigable waters of the adjoining coast. Baker, moreover, remained completely free under the explicit terms of the patent "to dredge out or fill in and reclaim said lands or otherwise improve the same."

Thus, if Baker were to leave the submerged lands in the form of an inland pond, the reservation would be meaningless, since the public would not thereby gain the right to trespass across the owner's property to enjoy their right to the recreational use of the submerged lands. See *Diversion Lake Club v. Heath*, 126 Tex. 129, 86 S.W.2d 441, 445 (1935); *Taylor Fishing Club v. Hammett*, 88 S.W.2d 127, 130 (Tex.Civ.App.—Waco 1935, writ dismissed); *Smith v. Godart*, 5 S.W. 211, 212 (Tex.Civ.App.—Texarkana 1927, no writ).

[15, 16] On the other hand, if Baker were to dredge channels connected to navigable waters, the reservation would be equally meaningless in view of the fact that all such submerged lands are open to public recreational use. Our State generally recognizes the right of the public to the recreational use of public waters flowing over private lands even without an express reservation of such in the private owner's chain of title. Generally, a natural stream or watercourse on the land sold is not an encumbrance, nor are riparian rights in a river. 92 C.J.S. *Vendor & Purchaser* § 206e (1955). The rights of a proprietor to the flow of water on his property is not an easement, but rather is inseparably connected with, and inherent in, the land, part and parcel to it. 21 C.J.S. *Easements* § 46 (1990); see *Stanfield v. Schneidewind*, 96 N.J.L. 428, 115 A. 339, 340 (N.J.Sup.1921) ("Nothing which constitutes a part of the estate, or which, as between the parties, is to

be regarded as an incident to which the estate is subject, can be deemed an encumbrance.")

Thus, even though submerged land may be privately owned, if navigable public waters flow over it, the public retains the right to use those waters for navigation, fishing, and other lawful purposes. *Diversion Lake Club*, 86 S.W.2d at 446; *Port Acres Sportsman's Club v. Mann*, 541 S.W.2d 847 (Tex.Civ.App.—Beaumont 1976, writ refused n.r.e.); see also *Carrithers v. Terramar Beach Community Improvement Ass'n*, 645 S.W.2d 772 (Tex.1983); contra *Fisher v. Barber*, 21 S.W.2d 569 (Tex.Civ.App.—Beaumont 1929, no writ) (owner of land under navigable waters was entitled to the exclusive enjoyment of all the rights inherent in such ownership, which includes the exclusive right of hunting and fishing thereon).

In *Diversion Lake Club*, the riparian owner of banks along both sides of a navigable river created an artificial lake covering both the original state-owned river bed and part of the privately-owned riparian lands. The Texas Supreme Court held that the riparian owner could not enjoin the public from fishing on all parts of the lake. The Court reasoned that,

the water of the lake, notwithstanding the fact that most of its bed is privately owned, is still public water. . . . [Thus, the private owners had] no title to the fish in the water of the lake, no exclusive right to take the fish from the lake, and no right to interfere with the public in their use of the river and its water for navigation, fishing, and other lawful purposes. . . . This artificial change in the river and its bed did not affect the public nature of the waters and did not take away the right of the public to use them for fishing.

Id. at 446.

In *Mann*, a private club acquired marsh lands which had not been navigable at the time they were sold by the State into private hands. *Id.* at 847. Later, however, the continued use of airboats through the marsh artificially created a navigable stream which flowed over the marshlands. The private club sought to fence off this area and to prevent the public from fishing in the stream.

Following *Diversion Lake Club*, the Beaumont Court held that, although the private club had title to the underlying land, it did not have the exclusive right to fish in the overlying waters. *Id.* at 850.

We note that there is some out-of-state authority to suggest that a canal on private property, constructed and maintained with private funds and used for private purposes, is a private canal subject to private control. See *Vermilion Corp. v. Vaughn*, 356 So.2d 551, 555 (La.Ct.App.1978), affirmed in part, and vacated and remanded in part, 444 U.S. 206, 100 S.Ct. 399, 62 L.Ed.2d 365 (1979); cf. *Hughes v. Nelson*, 303 S.C. 102, 399 S.E.2d 24 (Ct.App.1990) (continuous and unobstructed use of private canal by the public may establish public right to fish in the canal). However, the rationale of *Diversion Lake Club* suggests that such a canal in Texas would not be subject to exclusive private use so long as public waters flowed through it.

Therefore, in the present case, we do not believe that the terms of the patent and subsequent grant reserved any right of public recreational use that would not otherwise attach to navigable waters covering the property sold. Rather, we believe that the patent and grant merely restated and clarified the general public right to fish and hunt in navigable waters even on privately-owned submerged lands. The recreational use provision was thus merely descriptive of rights that the public already had and did not act as an additional limitation on title. See *Aranzas*, 365 S.W.2d at 223.

We hold that the State's clarification of the right of public use in the terms of the patent did not constitute a true encumbrance such as to diminish the value of the estate conveyed. Thus, there was legally insufficient evidence to establish a breach of warranty against encumbrances such as to cause damage to Baker, whose plans for the property were not hindered to any greater extent by the terms in the patent than they naturally would have been subject to the rights of the public to use the navigable submerged lands for public recreation. Natland's first through fourth points of error are sustained.

III. REMAINING POINTS OF ERROR

[17] By points five through seven, Natland complains of the court's charge to the jury. The charge included, in conjunction with a question regarding damages due to any encumbrances on the property, an instruction quoting Article 8225. Natland contends that the language referring to the State's reservation of mineral rights in the property was irrelevant and misleading. Natland also contends that the court erred by including in the charge an instruction that the deed conveyed from the San Patricio County Navigation District No. 1 and the City of Ingleside to National Steel was subject to the reservations set out in Patent 198. Finally, Natland complains of the court's failure to include instructions regarding the uses Baker's Port could make of the property vis-a-vis the public's recreational rights.

[18] The trial court has broad discretion when constructing the charge for the jury. So long as the instructions serve to aid the jury and are not clear misstatements of the law, the trial court has not abused its discretion when including them. *Boyer v. Scruggs*, 806 S.W.2d 941 (Tex.App.—Corpus Christi 1991, no writ); *Atchison, Topeka, & Santa Fe Ry. Co. v. O'Merry*, 727 S.W.2d 596 (Tex.App.—Houston [1st Dist.] 1987, no writ). The charge in this case aided the jury and did not misstate the law. Points of error five through seven are overruled.

[19] Natland's eighth through tenth points of error generally challenge the sufficiency of the evidence to support the jury's award of \$22,000,000 in Jury Question 18. Specifically, point eight suggests that a new trial is required to recalculate the Jury Question 18 valuation without consideration of the supposed encumbrances.

By Jury Question 18 concerning damages resulting from Natland's fraud and DTPA violations, the jury found that the value of the property as received was \$22,000,000 less than its value as represented, yet that the value as received was equal to the consideration paid by Baker. In other words, the property had special value to Baker for the specific purposes which Baker envisioned. Moreover, these damages are based on the

assumption that the specific encumbrances alleged would prevent this planned development. Natland contends that because the jury improperly attributed this reduction in value to encumbrances here shown to have been of no effect on the land, a new trial is necessary to properly assess any reduction in the value of the land.

Larry Baker, Sr. testified that, if he had known of the spoil easement and the navigational and public use restrictions, he would not have purchased the property. Baker testified that because the encumbrances defeated the purposes for which he intended to use the property, it was only good for pasture land of a substantially reduced value. Baker valued the property with encumbrances at \$9,500,000, substantially less than its value without encumbrances of \$31,686,000. Baker claimed the difference of \$22,186,000 as damages and the jury apparently agreed. Baker's testimony concerning the supposed decline in the value of the land because of these encumbrances thus forms the basis for the \$22,000,000 in damages found by the jury.

However, the spoil easement was removed by Natland and the jury attributed no damages to it. As for the navigational and public use restrictions, we have already examined these in our discussion of Natland's first through fourth points of error. Since there was no evidence of a breach of a covenant against encumbrances on which Baker relies, there is no evidence to support these damages of \$22,000,000. Appellants' eighth through tenth points of error are sustained.

[20] By its eleventh and twelfth points of error, Natland challenges the legal and factual sufficiency of the evidence to support the amount awarded Baker on its breach of title claim for the State-owned submerged land mistakenly incorporated in the deed from Natland to Baker.

By Jury Question 19, the jury found that approximately 29 acres of State-owned submerged land between the shoreline and the U.S. Army Corps of Engineer's westerly 200-foot reference line had a fair market value of \$360,000. The strip formed a part of Baker's Port's claim that Natland had fraudulently misrepresented its ownership of these

submerged lands as included within its grant to Baker's Port.

An expert witness, Scruggs Love, placed a value of \$10,000 per acre on shoreline lands. The tract specifically sought to be evaluated consisted of 29 acres. However, there was another tract involved in this case, a 36 acre tract, formerly submerged before becoming dry land as a result of accretion, which we discussed above in the State's appeal. That 36 acre tract was described during trial as lying between the 1958 shoreline and the present shoreline. A question remained whether the 36-acre tract included this 29-acre tract. We hold the jury's assessment of a \$360,000 value for this 29-acre tract is against the great weight and preponderance of the evidence. Natland's eleventh and twelfth points of error are sustained.

[21, 22] By point 13, Natland contends that insufficient evidence exists to find that it committed fraud. Fraud requires a material representation, made by one knowing of its falsity or with reckless disregard for its truth, with intent that the statement be relied on by another who does so rely to its detriment. *Eagle Properties, Ltd. v. Scharbauer*, 807 S.W.2d 714 (Tex.1990); *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670 (Tex. 1990), cert. denied, 498 U.S. 1048, 111 S.Ct. 755, 112 L.Ed.2d 775 (1991). Natland represented to Baker's Port that it would convey fee title to all of the land at issue. This it knowingly failed to do, particularly with regard to the submerged lands. We find sufficient evidence to support the jury's finding of fraud. Point of error 13 is overruled.

[23] By point 14, Natland contends that as a matter of law, Baker's fraud defense to Natland's counterclaim was barred by waiver, ratification, and estoppel. There are no pleadings of waiver or ratification, both affirmative defenses requiring specific pleadings. See TEX.R.CIV.P. 94. Although the jury was asked about estoppel, it failed to find that Baker was estopped. The difficult test on appeal that appellant must meet is set out in *Sternier v. Marathon Oil Co.*, 767 S.W.2d 686 (Tex.1989). Appellant has not so argued in its brief and we hold he has waived point of

error 14. See TEX.R.APP.P. 74(f). Point of error 14 is overruled.

[24] By points 15 and 16, Natland maintains that two of the jury's findings were fatally conflicting. The jury found that Natland committed fraud, but that it did not knowingly violate the DTPA or engage in unconscionable conduct. Natland asserts that these answers are in fatal conflict. We disagree. The acts of fraud and a knowing violation of the DTPA possess differing elements. The jury's findings are not in conflict. Points 15 and 16 are overruled.

By points twenty and twenty-one, Natland complains of one jury finding and the trial

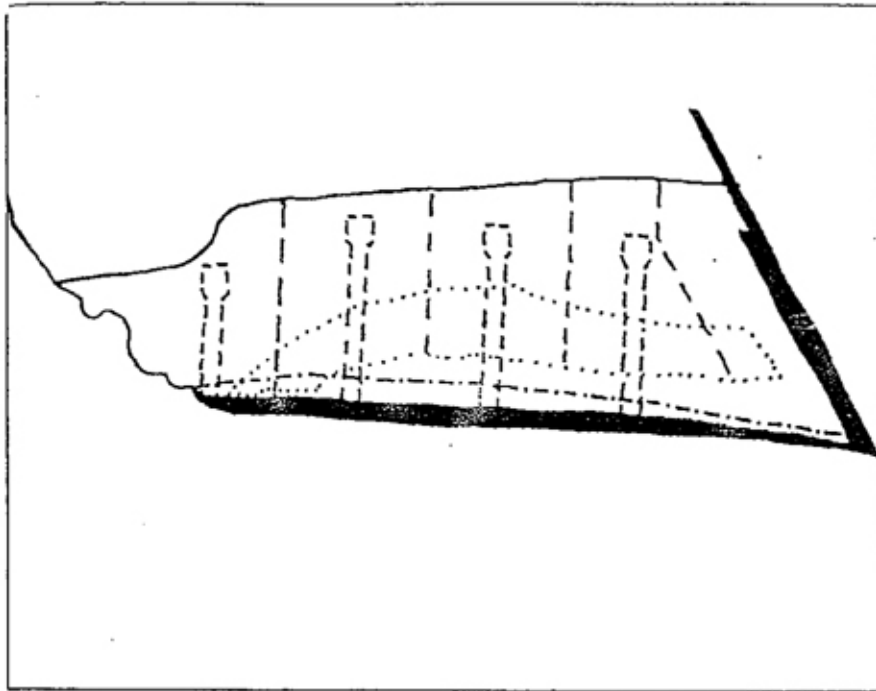
court's disregard of another, both involving the submerged lands. We are remanding and this point is not dispositive. Points of error 20 and 21 are sustained.

