MINUTE ITEM

10/79
W 22154
Scott
Collins

28. SAN LUIS REY RIVER BOUNDARY SETTLEMENT AND EXCHANGE
BLA NO. 192

During consideration of Calendar Item 28 attached, Mr. Robert Collins, Deputy Attorney General, stated that both parties have agreed to delete the phrase "by virtue of implied dedication" (page 3 of Calendar Item 28, paragraph 5). In addition, the attorneys for North Coast Village--Fulop, Rolston, Burns and McKittrick--asked Mr. Collins to mention that an agreement was reached wherein an insertion will be included in Boundary Line Agreement No. 192 which will note that the lots established by that Agreement are exempt under the Subdivision Map Act and will be legal lots without the filing of a subdivision map.

Mr. Cory asked why the above-referenced phrase was deleted. Mr. N. Gregory Taylor, Assistant Attorney General, explained that the State's position in asserting title to these lands was based on sovereign title claims and implied dedication. Even though North Coast Village is agreeing to enter into the compromise settlement, its attorney stated for the record, that it disputes the State's positions; however they have agreed to the compromise set forth in their agreement.

Mr. Cory questioned whether the Agreement was satisfactory to all parties and whether it had been entered into under duress. Mr. K. Phillip Knierim, a member of the firm referred to above representing North Coast Village, stated they were not happy with the Agreement, but for the record, they simply are stating they are entering into it.

In an attempt to explain Mr. Knierim's statement and summarize the situation, Mr. Taylor explained that:

1. The Commission authorized a quiet title action against North Coast Village in 1978.

2. North Coast Village contends it has complete ownership to the property in question.

3. Staffs of the Commission and the Attorney General's Office disagree with the position of North Coast Village and assert the State has claims to much of the land based on a number of grounds.

4. One part of the ownership in question is in bankruptcy proceedings and there is a need to conclude this Agreement as soon as possible due to those proceedings and because there are many liens and lawsuits outstanding so that the title can be completely cleared.

5. The staffs of the Commission and the Attorney General's Office have worked actively to arrive at a mutually satisfactory agreement which, if successful, will save substantial litigation costs.

Mr. Taylor stated that the duress about which Mr. Knierim speaks is not the type which would invalidate the Agreement. It is a matter where two parties disagree and a compromise is eventually reached. Mr. Knierim agreed with Mr. Taylor's summary, but reserved the contentions about the duress, except saying they will not seek to invalidate the Agreement based on that contention.

Mr. Taylor requested that the Commission's approval be contingent on the following:

1. Depending upon the results of the title report, North Coast Village, Inc., may or may not be a party to the Agreement.

2. A minor problem has arisen with the legal description on the common boundary between Parcel 1B and Parcels 2A and 3, and that this will be worked out prior to execution of the Agreement.

3. Since the Agreement was hurriedly prepared, other nonsubstantive changes will be made, however, anything substantive will be returned to the Commission for its approval.

Upon motion duly made and carried, the following resolution was approved by a vote of 3-0:

THE FOLLOWING APPROVAL IS GIVEN WITH THE UNDERSTANDING THAT:

1. NORTH COAST VILLAGE, INC., MAY OR MAY NOT BE A PARTY DEPENDING UPON THE RESULTS OF THE TITLE REPORT;

2. THE COMMON BOUNDARY BETWEEN PARCEL 1B AND PARCELS 2A AND 3 WILL BE ADJUSTED TO CORRECTLY REFLECT THE UNDERSTANDING OF THE PARTIES;

3. NONSUBSTANTIVE CHANGES MAY BE MADE TO THE AGREEMENT;

4. THE PHRASE "BY VIRTUE OF IMPLIED DEDICATION" IN PARAGRAPH 5, PAGE 3 OF THE CALENDAR ITEM, WILL BE DELETED;

5. THE FACT THAT AN INSERTION WILL BE INCLUDED IN BOUNDARY LINE AGREEMENT NO. 192 NOTING THAT THE LOTS ESTABLISHED BY THAT AGREEMENT ARE EXEMPT UNDER THE SUBDIVISION MAP ACT AND WILL BE LEGAL LOTS WITHOUT THE FILING OF A SUBDIVISION MAP;

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MINUTE ITEM NO. 28 CONTD.

THE COMMISSION:

1. FIND THAT THIS TRANSACTION IS IN SETTLEMENT OF TITLE AND BOUNDARY LITIGATION AND DETERMINE THAT AN EIR HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH REPORT IS NOT REQUIRED UNDER THE PROVISIONS OF P.R.C. 21065, 14 CAL. ADM. CODE 15037 AND 2 CAL. ADM. CODE 2903(d).

2. APPROVE THE SAN LUIS REY RIVER BOUNDARY SETTLEMENT AND EXCHANGE AGREEMENT - BLA NO. 192 AND AUTHORIZE THE EXECUTION OF SAID AGREEMENT ON BEHALF OF THE STATE LANDS COMMISSION IN SUBSTANTIALLY THE FORM OF THE COPY OF THE AGREEMENT ON FILE WITH THE COMMISSION.