We have addressed all issues raised and necessary to the final disposition of this appeal. See TEX.R.APP.P. 90(a).

In conclusion, we AFFIRM the summary judgment against the state of Texas. As to Natland's appeal of the judgment in favor of Baker, we REVERSE the judgment of the court and REMAND the case for trial consistent with this opinion.

NYE, former C.J., not participating.

APPENDIX



Map of Baker's Port

LEGEND

- Existing Road and Western Shoreline
--solid black line.
- Garrett & Brashear Tracts and State-owned Submerged Land
--solid black area.
- Proposed Channels and Roads for Baker's Port
--broken line.
- Patent 198 Lands
--dotted line.
- 1958 Shoreline
--alternating broken/dotted line.

San Patricio Sk. F. 54-25 counter 41793

OPINION ON MOTION
FOR REHEARING

Among its grounds for rehearing, appellee Baker complains that we failed to address its two cross-points on appeal. It also says that our disposition leaves unclear the matters to be retried on remand. We write to address these concerns.

[25] The first cross-point complains that the trial court erred in denying rescission of the sale, which Baker sought under the provisions of Texas Deceptive Trade Practices-Consumer Protection Act, Tex.Bus. & Com. Code Ann. § 17.50(b)(3) (Vernon 1987). One who seeks to rescind an agreement because of fraudulent representations must show that he relied upon such representations and that the same induced him to execute the agreement. *Traders & General Ins. Co. v. Bailey*, 127 Tex. 322, 94 S.W.2d 134, 136 (Tex. Comm'n App.1936, opinion adopted). The DTPA remedy of rescission is merely a statutory recognition of the equitable remedy of rescission based on fraudulent misrepresentation. See *Schenck v. Ebby Halliday Real Estate, Inc.*, 803 S.W.2d 361, 366 (Tex.App.—Fort Worth 1990, no writ).

[26] Baker's basis for rescission under the fraud and DTPA claims were the purported encumbrances on the title and the failure of Natland to convey submerged lands owned by the state that were shown as being part of the property. There was evidence that Baker relied on the absence of encumbrances; however, we held there were no encumbrances as a matter of law. As to the submerged lands, there was no evidence that Baker relied on representations that the state's submerged lands were in the tract purchased. There being no evidence of reliance, rescission is not a proper remedy. We overrule Baker's first cross-point.

By its second cross-point, Baker complains that the jury's finding of reasonable and necessary attorney's fees is against the great weight and preponderance of the evidence. We have reversed the judgment against Baker and remanded for trial a cause of action for which Baker was earlier awarded attorney's fees. Our disposition moots this claim

of error. We overrule Baker's second cross-point.

Baker also contends that our earlier opinion is ambiguous as to what cause of action is subject to remand for a new trial. The only issue remaining for retrial is the breach of title cause of action concerning the State-owned submerged lands and related attorney's fees.

We overrule all motions for rehearing.

NYE, former C.J., not participating.



TEXAS COMMERCE BANK REAGAN
Through its Successor in Interest, TEXAS
COMMERCE BANK NATIONAL
ASSOCIATION, Appellant,

v.

LEBCO CONSTRUCTORS,
INC., et al., Appellees.

No. 13-91-423-CV.

Court of Appeals of Texas,
Corpus Christi.

June 30, 1993.

Rehearing Overruled Sept. 29, 1993.

Developers of shopping center and general contractor hired to construct center brought suit against lender for fraud and negligent misrepresentation in connection with lender's refusal to fund construction loans that it had already approved. The 129th District Court, Harris County, Hugo A. Touchy, J., rendered judgment in accordance with jury verdict against lender, awarding damages of \$2.5 million to general contractor and \$300,000 to developers. Lender appealed, and developers and general contractor cross-appealed. The Court of Appeals, Gilberto Hinojosa, J., held that: (1) general contractor was entitled to recover on fraudulent and negligent misrepresentation claims

San Patricio Sk. F. 54-26 counter 91794

MAP NO. 1

This is the original plat of the Ingleside Townsite. It was recorded on May 31, 1912. As you can see, it includes the Ingleside Point peninsula, as it existed at that time.

MAP NO. 2

This map is a closer view of the peninsula as platted. The northwest lines drawn across the peninsula indicate the location of the La Quinta channel.

MAP NO. 3

This is a survey of the Ingleside Point island and the adjoining La Quinta channel, as it existed in August, 1958. It reveals that portion of the La Quinta channel, comprising 48.33 acres, that severed the peninsula, creating the Ingleside Point island. The broken lines indicate the accretive lands to the North and South, beyond the original 125.72-acre island tract. Judging from the surveyor's notes, he clearly considered these to have been created by spoil runoff.

012797\1\BAY\INGLESID.MAP\csj:1

Sketch File 54 (flattened)
San Patricio
Ingleside Point
Feb. 21 19 97
GERRY MAURO, C.S.T.
Douglas Howard

San Patricio Sk. F. 54-27

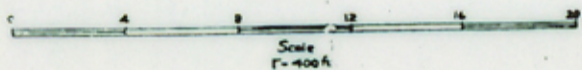
counter 41804

MAP #1

MAP OF
INGLESIDE
TOWNSITE
SAN PATRICIO CO.
TEXAS.
PLATTED FOR
BURTON & DANFORTH.

517 Gibbs Building, San Antonio, Texas.

BY
P. L. TELFORD, C.E., APR. 1910.
C.S.C. 281.



*This map is duly recorded
in map records of San
Patricio County on page
11; and was recorded
on May 31st 1912
Filed Sept 30-1911. San Patricio Title Co. Abilene
By J. B. Lewis
Scriber & Atty*

INGLESIDE
BAY

Drawn
10



Sketch File 54 (Flattened)
San Patricio
Ingleside Point
Feb. 21
GARY MAURO COPY
Douglas Howard

CORPUS

CORPUS CHRISTI

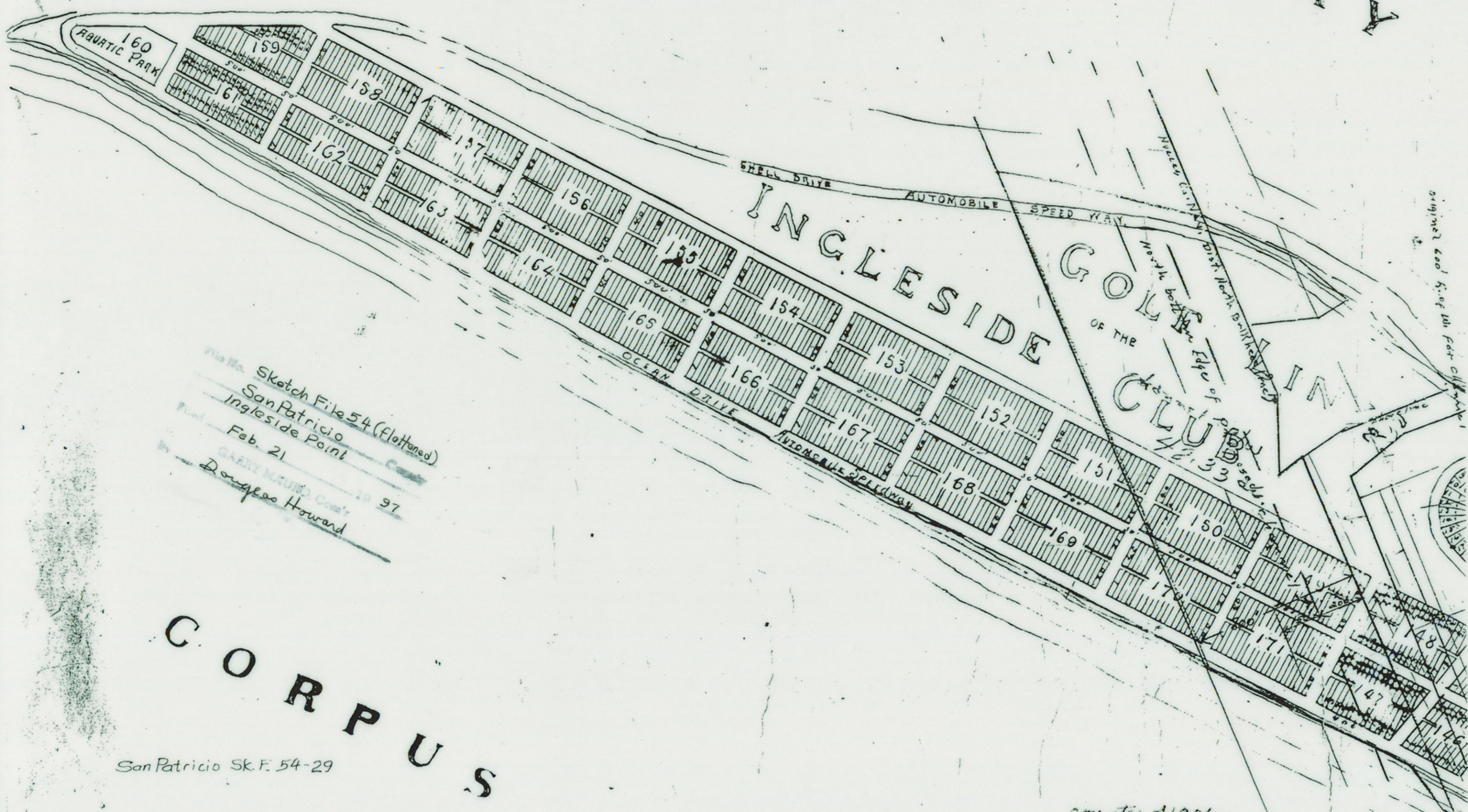
CHRISTI

BAY

VOL. 1 1911

MAP #2

BAY



File No. Sketch File 54 (Flattened)
 San Patricio
 Ingleside Point
 Feb. 21
 GARY MEYER, Const.
 Douglas Howard

CORPUS

San Patricio Sk. F. 54-29

counter 41806

Original 600 ft. of the Port of Corpus

File No Sketch File 54 (flattened)

San Patricio
Ingleside Point

Filed Feb. 21 19 97

GARRY MAURO, Com'r
BY Douglas Howard

CORPUS CHRISTI BAY

INGLESIDE COVE

THOS T WILLIAMSON
SURVEY No. 47

JOHN ROBINSON SURVEY
PAT. No. 436 Vol 9

THOS T WILLIAMSON L.S. No. 47
PAT. No. 535 VOL 2

FROM FIELD NOTES OF THE ORIGINAL
SURVEY OF DEC 3, 1909 BY
W. KIDGERSON BARRINGS OF
CALLS REFERRED TO CALDERON
WITH COORDINATE SYSTEM AND
SURVEYS ON THE GROUND

T. H. JUDSON SURVEY
PAT. No. 63 VOL 13

10.05 ACRES
OF
THOS T WILLIAMSON IN AREA
EAST OF TRAIL OF INGLESIDE

2.15 ACRES
OF
THOS T WILLIAMSON, IN AREA
SOUTHWEST CORNER OF INGLESIDE

10.02 ACRES
OF
JUN G. HATCH IN TRACT OF
INGLESIDE OF WHICH 6.05 ACRES
LIE BETWEEN SOUTH LINE OF
OCEAN DRIVE AND THE BRIDGE LINE.

Prepared by:
SURETY TITLE & ABSTRACT CO.
111 No. ODEM ST.
SINTON, TEXAS

INGLESIDE LAND CO. & ITS MINERAL GRANTEES
125.12 ACRES
WAS OF ORIGINAL TRACT OF THE
JOHN G. HATCH, PAT. No. 508 VOL 10
ORIGINAL SURVEY BY JO G HATCH JULY 29, 1896

CORPUS CHRISTI

CORPUS CHRISTI

CHRISTI

STATE OF TEXAS
COUNTY OF SAN PATRICK

ALL HEREBY CERTIFY THAT THIS MAP OF ALL THE LAND
INCLUDING SURVEYED EAST LAND CONTAINED IN THE WHOLE OF THE
JOHN G. HATCH SURVEY, PATENT NO. 508 VOLUME 10, IN SAN PATRICK
COUNTY, TEXAS, AND THAT PART OF THE THOS T WILLIAMSON L.S.
NO. 47 SURVEY, PATENT NO. 535, VOLUME 2, IN SAN PATRICK
COUNTY, TEXAS, WHICH LIES SOUTH OF DEBAGWAY IN THE TOWNSHIP
OF INGLESIDE AS SHOWN UPON MAP OF HATCH BY D.L. TELEBER,
SUCCESSION OF RECORD IN VOLUME 2, PAGES 3 AND 6, OF THE MAP
RECORDS OF SAN PATRICK COUNTY, TEXAS, AND SHOWING THAT PART
OF LAND OF SAID JOHN G. HATCH WHICH IS SITUATED WITHIN THE BOUNDARIES
AND LIMITS OF SAID TOWNSHIP OF INGLESIDE AS FIXED BY JUDGMENT
AND DECREE OF COMMISSIONERS COURT OF SAID COUNTY, NOVEMBER
THIRD, 1922, RECORDED IN THE MINUTES OF SAID COURT IN VOLUME 2, PAGES
421 AND 422, AND ALSO IN VOLUME 12, PAGE 410, OF THE DEED RECORDS
OF SAID COUNTY, WAS PREPARED FROM NOTES OBTAINED FROM PATENTS
AND SURVEYS MADE ON THE GROUND BY US FOR THE INGLESIDE LAND CO.

12-800

FILED FOR RECORD
10/10 AM 11 M
Vilma Sherman
George Carter



Vilma Sherman
County Clerk, San Patricio County
By George Carter Deputy

SCALE: 1" = 100 YARDS = 300 FT.
TEXAS COORDINATE SYSTEM - SOUTH ZONE

John Mauro, P.E., License No. 10457
D.L. Teleber, Surveyor



San Patricio Sk. F. 54-30

Answer
10

counter 41807

5/36



Texas General Land Office
Garry Mauro, Commissioner

Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78701-1495
(512) 463-5001

M'Lou Patton Bell
Attorney at Law
Director, Real Estate Section
(512) 305-9127
Fax (512) 463-6311
Board Certified Commercial
Real Estate Law, Texas
Board of Legal Specialization

February 14, 1997

File No. Sketch File
54 (Flattened)
San Patricio County
Ingleside Point
Filed Feb. 21 19 97
By GARRY MAURO, Com'r
Douglas Howard

Mr. Kenneth Berry
President
BAY, LTD.
1414 Corn Products Road
Corpus Christi, Texas 78409

Re: Ingleside Point Property; Ownership of Additional Acreage

Dear Mr. Berry:

I am writing in response to your request for information concerning the Permanent School Fund's claim, if any, to emergent land adjacent to certain land located in Ingleside, Nueces County, Texas. The acreage about which you inquire was originally platted around 1912, and was then part of a peninsula which extended into Ingleside Cove. It appears that the area described as "Ingleside Point" on U.S.G.S. 7.5 Minute Series Quadrangle maps was separated from the mainland when LaQuinta Channel was dredged by the U.S. Army Corps of Engineers in the 1950's. It further appears that Ingleside Point, the land mass which was isolated from the mainland as a result of such dredging, has increased in land area over time, either through the process of accretion or artificial build-up. Your question regarding a Permanent School Fund claim of ownership of the increased land area is addressed below.

Based on the records and information you provided to the General Land Office, the General Land Office does not claim ownership of the increased land area on behalf of the Permanent School Fund. Our review of the available maps for this area indicates, however, that the Port of Corpus Christi, as successor in interest to Nueces County Navigation District, has extensive land holdings in the area. Because the court in Natland Corp. v. Baker's Port, Inc., did not address ownership of submerged land located with a navigation district which, under the authority of the district, was spoiled and later became emergent, you may want to contact the Port of Corpus Christi to determine the extent, if any, of its ownership claims in the area of Ingleside Point.

San Patricio Sk.F. 54-31

Page two.
Letter to Kenneth Berry
February 14, 1997

If you have questions regarding the above, please feel free to contact me.

Sincerely,

GENERAL LAND OFFICE

By: M'Lou Patton Bell 1997
M'Lou Patton Bell

cc: Spencer Reid

San Patricio sk.F. 54-32

counter 41796



San Patricio Co.
sk. File 54 (Flattened)

Source:
1990
Aerial

San Patricio sk.F. 54-37 +
COUNT 11797



LAW OFFICES OF
NICOLAS, MORRIS, GILBREATH & SMITH, L.L.P.

5926 SOUTH STAPLES, SUITE A-2
CORPUS CHRISTI, TEXAS 78413
TELEPHONE (512) 992-1754

File No Sketch File 54

MARK D. GILBREATH
ROBERT C. MORRIS
BRADLEY A. SMITH

OF COUNSEL
TOUFIC NICOLAS
PAT MORRIS

San Patricio County

ALFRED N. NICOLAS
(1924-1987)

Filed July 16 19 98

GARRY MAURO, Com'r

By Douglas Howard

FAX TRANSMITTAL COVER LETTER

FAX NUMBER (512) 992-9317

98 JUL - 8 AM 9:28
GENERAL LAND OFFICE
LEGAL SERVICES

TO: Bob Moreland

FIRM: _____

FAX #: 512/463-6311

FROM: Mark Gilbreath

DATE: 7-8-98

RE: Berry

TIME: A.M.

DOCUMENT TRANSMITTED: Copy First Page Compromise and Settlement Agreement

NUMBER OF PAGES: Including cover sheet 2

COMMENTS: This was filed both in Nueces and San Patricio County. Note the long "Doc # " at top is Nueces County's recording number and the short number under it is San Patricio's recording number.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (512) 992-1754.

FAX OPERATOR: Kimberly

CONFIDENTIALITY NOTICE

THIS FACSIMILE TRANSMISSION (AND/OR THE DOCUMENTS ACCOMPANYING IT) MAY CONTAIN CONFIDENTIAL INFORMATION BELONGING TO THE SENDER WHICH IS PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE. THIS INFORMATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR THE TAKING OF ANY ACTION IN RELIANCE ON THE CONTENTS OF THIS INFORMATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE TO ARRANGE FOR RETURN OF THE DOCUMENT.

San Patricio Co. Sk. F. 54-38

DOCH 1997033248

34

COMPROMISE AND SETTLEMENT AGREEMENT ^{FILE NO.} 454750

This Compromise and Settlement Agreement ("Agreement") is made and entered into by and between the State of Texas, acting by and through Garry Mauro, Commissioner of the Texas General Land Office and Chairman of the School Land Board, on behalf of the Permanent School Fund (the "State"), and Kenneth Berry, and wife, Brenda Berry, collectively ("Berry").

WHEREAS, the State is the owner, by sovereignty, of unpatented coastal public lands in Nueces and San Patricio Counties, Texas; and

WHEREAS, state-owned submerged lands and the minerals under submerged lands in Nueces and San Patricio Counties are dedicated to the Permanent School Fund ("PSF"); and

WHEREAS, Berry is the record owner of lands on Ingleside Point described as 116.607 acres, being a part of the John G. Hatch Survey ("Hatch Survey") in San Patricio County, as depicted by the hatched area Exhibit A-1; and

WHEREAS, Berry asserts a claim of title to certain other land on Ingleside Point adjacent to the above-referenced land owned by Berry, which additional area is along or within an area filled by material dredged from Corpus Christi Bay by the U.S. Army Corps of Engineers and is more particularly depicted by the hatched area outside the Hatch Survey and enclosed by the survey of the "Existing Shoreline" shown on the location map designated as Exhibit A-2, attached hereto and incorporated herein by reference for all purposes (the "Claimed Area"); and

WHEREAS, the State and Berry deem it to be in their respective best interests to resolve uncertainty and potential conflict regarding their respective interests in the Claimed Area in Corpus Christi Bay through compromise and settlement, without the necessity of protracted and costly litigation; and

WHEREAS, legal descriptions of the boundaries of the property which is the subject of this agreement are attached hereto as Exhibit B, along with the Surveyor's Report (Exhibit C), and the Surveyor's Plat (Exhibit D), all of which are included herein by this reference for all purposes; and

WHEREAS, the State and Berry have agreed to evidence the respective interests of the Permanent School Fund and Berry in the Claimed Area by entering into a written agreement to be recorded by Berry in the real property records of Nueces and San Patricio Counties, Texas; and

File No Sketch File 54
San Patricio County

Filed JULY 16 19 98

GARRY MAURO, Com'r
By Douglas Howard

1

LEGAL SERVICES
GENERAL LAND OFFICE

62:6 AM 8-708 86

San Patricio Co. Sk. F. 54-39

COMPROMISE AND SETTLEMENT AGREEMENT

This Compromise and Settlement Agreement ("Agreement") is made and entered into by and between the State of Texas, acting by and through Garry Mauro, Commissioner of the Texas General Land Office and Chairman of the School Land Board, on behalf of the Permanent School Fund (the "State"), and Kenneth Berry, and wife, Brenda Berry, collectively ("Berry").

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WHEREAS, the State and Berry deem it to be in their respective best interests to resolve uncertainty and potential conflict regarding their respective interests in the Claimed Area in Corpus Christi Bay through compromise and settlement, without the necessity of protracted and costly litigation; and

WHEREAS, legal descriptions of the boundaries of the property which is the subject of this agreement are attached hereto as Exhibit B, along with the Surveyor's Report (Exhibit C), and the Surveyor's Plat (Exhibit D), all of which are included herein by this reference for all purposes; and

WHEREAS, the State and Berry have agreed to evidence the respective interests of the Permanent School Fund and Berry in the Claimed Area by entering into a written agreement to be recorded by Berry in the real property records of Nueces and San Patricio Counties, Texas; and

WHEREAS, pursuant to TEX. NAT. RES. CODE ANN. §33.060 (Vernon Supp 1997), the School Land Board, on behalf of the Permanent School Fund, has the authority to locate a boundary separating coastal public land from other land; and

WHEREAS, the State has agreed not to assert a claim of an interest in the surface of the land depicted on Exhibit A-2, attached hereto and incorporated herein by this reference;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties agree as follows:

1. It is mutually agreed that the PSF owns the mineral estate under all lands in Corpus Christi Bay outside of the Hatch Survey lands owned by Berry, either through sovereignty or by reservation, and that Berry agrees to and shall make no claim of an interest in the said mineral estate outside of the Hatch Survey lands. However, the State and PSF expressly waive and release all rights of ingress and egress and all other rights of every kind and character whatsoever to enter upon or to use the surface of the Hatch Survey lands or the Claimed Area or any part thereof, including without limitation, the right to enter upon the surface of said lands for purposes of exploring for, developing, transporting and/or producing the oil, gas, and/or other minerals in and under, and that may be produced therefrom, or any other purposes incident thereto.

2. The State agrees to and shall make no claim of an interest in the surface of lands shown within the survey depicting the Existing Shoreline (Exhibit A-2), whether said claim now exists or may hereafter arise as a result of a change in the location of the Existing Shoreline, except as to the right of the public, if any, to use the surface of the water overlaying the small parcel shown thereon as Tract C, heretofore excavated from the Hatch Survey lands.

3. This agreement, with Exhibits "A-1", "A-2", "B", "C" and "D" attached, upon execution by the respective parties hereto shall be filed for record in the Real Property Records of Nueces and San Patricio Counties, Texas, within five (5) days of final execution of this agreement on behalf of the State. The recording of this agreement shall be at the sole cost and expense of Berry. Within ten (10) days of recording, Berry shall provide the State with a certified copy of such recorded agreement.

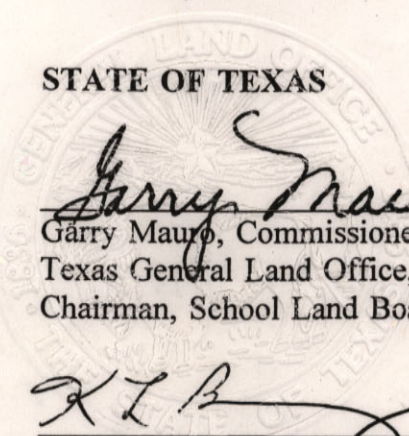
4. This agreement is executed by the State, acting by and through Garry Mauro, Commissioner of the Texas General Land Office and Chairman of the School Land Board, on behalf of the Permanent School Fund, by virtue of and under the authority of TEX. NAT. RES. CODE ANN., §33.060 (Vernon Supp. 1997).

5. The parties agree that this agreement is limited to the Permanent School Fund's interest in the coastal public lands described herein, and does not address, nor concern, a claim of any other State entity or political subdivision with regard to such lands.

6. This agreement shall be binding upon and inure to the benefit of the successors, heirs, representatives, and assigns of the parties hereto, but is limited to the specific areas addressed herein. Nothing in this agreement shall be deemed nor construed as being an admission or a recognition of, or constitute a bar to the assertion of, a different basis for the determination of a boundary between the parties hereto, or any of the parties hereto and any other party as to any property not the subject of this agreement, at any other place or location.

IN WITNESS WHEREOF, this agreement is executed under Seal of Office this 4th day of September, 1997, effective September 1, 1997.

STATE OF TEXAS


Garry Mauro
Garry Mauro, Commissioner,
Texas General Land Office, and
Chairman, School Land Board

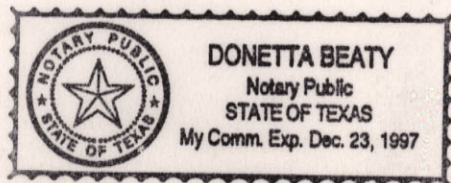
K I B
Kenneth Berry

Brenda Berry
Brenda Berry

STATE OF TEXAS §

COUNTY OF Quevas §

This instrument was acknowledged before me on Aug 28, 1997, by Kenneth Berry.



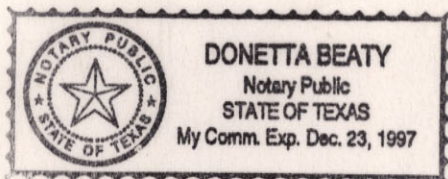
Donetta Beaty
Notary Public in and for
the State of Texas

Commission expires: 12/23/97

STATE OF TEXAS §

COUNTY OF Quevas §

This instrument was acknowledged before me on Aug 28, 1997, by Brenda Berry.



Donetta Beaty
Notary Public in and for
the State of Texas

Commission expires: 12/23/97

EXHIBIT "A-1"

A part of the John G. Hatch Survey

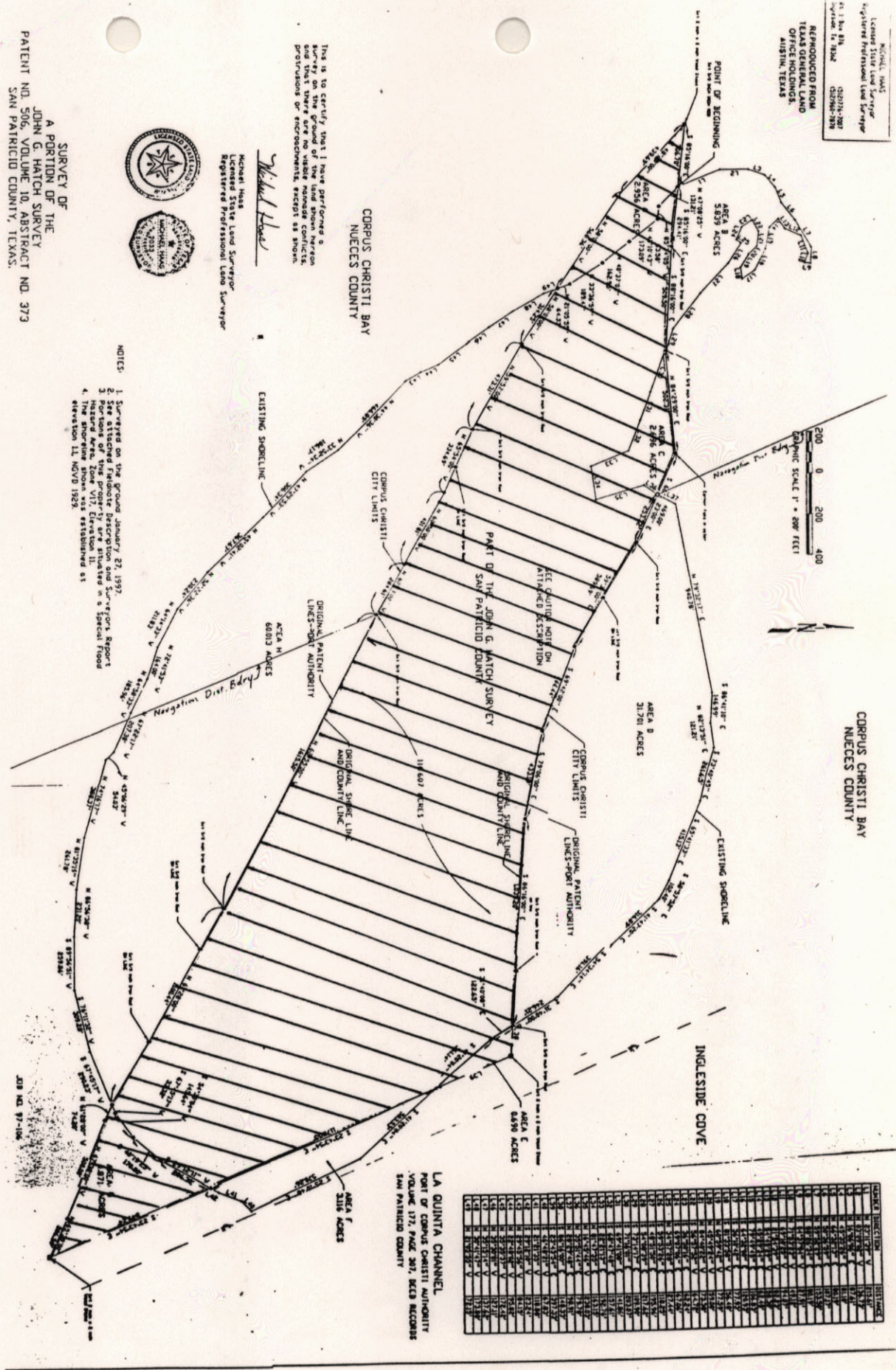
116.607 acres
San Patricio County, Texas

5

San Patricio Co. Sk. F. 54-44

MICHAEL HALL
 Licensed State Land Surveyor
 Registered Professional Land Surveyor
 No. 1, 104, 818 02/21/76-2027
 Expire on 12/31/2027 02/21/76-2027
 Address: Ft. Worth, Texas 02/21/76-2027

REPRODUCED FROM
 TEXAS GENERAL LAND
 OFFICE RECORDS
 AUSTIN, TEXAS



This is to certify that I have performed a survey of the ground of the land shown herein and that the same is in accordance with the provisions of encroachments, except as shown.

Michael Hall
 Michael Hall
 Licensed State Land Surveyor
 Registered Professional Land Surveyor



SURVEY OF THE
 A PORTION OF THE
 JOHN G. HATCH SURVEY
 PATENT NO. 506, VOLUME 10, ABSTRACT NO. 373
 SAN PATRICIO COUNTY, TEXAS.

- NOTES:
1. Surveyed on the ground January 27, 1997.
 2. See attached Findnote Description and Surveyor Report.
 3. Portions of the property are situated in a special flood hazard area.
 4. The shoreline shown was established at elevation 11, NOV 1929.

SECTION	TOWNSHIP	RANGE	ACRES	FRAC.	REMARKS
1	10N	10W	5,839	1/100	AREA A
2	10N	10W	2,266	1/100	AREA B
3	10N	10W	2,170	1/100	AREA C
4	10N	10W	119,607	1/100	AREA D
5	10N	10W	6,559	1/100	AREA E
6	10N	10W	2,118	1/100	AREA F

LA QUINTA CHANNEL
 PORT OF CORPUS CHRISTI AUTHORITY
 VOLUME 173 PAGE 201 RECS RECORDS
 SAN PATRICIO COUNTY

San Patricio Co. Sk. F. 54-45

EXHIBIT A-1

COUNTER 82933

EXHIBIT "A-2"

Survey of Existing Shoreline, Ingleside Point

"Claimed Area"
Nueces County, Texas

6 San Patricio Co. Sk.F. 54-46

REPRODUCED FROM
 TEXAS GENERAL LAND
 OFFICE HOLDINGS,
 AUSTIN, TEXAS

SURVEY OF THE
 A PORTION OF THE
 JOHN G. HATCH SURVEY
 PATENT NO. 506, VOLUME 10, ABSTRACT NO. 373
 SAN PATRICIO COUNTY, TEXAS.



Michael Hass
 Licensed State Land Surveyor
 Registered Professional Land Surveyor

Michael Hass

This is to certify that I have performed a survey on the ground of the land shown hereon and that there are no visible notable conflicts, provisions or encroachments, except as shown.

CORPUS CHRISTI BAY
 NUECES COUNTY

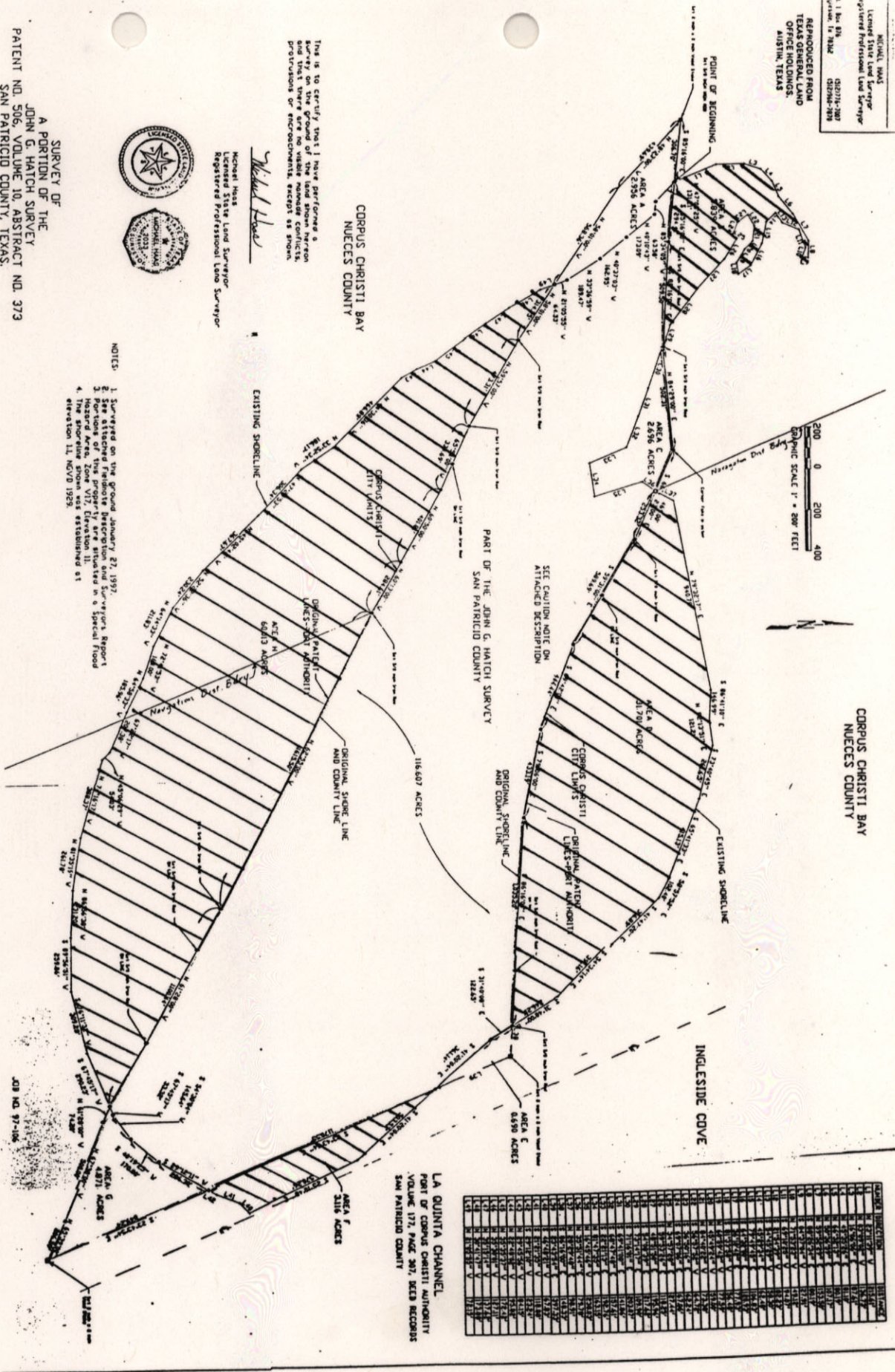


EXHIBIT A-2

COUNTER 82935

San Patricio Co. Sk. F. 54-47

EXHIBIT "B"

Legal Descriptions of Boundaries
of Individual Components of "Claimed Area"

HAAS SURVEYING

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January 28, 1997

97-106

FIELDNOTE DESCRIPTION of a portion of the John G. Hatch Survey, Patent No. 506, Volume 10, Abstract No. 373, San Patricio County, Texas, known as Ingleside Point;

BEGINNING at a 5/8 inch iron rod set at the intersection of the existing shoreline at the westerly end of this tract with the original northerly shoreline depicted by map recorded in Volume 5, Page 36, Map Records of said County, (X = 2,405,723.42 : Y = 790,594.09);

THENCE, along said original shoreline, **SOUTH 85 degrees-16 minutes EAST**, 294.41 feet to a 5/8 inch iron rod set;

THENCE, along said original shoreline, **SOUTH 88 degrees-16 minutes EAST**, 509.50 feet to a 5/8 inch iron rod set;

THENCE, along said original shoreline, **NORTH 84 degrees-29 seconds EAST**, 502.31 feet;

THENCE, along said original shoreline, **SOUTH 66 degrees-23 minutes EAST**, 469.00 feet to a 5/8 inch iron rod set;

THENCE, along said original shoreline, **SOUTH 59 degrees-31 minutes EAST**, at 312.00 feet pass a 5/8 inch iron rod set on the top of a man-made levee, in all 589.69 feet;

THENCE, along said original shoreline, **SOUTH 69 degrees-42 minutes EAST**, 444.44 feet;

THENCE, along said original shoreline, **SOUTH 79 degrees-06 minutes EAST**, 433.19 feet;

San Patricio Co. Sk. F. 54-49

THENCE, along said original shoreline, **SOUTH** 86 degrees-16 minutes **EAST**, at 772.00 feet pass a 5/8 inch iron rod set on the top of a man-made levee, in all 1035.20 feet to a 5/8 inch iron rod set on the existing shoreline near the northwesterly corner of that 48.33 acre tract described in Deed recorded in Volume 177, Page 307, Deed Records of said County;

THENCE, along said existing shoreline, **SOUTH** 31 degrees-40 minutes-08 seconds **EAST**, 122.65 feet;

THENCE, along said existing shoreline, **SOUTH** 41 degrees-20 minutes-04 seconds **EAST**, 361.14 feet to the westerly boundary of said 48.33 acre tract;

THENCE, along said westerly boundary, **SOUTH** 23 degrees-43 minutes-54 seconds **EAST**, 1170.55 feet to the existing shoreline;

THENCE, along said existing shoreline, **SOUTH** 29 degrees-12 minutes-11 seconds **WEST**, 286.30 feet;

THENCE, along said existing shoreline, **SOUTH** 40 degrees-19 minutes-25 seconds **WEST**, 170.80 feet;

THENCE, along said existing shoreline, **SOUTH** 54 degrees-30 minutes-04 seconds **WEST**, 145.64 feet;

THENCE, along said existing shoreline, **SOUTH** 67 degrees-45 minutes-17 seconds **WEST**, 33.32 feet to the original southerly shoreline;

THENCE, along said original shoreline, **NORTH** 61 degrees-28 minutes **WEST**, at 360.80 feet pass a 5/8 inch iron rod set for line, at 870.44 feet pass a 5/8 inch iron rod set for line, in all 1100.44 feet to a 5/8 inch iron rod set;

THENCE, along said original shoreline, **NORTH** 62 degrees-55 minutes **WEST**, 1615.50 feet to a 5/8 inch iron rod set;

THENCE, along said original shoreline, **NORTH** 60 degrees-13 minutes **WEST**, 284.61 feet;

THENCE, along said original shoreline, **NORTH** 60 degrees-50 minutes **WEST**, 401.81 feet;

THENCE, along said original shoreline, **NORTH** 65 degrees-54 minutes **WEST**, at 136.69 feet pass a 5/8 inch iron rod set on top of a man-made levee, in all 334.69 feet to a 5/8 inch iron rod set;

San Patricio Co. Sk. F. 54-50

THENCE, along said original shoreline, **NORTH 59 degrees-57 minutes WEST**, 473.31 feet to a 5/8 inch iron rod set;

THENCE, along said original shoreline, **NORTH 58 degrees-01 minutes WEST**, 314.25 feet to the existing shoreline;

THENCE, along said existing shoreline, **NORTH 21 degrees-05 minutes-55 seconds WEST**, 64.33 feet;

THENCE, along said existing shoreline, **NORTH 33 degrees-36 minutes-59 seconds WEST**, 189.47 feet;

THENCE, along said existing shoreline, **NORTH 40 degrees-37 minutes-03 seconds WEST**, 162.95 feet;

THENCE, along said existing shoreline, **NORTH 40 degrees-10 minutes-43 seconds WEST**, 173.09 feet;

THENCE, along said existing shoreline, **NORTH 85 degrees-34 minutes-05 seconds WEST**, 63.58 feet;

THENCE, along said existing shoreline, **NORTH 47 degrees-08 minutes-25 seconds WEST**, 131.21 feet to the **POINT OF BEGINNING**.

CONTAINING 116.607 acres, more or less.

NOTE: See attached Survey Drawing and Surveyors Report.

This description is part of a survey drawing and surveyors report of the same date and IS NOT complete without them.

Coordinate and bearings are based on the Texas State Plane Coordinate System, South Zone.

CAUTION: PORTIONS OF THIS PROPERTY HAVE BEEN FILLED WITH DREDGE DISPOSAL. SOME AREAS, ESPECIALLY NEAR THE WESTERLY PORTION OF THE LEVEED AREA ARE DANGEROUS AND ATTEMPTING TO WALK THERE COULD BE FATAL. CONSULT AN EXPERIENCED DREDGING CONTRACTOR BEFORE WALKING INSIDE THE LEVEED PORTION OF THIS PROPERTY.

Michael Haas
Michael Haas, L.S.L.S./R.P.L.S.



San Patricio Co. SK.F. 54-51

EXHIBIT B

HAAS SURVEYING

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February 4, 1997

Job No. 97-106

TRACT A

FIELDNOTE DESCRIPTON of a portion of the John G. Hatch Survey, Abstract No. 373, San Patricio County, Texas (now submerged) known as Ingleside Point, as shown by map recorded in Volume 5, Page 36, Map Records of said County;

BEGINNING at a 5/8 inch iron rod set at the intersection of the existing shoreline at the westerly end of said Ingleside Point with the original shoreline depicted by said recorded map (X=2,405,723.42 : Y=790,594.09);

THENCE , along said existing shoreline the following:

SOUTH 47 degrees-08 minutes-25 seconds EAST, 131.21 feet,

SOUTH 85 degrees-34 minutes-05 seconds EAST, 63.58 feet,

SOUTH 40 degrees-10 minutes-43 seconds EAST, 173.09 feet,

SOUTH 40 degrees-37 minutes-03 seconds EAST, 162.95 feet,

SOUTH 33 degrees-36 minutes-59 seconds EAST , 189.47 feet

and **SOUTH 21 degrees-05 minutes-55 seconds EAST**, 64.33 feet to the original shoreline, also being the shoreline described by Patent from the State of Texas to Nueces County Navigation District No. 1 (now the Port of Corpus Christi Authority) recorded in Volume 455, Page 586, Deed Records, Nueces County;

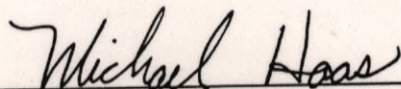
San Patricio Co. Sk. F. 54-52

THENCE. along said original shoreline and patent line, **NORTH 58 degrees-01 minutes WEST**, 568.36 feet and **NORTH 48 degrees-23 minutes WEST**, 439.69 feet to the most westerly corner;

THENCE, along said common line, **SOUTH 85 degrees-16 minutes EAST**, 306.70 feet to the **POINT OF BEGINNING**.

CONTAINING 2.956 acres, more or less.

NOTE: This description is part of a survey drawing, description and Surveyors Report dated January 27 and 28, 1997 and is not complete without them. Coordinate and bearings are based on the Texas State Plane Coordinate System, South Zone.



Michael Haas, L.S.L.S./R.P.L.S.



San Patricio Co. Sk. F. 54-53

EXHIBIT B
5 OF 19

COUNTER 82941

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February 4, 1997

Job No. 97-106

TRACT B

FIELDNOTE DESCRIPTION of a portion of formerly submerged land patented by the State of Texas to the Nueces County Navigation District No. 1 (now the Port Authority of Corpus Christi) recorded in Volume 455, Page 586, Deed Records, Nueces County, adjoining the John G. Hatch Survey, Abstract No. 373, San Patricio County, known as Ingleside Point, as shown by map recorded in Volume 5, Page 36, Map Records, San Patricio County;

BEGINNING at a 5/8 inch iron rod set at the intersection of the existing shoreline at the westerly end of said Ingleside Point with the original shoreline depicted by said recorded map (X=2,405,723.42 : Y=790,594.09);

THENCE, along said existing shoreline the following;

NORTH 23 degrees-11 minutes-39 seconds **WEST** 215.61 feet;

NORTH 3 degrees-09 minutes-02 seconds **WEST** 136.73 feet;

NORTH 16 degrees-06 minutes-06 seconds **EAST** 87.61 feet;

NORTH 45 degrees-35 minutes-26 seconds **EAST** 81.10 feet;

NORTH 66 degrees-32 minutes-13 seconds **EAST** 80.19 feet;

NORTH 50 degrees-36 minutes-59 seconds **EAST** 107.17 feet;

NORTH 59 degrees-52 minutes-29 seconds **EAST** 153.50 feet;

SOUTH 88 degrees-26 minutes-34 seconds **EAST** 80.19 feet;

San Patricio Co. Sk.F. 54-54

SOUTH 04 degrees-37 minutes-04 seconds WEST 27.91 feet;
NORTH 71 degrees-53 minutes-23 seconds WEST 49.12 feet;
SOUTH 69 degrees-10 minutes-25 seconds WEST 94.07 feet;
SOUTH 21 degrees-54 minutes-39 seconds WEST 82.23 feet;
SOUTH 54 degrees-45 minutes-29 seconds WEST 58.30 feet;
SOUTH 45 degrees-29 minutes-34 seconds EAST 62.48 feet;
SOUTH 79 degrees-49 minutes-45 seconds EAST 106.83 feet;
SOUTH 64 degrees-32 minutes-00 seconds EAST 120.93 feet;
SOUTH 36 degrees-10 minutes-42 seconds EAST 77.93 feet;
SOUTH 81 degrees-33 minutes-58 seconds WEST 56.48 feet;
NORTH 60 degrees-59 minutes-42 seconds WEST 77.59 feet;
NORTH 45 degrees-49 minutes-24 seconds WEST 59.00 feet;
NORTH 84 degrees-40 minutes-22 seconds WEST 73.38 feet;
SOUTH 56 degrees-57 minutes-52 seconds WEST 64.72 feet;
SOUTH 36 degrees-50 minutes-16 seconds EAST 62.24 feet;
SOUTH 69 degrees-07 minutes-06 seconds EAST 67.06 feet;
NORTH 34 degrees-57 minutes-28 seconds EAST 27.44 feet;
SOUTH 59 degrees-53 minutes-26 seconds EAST 118.25 feet;
SOUTH 48 degrees-51 minutes-50 seconds EAST 195.96 feet;
SOUTH 54 degrees-08 minutes-39 seconds EAST 217.62 feet;

and **SOUTH 73 degrees-14 minutes-17 seconds EAST 109.90 feet** to the original shoreline and patent line;

San Patricio Co. Sk. F. 54-55

THENCE, along said common line, **NORTH** 88 degrees-16 minutes **WEST**, 509.50 feet and **NORTH** 85 degrees-16 minutes **WEST**, 294.41 feet to the **POINT OF BEGINNING**.

CONTAINING: 5.839 acres more or less.

NOTE: This description is part of a survey drawing, description and Surveyors Report dated January 27 and 28, 1997 and is not complete without them. Coordinate and bearings are based on the Texas State Plane Coordinate System, South Zone.

Michael Haas

Michael Haas, L.S.L.S./R.P.L.S.



San Patricio Co. Sk. F. 54-56

HAAS SURVEYING

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February 4, 1997

Job No. 97-106

TRACT D

FIELDNOTE DESCRIPTION of a portion of formerly submerged land patented by the State of Texas to the Nueces County Navigation District No. 1 (now the Port Authority of Corpus Christi) recorded in Volume 455, Page 586, Deed Records, Nueces County, adjoining the John G. Hatch Survey, Abstract No. 373, San Patricio County, known as Ingleside Point, as shown by map recorded in Volume 5, Page 36, Map Records, San Patricio County;

BEGINNING at the intersection of a northerly bondary of said Hatch Survey with the existing shoreline (X=2,407,223.69 : Y=790,516.27)

THENCE, along said existing shoreline the following:

NORTH 28 degrees-29 minutes-48 seconds **EAST** 98.91 feet,

NORTH 79 degrees-32 minutes-17 seconds **EAST** 940.78 feet,

SOUTH 86 degrees-41 minutes-10 seconds **EAST** 146.99 feet,

NORTH 82 degrees-13 minutes-51 seconds **EAST** 121.21 feet,

SOUTH 73 degrees-40 minutes-45 seconds **EAST** 261.65 feet,

SOUTH 65 degrees-41 minutes-33 seconds **EAST** 415.13 feet,

SOUTH 58 degrees-57 minutes-52 seconds **EAST** 102.40 feet,

SOUTH 41 degrees-47 minutes-20 seconds **EAST** 316.89 feet,

SOUTH 54 degrees-34 minutes-14 seconds **EAST** 391.16 feet,

San Patricio Co. Sk. F. 54-57

EXHIBIT B
9 OF 19

and **SOUTH 31 degrees-40 minutes-00 seconds EAST 246.21 feet** to the original shoreline and patent line;

THENCE, along said common line **NORTH 86 degrees-16 minutes WEST 1,035.20 feet**,

NORTH 79 degrees-06 minutes WEST 433.19 feet,

NORTH 69 degrees-42 minutes WEST 444.44 feet,

NORTH 59 degrees-31 minutes WEST 589.69 feet and

NORTH 66 degrees-23 minutes WEST 253.32 feet to the **POINT OF BEGINNING**.

CONTAINING 31.701 acres more or less.

NOTE: This description is part of a survey drawing, description and Surveyors Report dated January 27 and 28, 1997 and is not complete without them. Coordinate and bearings are based on the Texas State Plane Coordinate System, South Zone.

Michael Haas

Michael Haas, L.S.L.S./R.P.L.S.



San Patricio Co. Sk. F. 54-58

EXHIBIT B
10 OF 19

COUNTER 82946

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February 4, 1997

Job No. 97-106

TRACT E

FIELDNOTE DESCRIPTION of a portion (now submerged) of the John G. Hatch Survey, Abstract No. 373, San Patricio County, Texas, known as Ingleside Point, as shown by map recorded in Volume 5, Page 36, Map Records;

BEGINNING at a 5/8 inch iron rod set at the intersection of the existing shoreline with the original shoreline as shown on said Map (X=2,409,839.18 : Y=789,812.12);

THENCE , along said original shoreline **SOUTH** 86 degrees-16 minutes **EAST**, 148.33 feet to the northwesterly corner of a 48.33 acre easement described as "First Tract" in that deed recorded in Volume 177, Page 307, Deed Records;

THENCE, along the westerly boundary of said easement, **SOUTH** 23 degrees-43 minutes-54 seconds **EAST**, 397.33 feet to the existing shoreline;

THENCE , along said existing shoreline, **NORTH** 41 degrees-20 minutes-04 seconds **WEST** 361.14 feet and **NORTH** 31 degrees-40 minutes 08 seconds **WEST**, 122.65 feet to the **POINT OF BEGINNING**.

CONTAINING 0.690 acres more or less.

NOTE: This description is part of a survey drawing, description and Surveyors Report dated January 27 and 28, 1997 and is not complete without them. Coordinate and bearings are based on the Texas State Plane Coordinate System, South Zone.

Michael Haas

Michael Haas, L.S.L.S./R.P.L.S.



San Patricio Sk. F. 54-59

EXHIBIT B
11 OF 19

COUNTER 82947

HAAS SURVEYING

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Route 1, Box 876 * 3370 Ave. A
Ingleside, Texas 78362

February 4, 1997

Job No. 97-106

TRACT F

FIELDNOTE DESCRIPTION of a portion of the John G. Hatch Survey, Abstract No. 373, San Patricio County, Texas, known as Ingleside Point, as shown by map recorded in Volume 5, Page 36, Map Records, situated within that 48.33 acre easement described as "First Tract" in that deed recorded in Volume 177, Page 307, Deed Records;

BEGINNING at the northerly intersection of the westerly boundary of said easement with the existing shoreline (X=2,410,142.09 : Y=789,436.59);

THENCE. along said existing shoreline **SOUTH** 41 degrees-20 minutes-04 seconds **EAST**, 503.53 feet,

SOUTH 25 degrees-10 minutes-48 seconds **EAST**, 570.26 feet,

SOUTH 46 degrees-48 minutes-21 seconds **WEST**, 67.83 feet,

SOUTH 21 degrees-21 minutes-35 seconds **WEST**, 118.88 feet,

and **SOUTH** 29 degrees-12 minutes-10 seconds **WEST**, 23.24 feet to the westerly boundary of said easement;

THENCE, along said westerly boundary, **NORTH** 23 degrees-43 minutes-54 seconds **WEST**, 1,170.55 feet to the **POINT OF BEGINNING.**

CONTAINING 3.116 acres, more or less.

San Patricio Co. Sk.F. 54-60

EXHIBIT B

COUNTER 82948

NOTE: This description is part of a survey drawing, description and Surveyors Report dated January 27 and 28, 1997 and is not complete without them. Coordinate and bearings are based on the Texas State Plane Coordinate System, South Zone.

Michael Haas

Michael Haas, L.S.L.S./R.P.L.S.



San Patricio Co. Sk. F. 54-61

EXHIBIT B
13 OF 19

COUNTER 82949

HAAS SURVEYING

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Route 1, Box 876 * 3370 Ave. A
Ingleside, Texas 78362

February 4, 1997

Job No. 97-106

TRACT G

FIELDNOTE DESCRIPTION of a portion of the John G. Hatch Survey, Abstract No. 373, San Patricio County, Texas, (now submerged) known as Ingleside Point, as shown by map recorded in Volume 5, Page 36, Map Records;

BEGINNING at the intersection of the original southerly shoreline shown on said map with the westerly boundary of that 48.33 acre easement described as "First Tract" in that deed recorded in Volume 177, Page 307, Deed Records, also being on the original patent line to the Nueces County Navigation District No. 1 (now the Port of Corpus Christi Authority) (X=2,410,929.35 : Y= 787,576.82);

THENCE, along said original shoreline and patent line **NORTH 65 degrees-39 minutes WEST**, 206.59 feet,

NORTH 67 degrees-38 minutes WEST, 500.00 feet,

and **NORTH 61 degrees-28 minutes WEST** 74.20 feet to the existing shoreline;

THENCE, along said existing shoreline **NORTH 67 degrees-45 minutes-17 seconds EAST**, 33.32 feet,

NORTH 54 degrees-30 minutes-04 seconds EAST, 145.64 feet,

NORTH 40 degrees-19 minutes-25 seconds EAST, 170.80 feet,

and **NORTH 29 degrees-12 minutes-11 seconds WEST**. 286.30 feet to the westerly boundary of said easement;

THENCE, along said westerly boundary, **SOUTH 23 degrees-43 minutes-54 seconds EAST**, 849.24 feet to the **POINT OF BEGINNING**.

San Patricio Co. Sk. F. 54-62

EXHIBIT B

COUNTER 82950

CONTAINING 4.871 acres, more or less.

NOTE: This description is part of a survey drawing, description and Surveyors Report dated January 27 and 28, 1997 and is not complete without them. Coordinate and bearings are based on the Texas State Plane Coordinate System, South Zone.

Michael Haas

Michael Haas, L.S.L.S./R.P.L.S.



San Patricio Co. Sk. P. 54-63

HAAS SURVEYING

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Route 1, Box 876 * 3370 Ave. A
Ingleside, Texas 78362

February 4, 1997

Job No. 97-106

TRACT H

FIELDNOTE DESCRIPTION of a portion of formerly submerged land patented by the State of Texas to the Nueces County Navigation District No. 1 (now the Port Authority of Corpus Christi) recorded in Volume 455, Page 586, Deed Records, Nueces County, adjoining the John G. Hatch Survey, Abstract No. 373, San Patricio County, known as Ingleside Point, as shown by map recorded in Volume 5, Page 36, Map Records, San Patricio County;

BEGINNING at the intersection of the southerly original shoreline depicted by said recorded map with the existing shoreline (X=2,406,228.79 : Y=790,026.19);

THENCE, along said original shoreline and the shoreline described by Patent from the State of Texas to Nueces County Navigation District No. 1 (now the Port of Corpus Christi Authority) recorded in Volume 455, Page 586, Deed Records, Nueces County,

SOUTH 58 degrees-01 minutes **EAST** 314.25 feet,

SOUTH 59 degrees-57 minutes **EAST** 473.31 feet,

SOUTH 65 degrees-54 minutes **EAST** 334.69 feet,

SOUTH 60 degrees-50 minutes **EAST** 401.81 feet,

SOUTH 60 degrees-13 minutes **EAST** 284.61 feet,

SOUTH 62 derees-55 minutes **EAST** 1,615.50 feet,

and **SOUTH** 61 degrees-28 minutes-00 seconds **EAST** 1,100.44 feet to the existing shoreline,

THENCE, along said existing shoreline **SOUTH** 67 degrees-45 minutes-17 seconds **WEST**, 290.23 feet,

SOUTH 76 degrees-11 minutes-32 seconds **WEST**, 309.28 feet,

SOUTH 89 degrees-56 minutes-51 seconds **WEST**, 259.86 feet,

NORTH 86 degrees-56 minutes-38 seconds **WEST**, 231.20 feet,

NORTH 81 degrees-35 minutes-19 seconds **WEST**, 261.78 feet,

NORTH 74 degrees-16 minutes-17 seconds **WEST**, 388.37 feet,

NORTH 45 degrees-06 minutes-29 seconds **WEST**, 54.03 feet,

NORTH 67 degrees-22 minutes-17 seconds **WEST**, 207.38 feet,

NORTH 64 degrees-58 minutes-33 seconds **WEST**, 185.96 feet,

NORTH 72 degrees-41 minutes-53 seconds **WEST**, 164.00 feet,

NORTH 64 degrees-14 minutes-33 seconds **WEST**, 211.83 feet,

NORTH 52 degrees-22 minutes-36 seconds **WEST**, 230.24 feet,

NORTH 45 degrees-02 minutes-41 seconds **WEST**, 367.67 feet,

NORTH 47 degrees-29 minutes-53 seconds **WEST**, 306.34 feet,

NORTH 33 degrees-52 minutes-34 seconds **WEST**, 186.17 feet,

NORTH 44 degrees-30 minutes-36 seconds **WEST**, 466.89 feet,

NORTH 29 degrees-45 minutes-56 seconds **WEST**, 84.15 feet,

NORTH 22 degrees-48 minutes-02 seconds **WEST**, 95.82 feet,

NORTH 35 degrees-35 minutes-37 seconds **WEST**, 172.42 feet,

NORTH 35 degrees-30 minutes-01 seconds **WEST**, 127.11 feet,

NORTH 35 degrees-15 minutes-14 seconds **WEST**, 137.62 feet,

NORTH 30 degrees-41 minutes-47 seconds **WEST**, 173.88 feet,

and **NORTH 21 degrees-05 minutes-55 seconds WEST**, 72.15 feet to the **POINT OF BEGINNING**.

CONTAINING: 60.013 acres more or less.

NOTE: This description is part of a survey drawing, description and Surveyors Report dated January 27 and 28, 1997 and is not complete without them. Coordinate and bearings are based on the Texas State Plane Coordinate System, South Zone.

Michael Haas

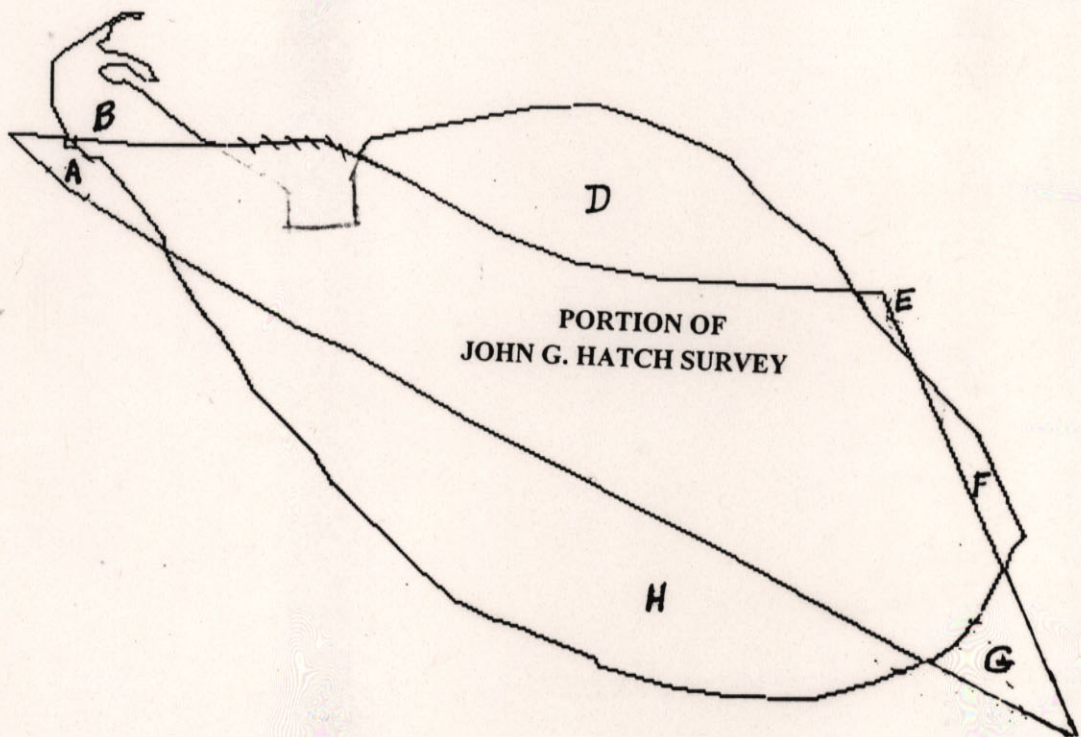
Michael Haas, L.S.L.S./R.P.L.S.



San Patricio Co. Sk. F. 54-66

EXHIBIT B
18 OF 19

COUNTER 82954



*Changes
as per...*

*Existing
shoreline
is edged*

*NO cut in surface
min resid, not relying.*

EXHIBIT "C"

Surveyor's Report

**Haas Surveying
Michael Haas, RPLS, LSLS**

January 29, 1997

HAAS SURVEYING

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Route 1, Box 876 * 3370 Ave. A
Ingleside, Texas 78362

January 29, 1997

97-106

SURVEYORS REPORT

This report is to accompany a survey drawing and description of a portion of the John G. Hatch Survey, Patent No. 506, Volume 10, Abstract No. 373, San Patricio County, Texas, known as Ingleside Point, surrounded by Corpus Christi Bay. The property appears on the U.S. Geological Survey 7.5 minute Quadrangle Map "Port Ingleside". This property is sometimes referred to as an island but was originally a peninsula connected to the mainland adjoining Ingleside-on-the-Bay. In the early 1950's an easement was granted (Volume 177, Page 307, Deed Records) for the construction of a channel now known as La Quinta channel that artificially severed this property from the mainland.

Spoil material from the dredging was deposited on portions of this property that altered the original shoreline. A survey was performed by John Huston and P. L. Telford, recorded in Volume 5, Page 36, Map Records, which delineated the original shoreline and portions where dredge spoil was deposited outside the original shoreline, and was tied to the Texas State Plane Coordinate System. This survey is based on the original shoreline determined by Mr. Huston and Mr. Telford, and subsequent alterations and erosion that have occurred.

There is evidence that uncontained dredge disposal was placed on this property, and in 1989 a major construction project occurred developing a levee system, outfall structure, and the placing of large quantities of dredged material on this and adjoining property.

The current survey begins at the westerly end of the property. The described property (116.607 acres) is delineated by the solid heavy boundary on the attached drawing.

San Patricio Co. Sk. F. 54-69

EXHIBIT C

1 OF 2

COUNTER 82957

Area "A" was included in the Huston-Telford Survey and appears to have been eroded away by natural causes and probably has been lost to this erosion. This area of 2.956 acres is not included in this survey.

Area "B", containing 5.872 acres, is artificial fill placed on property owned by the Port of Corpus Christi Authority and is not included in this survey.

Area "C" is under water but is the result of the dredging of a private channel and its' area of 2.696 acres is included in this survey.

Area "D" is artificial fill placed on property owned by the Port Authority and its' 31.701 acres is not included in this survey.

Area "E", containing 0.690 acres, because of its' proximity to the La Quinta Channel, is erosion loss of land from the original shoreline due to or aided by artificial influences. Title to this parcel is unclear. Its' area is not included in this survey.

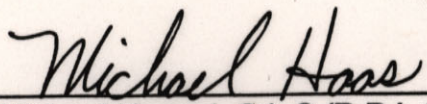
Area "F" is within the easement granted to the Port Authority to dredge La Quinta Channel. The Port Authority apparently still has the right to dredge or fill on this 3.116 acres and its' area is not included in this survey.

Area "G" suffers from the combined effects of natural erosion due to the strong wind influence from the southeast for most of the year and its' proximity to the artificial channel alongside it. Title to this 4.87 acres is unclear and has not been included in this survey.

Area "H", containing 60.013 acres, is artificial fill placed on property owned by the Port Authority and is not included in this survey.

This report is part of a survey drawing and description of same date and is not complete without them.

See the **CAUTION** on the survey description before going on the property.


Michael Haas, L.S.L.S./R.P.L.S.



San Patricio Co. Sk. F. 54-70

EXHIBIT "D"

Surveyor's Plat

Haas Surveying
Michael Haas, RPLS, LSLs

January 27, 1997

RECVD SERVICES
GENERAL LAND OFFICE
TO: LINA ESQUARTE

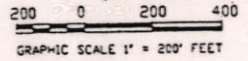
9

San Patricio Co. Sk. F. 54-71

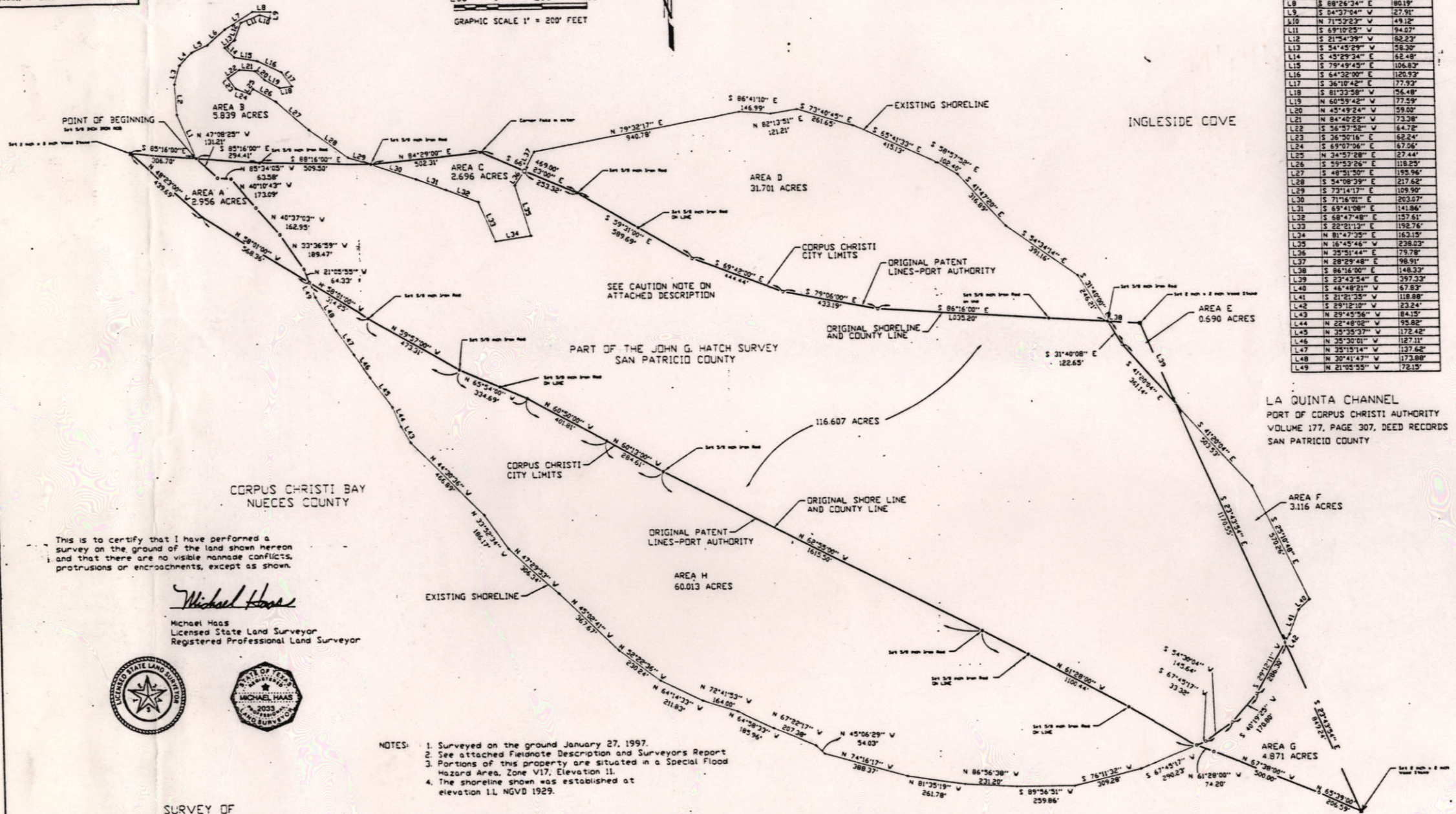
COUNTER 82959

HAAS SURVEYING
 MICHAEL HAAS
 Licensed State Land Surveyor
 Registered Professional Land Surveyor
 Rt. 1 Box 876 (512)776-7007
 Ingleside, Tx. 78362 (512)960-7870

CORPUS CHRISTI BAY
 NUECES COUNTY



NUMBER	DIRECTION	DISTANCE
L1	N 23°11'39" W	215.61'
L2	N 03°09'02" W	136.73'
L3	N 16°06'06" E	87.61'
L4	N 43°35'26" E	81.19'
L5	N 66°32'31" E	80.19'
L6	N 58°36'59" E	107.17'
L7	N 59°52'29" E	153.50'
L8	S 88°26'34" E	80.19'
L9	S 04°27'04" W	27.91'
L10	N 71°52'23" W	49.12'
L11	S 69°10'23" E	84.07'
L12	S 21°54'39" W	82.23'
L13	S 34°45'29" W	58.20'
L14	S 45°29'34" E	62.48'
L15	S 79°49'45" E	106.83'
L16	S 64°32'00" E	120.93'
L17	S 36°10'42" E	77.92'
L18	S 81°23'58" W	56.48'
L19	N 60°59'42" W	77.59'
L20	N 45°49'24" W	59.02'
L21	N 84°40'22" W	73.38'
L22	S 56°57'52" W	64.72'
L23	S 36°50'16" E	62.24'
L24	S 69°07'06" E	67.06'
L25	N 34°57'28" E	27.44'
L26	S 29°53'26" E	118.29'
L27	S 48°51'50" E	195.96'
L28	S 54°08'39" E	217.62'
L29	S 73°14'17" E	109.90'
L30	S 71°16'01" E	203.07'
L31	S 69°41'08" E	141.86'
L32	S 68°47'48" E	157.61'
L33	S 22°21'13" E	192.76'
L34	N 81°47'25" E	163.19'
L35	N 16°45'46" W	238.03'
L36	N 35°51'44" E	79.78'
L37	N 28°29'48" E	98.91'
L38	S 86°16'00" E	148.33'
L39	S 23°43'54" E	297.33'
L40	S 48°48'21" W	67.83'
L41	S 21°21'25" W	118.88'
L42	S 29°12'10" W	232.4'
L43	N 29°45'56" W	84.15'
L44	N 22°48'02" W	95.82'
L45	N 35°35'37" W	172.42'
L46	N 35°30'01" W	127.11'
L47	N 29°15'14" W	137.62'
L48	N 20°41'47" W	173.88'
L49	N 21°05'55" W	72.15'



This is to certify that I have performed a survey on the ground of the land shown hereon and that there are no visible manmade conflicts, protrusions or encroachments, except as shown.

Michael Haas
 Michael Haas
 Licensed State Land Surveyor
 Registered Professional Land Surveyor



- NOTES:
1. Surveyed on the ground January 27, 1997.
 2. See attached Fieldnote Description and Surveyors Report
 3. Portions of this property are situated in a Special Flood Hazard Area, Zone V17, Elevation 11.
 4. The shoreline shown was established at elevation 11.1 NGVD 1929.

SURVEY OF
 A PORTION OF THE
 JOHN G. HATCH SURVEY
 PATENT NO. 506, VOLUME 10, ABSTRACT NO. 373
 SAN PATRICIO COUNTY, TEXAS.

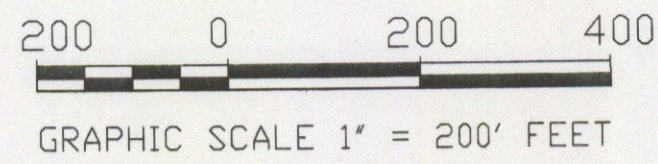
JOB NO. 97-106

COUNTER 82960

San Patricio Co. S.L.F. 54-72

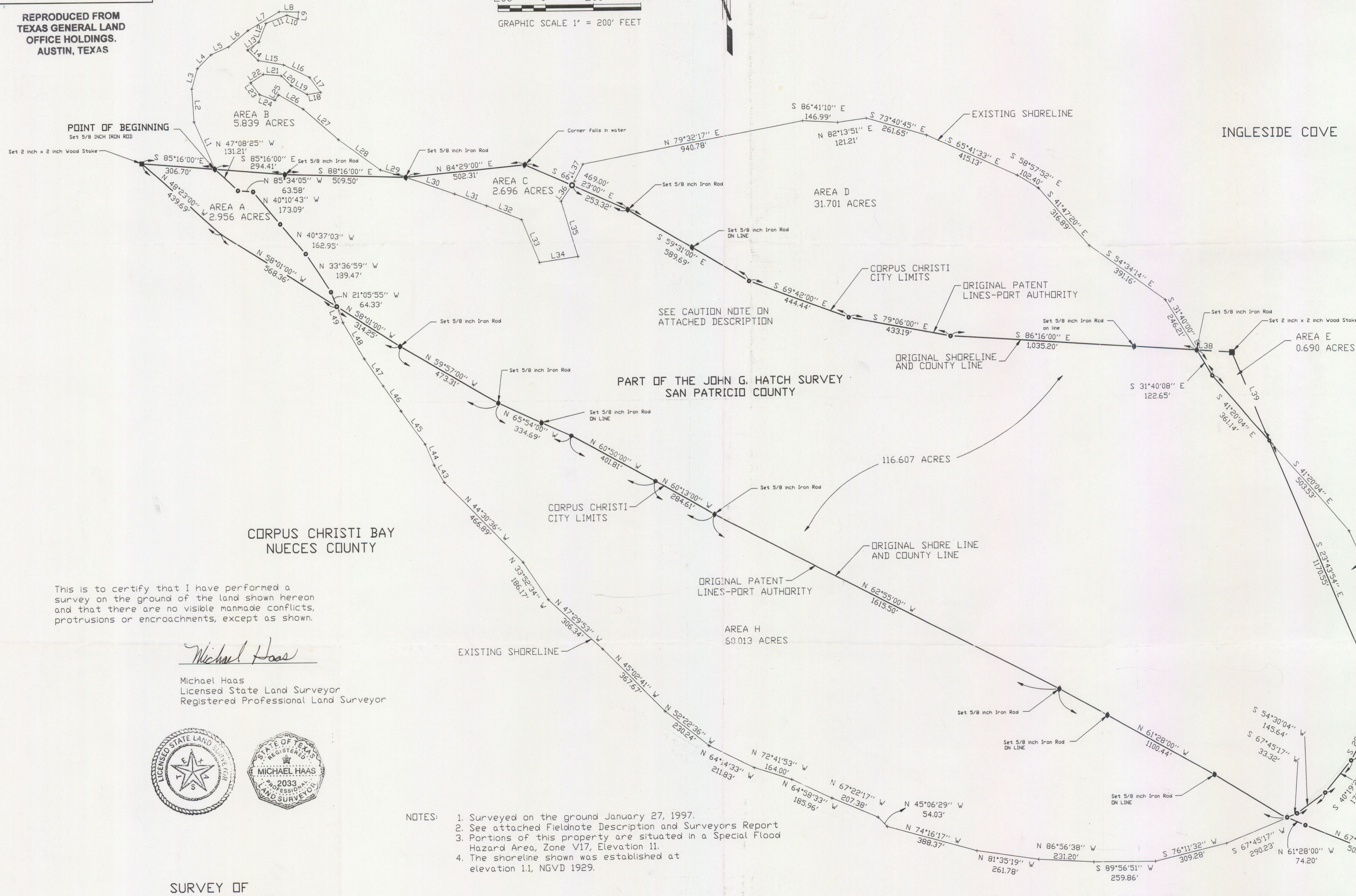
HAAS SURVEYING
 MICHAEL HAAS
 Licensed State Land Surveyor
 Registered Professional Land Surveyor
 Rt. 1 Box 876 (512)776-7007
 Ingleside, Tx 78362 (512)960-7870

REPRODUCED FROM
 TEXAS GENERAL LAND
 OFFICE HOLDINGS.
 AUSTIN, TEXAS



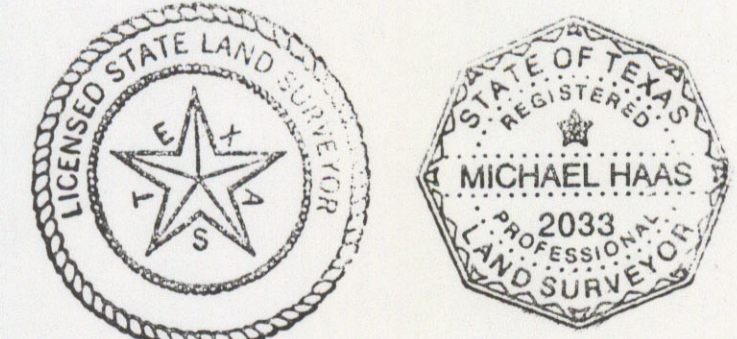
CORPUS CHRISTI BAY
 NUECES COUNTY

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SURVEY OF
 A PORTION OF THE
 JOHN G. HATCH SURVEY
 PATENT NO. 506, VOLUME 10, ABSTRACT NO. 373
 SAN PATRICIO COUNTY, TEXAS.

JOB NO. 97-106

General Land Office
Stephen F. Austin Bldg.
1700 N. Congress Ave.
Austin, Texas 78701
10:00 a.m., Room 831

File No Sketch File 54
San Saba SAN PATRICO County
Ingliside Point
Filed September 3 19 98
GARRY MAURO, Com'r

By _____
DOCKET
SCHOOL LAND BOARD
REGULAR MEETING
JULY 15, 1997

-
1. Approval of the minutes of the July 1, 1997 meeting.

 2. Pooling application: Bellwether Exploration Company, State Leases M-96866 and M-96867, Matagorda County.

 3. Pooling application: Parker & Parsley Development L.P., State Leases M-97567 and M-97568, Hemphill County.

 4. Pooling application: Esenjay Petroleum Corporation, State Lease M-97984, Orange County.

 5. Consideration of nominations, terms and conditions for the October 7, 1997 oil, gas and other minerals lease sale.

6. Application to purchase excess acreage Colorado/Lavaca Counties
 By: Alis & Company 59.861 acres
 Corrected field notes - 1,347.812 acres File COL-43-B & D
 Patented survey - 1,280.000 acres
 Total excess - 59.861 acres
 (7.951 acres in riverbed not conveyed)
 Appraised value: \$940 per acre, including minerals
 Formula value & sale price: \$470 per acre, including minerals
 Total purchase price: \$28,135

Recommendation: Place sales proceeds in escrow account as authorized by Texas Natural Resources Code, Section 51.401.

7. Direct land sale - tax foreclosure Bexar County
 To: St. Phillip Baptist Church 6,250 sq. ft.
 Appraised value: \$.10 per sq. ft.
 Total purchase price: \$600

Recommendation: Proceeds from this sale be placed in the Capital Trust Fund, after the costs of sale are deducted, as required by Texas Natural Resources Code, Section 32.112.

(OVER)

-
8. Coastal public lands - consideration of boundary agreement, San Patricio County.
-
9. Coastal public lands - consideration of waiver of surface access to a site in Nueces Co.
-
10. Coastal public lands - 2 commercial easement renewals.
-
11. Coastal public lands - 1 easement application.
-
12. Coastal public lands - structure (cabin) permits.
- A. 3 renewals.
 - B. 2 amendments.
 - C. 4 terminations.
 - D. 3 requests.
 - E. 1 request/rebuilding.
-
13. Executive Session - consideration and approval of request for proposals for the Paseo Del Este Project, El Paso County,
Open Session - consideration and approval of request for proposals for the Paseo Del Este Project, El Paso County.
-
14. Executive Session - consideration and approval to purchase approximately 92 acres, Dallas/Tarrant County.
Open Session - consideration and approval to purchase approximately 92 acres, Dallas/Tarrant County.
-
15. Executive Session - consideration and approval to purchase 3 improved sites in Dallas/Denton/Harris Counties.
Open Session - consideration and approval to purchase 3 improved sites in Dallas/Denton/Harris Counties.
-
16. Executive Session - Royalty settlement with Mobil Oil Corporation, High Island Block 14-L, Jefferson County.
Open Session - Royalty settlement with Mobil Oil Corporation, High Island Block 14-L, Jefferson County.
-

17. Executive Session - pending or contemplated litigation.

XXXX

San Patricio Co. Sk. F. 54-75

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MINUTES
SCHOOL LAND BOARD
REGULAR MEETING
JULY 15, 1997

The School Land Board of the State of Texas met in a regular meeting on Tuesday, July 15, 1997 with the following members present: Garry Mauro, Commissioner of the General Land Office and Chairman of the Board; Bill Warnick and Louis Renaud. Those present from the General Land Office were Linda K. Fisher, Secretary to the Board; Spencer Reid, Senior Deputy Land Commissioner; Melody Gary and LaNell Aston, Assistants to the Senior Deputy Land Commissioner; Robert Hatter, Peter Boone, Bill Farr, Lynn Pham, Tracey Throckmorton and Dianna Gordon, Energy Resources; Jeff Long, Public Information; Ben Thomson, Surveying Division; David Hall, Ken Mills, Daryl Morgan, Nora Evans, Terri Loeffler, Kay Molina and Bob Moreland, Legal Division; Mark McAnally, Appraisal Division; Kathy Mikkelson, Fiscal; Chris Price, Bob Blumberg, Bob Dedman, Greg Rives, Jim Crow, Susan Sugarek, Anita Dabney, Bob Hewgley, Earl Fuller, Claudette Carr, Angela Henderson and Adolph Kremel, Asset Management. Also present were Flip Whitworth, Attorney, Austin, Texas, representing Bellwether Exploration and Parker & Parsley; Jeffee Martinez Vargas, Attorney General's Office; and Billy G. Thompson, Texas Energy Week, Austin, Texas.

Commissioner Mauro requested that Bill Warnick call the meeting to order and take up Items, 1 thru 6, 10, 11 and 12, and recess until 1:00 p.m.

Motion was made by Mr. Renaud and seconded by Mr. Warnick that Item No. 1, minutes of the July 1, 1997 meeting, be approved. Motion carried unanimously.

Motion was made by Mr. Renaud and seconded by Mr. Warnick that Item No. 2, pooling application, Bellwether Exploration Company, State Leases M-96867 and M-97568, Matagorda County, be approved according to the Pooling Committee Report, attached hereto as Exhibit "A". Motion carried unanimously.

Motion was made by Mr. Renaud and seconded by Mr. Warnick that Item No. 3, pooling application, Parker & Parsley Development L.P., State Leases M-97567 and M-97568, Hemphill County, be approved according to the Pooling Committee Report, attached hereto as Exhibit "B". Motion carried unanimously.

Motion was made by Mr. Warnick and seconded by Mr. Renaud that Item No. 4, pooling application, Esenjay Petroleum Corporation, State Lease M-97984, Orange County, be approved according to the Pooling Committee Report, attached hereto as Exhibit "C". Motion carried unanimously.

Robert Hatter presented the Board with information on Item No. 5 nominations, terms and conditions for the October 7, 1997 oil, gas and other minerals lease sale. Motion was made by Mr. Warnick and

(OVER)

San Patricio Co. Sk. F. 54-76

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seconded by Mr. Renaud that the nominations, terms and conditions for the October 7, 1997 oil, gas and other minerals lease sale, as shown in the attached Exhibit "D", be approved as recommended by the staff. Motion carried unanimously.

Motion was made by Mr. Renaud and seconded by Mr. Warnick that Item No. 6, application to purchase excess acreage by Alis & Company, 59.861 acres, File COL-43-B & D, Colorado/Lavaca Counties, be approved at the formula value and sale price of \$470 per acre, including minerals, for a total of \$28,135; and that the sales proceeds be placed in the escrow account as authorized by Texas Natural Resources Code, Section 51.401, as shown in the attached Exhibit "E". Motion carried unanimously.

Motion was made by Mr. Renaud and seconded by Mr. Warnick that Item No. 7, direct land sale of tax foreclosure tract, to St. Phillip Baptist Church, 6,250 sq. ft., Bexar County, be approved at the appraised value of \$.10 per sq. ft., for a total of \$600; and that the proceeds from this sale be placed in the Capital Trust Fund, after the costs of sale are deducted, as required by Texas Natural Resources Code, Section 32.112, as described in the attached Exhibit "F". Motion carried unanimously.

Motion was made by Mr. Warnick and seconded by Mr. Renaud that Item No. 10, coastal public lands, 2 commercial easement renewals by Star Enterprise, and Vintage Petroleum, Inc., be approved as shown in the attached Exhibit "G". Motion carried unanimously.

Motion was made by Mr. Warnick and seconded by Mr. Renaud that Item No. 11, coastal public lands, 1 easement application by Wade Irvin, be approved as shown in the attached Exhibit "H". Motion carried unanimously.

Motion was made by Mr. Renaud and seconded by Mr. Warnick that coastal public lands, structure cabin permits, Item No. 12-A, 3 renewals for Michael R. Hoffman, Lupe Del Toro and Charles H. Sikes; Item No. 12-B, 2 amendments for Donald R. Lothringer and John Peveto; Item No. 12-C, 4 terminations for Sandra Kay Hale, R. E. Machen, Carl V. Gatti and Morris E. Wilson; Item No. 12-D, 3 requests for Gary W. Crouch, William Goldston Gabriel Garza; and Item No. 12-E, 1 request/rebuilding for George Wayne Lambert, be approved as shown in the attached Exhibits "I", "J", "K", "L" and "M". Motion carried unanimously.

Mr. Warnick announced at 10:20 a.m. that the Board will recess and reconvene at 1:00 p.m. to complete the docket.

The Board reconvened in regular session at 1:00 p.m in Room 831 with Commissioner Mauro presiding.

Spencer Reid presented the Board with information on Item No. 8, consideration of boundary agreement, San Patricio County, attached

San Patricio Co. Sk.F. 54-77

counter 41802

hereto as Exhibit "N". Motion was made by Mr. Warnick and seconded by Mr. Renaud that the boundary agreement be approved subject to retaining the minerals on the tract of land and that Spencer Reid contact the applicant concerning the mineral reservation. Motion carried with Commissioner Mauro abstaining.

Motion was made by Commissioner Mauro and seconded by Mr. Warnick that Item No. 9, consideration of waiver of surface access to a site in Nueces County, be approved as shown in the attached Exhibit "O". Motion carried unanimously.

Commissioner Mauro announced at 1:37 p.m. that the School Land Board would enter into an Executive Session under Chapter 551, Subchapter D, Texas Government Code, Section 551.072, to discuss Item No. 13, consideration and approval of request for proposals for the Paseo Del Este Project, El Paso County; Item No. 14, consideration and approval to purchase approximately 92 acres, Dallas/Tarrant County; Item No. 15, consideration and approval to purchase 3 improved sites in Dallas/Denton/Harris Counties; and under Chapter 551, Subchapter D, Texas Government Code, Section 551.071 to discuss Item No. 16, royalty settlement with Mobil Oil Corporation, High Island Block 14-L, Jefferson County; and Item No. 17, pending or contemplated litigation. No action was taken in Executive Session.

The Board reconvened in regular session at 1:57 p.m.

No action was taken on Item Nos. 13, 15 and 17.

Motion was made by Commissioner Mauro and seconded by Mr. Warnick that Item No. 14, consideration and approval to purchase approximately 92 acres, Dallas/Tarrant County, be approved contingent on the completion of an appraisal, survey, and working out solutions on any zoning problems that may exist. Motion carried unanimously.

Motion was made by Mr. Warnick and seconded by Mr. Renaud that Item No. 16, royalty settlement with Mobil Oil Corporation, High Island Block 14-L, Jefferson County, be approved as recommended by the staff in Executive Session, and as shown in the attached Exhibit "P". Motion carried unanimously.

There being no further business to come before the Board, the meeting was adjourned.

ATTEST:

APPROVED:

Linda K. Fisher
Linda K. Fisher, Secretary

Garry Mauro
Garry Mauro, Commissioner of the
General Land Office and Chairman
of the School Land Board

San Patricio Co. SK F. 54-78

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