3. FIND THAT THE EXCHANGE OF LANDS, INTERESTS IN LANDS, AND RIGHTS SET FORTH IN THE AGREEMENT ARE IN THE BEST INTEREST OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION AND FOR THE OTHER PURPOSES SPECIFIED IN SECTION 2 OF CHAPTER 846, STATUTES OF 1979; THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING IN THE WATERS INVOLVED BUT WILL IN FACT ENHANCE AND ENLARGE PUBLIC RIGHTS AND UTILIZATION OF SAID WATERWAYS FOR TRUST PURPOSES; AND THAT THE STATE WILL RECEIVE LANDS AND INTERESTS IN LANDS EQUAL TO OR GREATER IN VALUE THAN ANY LANDS OR INTERESTS IN LANDS RELINQUISHED BY THE STATE PURSUANT TO SAID AGREEMENT.

4. AUTHORIZE THE STATE LANDS COMMISSION STAFF AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE TERMS AND PROVISIONS OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, EXECUTION OF ALL DOCUMENTS, MAPS, TITLE AND ESCROW INSTRUCTIONS, AND APPEARANCES IN ANY LEGAL PROCEEDINGS BROUGHT CONCERNING THE ABOVE TRANSACTION.

Attachment: Calendar Item No. 29. (8 Pages)

MINUTE ITEM

This Calendar Item No. 28. was approved as Minute Item No. 28 by the State Lands Commission by a vote of 3 to 0 at its 10-29-79 meeting.

CALENDAR ITEM

28.

10/79
W 22154
Scott
Collins
BLA 192

SAN LUIS REY RIVER BOUNDARY SETTLEMENT AND EXCHANGE - BLA NO. 192

The San Luis Rey River Boundary Settlement and Exchange - BLA No. 192 between the State of California, the City of Oceanside, and certain Private Parties, namely, Century Southwest Corporation, a California corporation, North Coast Village, Ltd., a California limited partnership, North Coast Village, Inc., a California non-profit corporation, John R. Prewitt, a single man, and John R. Prewitt and Carol Prewitt Murphy, as co-trustees under the will of Ray C. Prewitt, deceased, and Condor Corporation, a California corporation, and any other Parties shown to be necessary by forthcoming title reports; provides for the exchange and conveyancing of certain lands in the City of Oceanside; for the settlement of the interests of the respective parties; for the termination of the easement and public trust for commerce, navigation and fisheries as to certain portions of said lands; for execution of all documents and maps necessary to accomplish the provisions of said agreement; and approval of all acts of the City of Oceanside and authorization to the staff and the Attorney General necessary to accomplish the provisions of said agreement in order to confirm, quiet title and exchange the respective interests in lands within the Agreement Area in the City of Oceanside, as trustee, and in Private Parties.

The property involved in this transaction, i.e., the Agreement Area, consists of approximately 25 acres located along the shoreline at the mouth of the San Luis Rey River within the northerly part of the City of Oceanside, San Diego County, California, more particularly shown in the attached Exhibits "A" and "C".

This Agreement will settle a title dispute which exists between the State, the City of Oceanside as trustee of the State's sovereign rights, and Private Parties who possess interests in the apartment complex shown as "North Coast Village," which is built on a portion of the property in dispute. This dispute was the subject of prior Commission action, namely Calendar Item No. 38 of the December 20, 1978, meeting which authorized the Commission's staff and the Attorney General's Office "to take whatever steps are necessary, including the initiation of litigation, to protect the public's rights in the areas around the mouth of the San Luis Rey River."

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MINUTE PAGE 2096

A 74
S 36

The Private Parties, or some of them, claim to be the owners of all right, title, and interest of the uplands in the Agreement Area by virtue of being successors in interest to two United States Patents, No. 1045, dated June 20, 1883, and No., 2608, dated March 7, 1890.

The City of Oceanside claims all right, title and interest in the tide and submerged lands within and adjoining Agreement Area which lie under the waters of the Pacific Ocean and the San Luis Rey River (including its estuary and lagoon), by a grant in trust from the State pursuant to the provisions of Chapter 846, Statutes of 1979. Such tide and submerged lands of the State are subject to the common law trust of commerce, navigation and fisheries for the benefit of all of the people of the State.

The City, as trustee for the State also claims a public access and recreational easement over portions of the Agreement Area, by virtue of past prescriptive use by the public, under the doctrine of implied dedication declared by the California Supreme Court in Gion v. City of Santa Cruz (1970) 2 Cal. 3d 29. Such claim is based on an investigation conducted by the Attorney General's Office, requested by the City of Oceanside and the California Coastal Commission.

The necessity of settling these conflicting claims became apparent when Private Parties applied for a Coastal permit for the conversion of the "North Coast Village" apartment complex into a stock cooperative. The California Coastal Commission approved the permit, contingent on several conditions, among which is the satisfactory completion and execution of a boundary agreement which would settle the various ownership claims.

Such an Agreement has been negotiated and executed by Private Parties. A copy of this Agreement is on file in the Office of the State Lands Commission and incorporated herein by this reference. While the Agreement sets forth all the specific terms and conditions of the settlement, for purposes of convenience, a brief summary of its principal terms are as follows:

1. All Parties to the Agreement agree to a common boundary line between the Uplands and Granted Tidelands within the Agreement Area, such boundary line being agreed to comprise a portion of the ordinary high water mark of the San Luis Rey River and the Pacific Ocean. Said boundary line is described in Exhibit "B" hereof.

2. The Parties agree and will confirm that the City, as Trustee, is vested with all right, title and interest in Parcel 1A and 1B, as shown on the map of Exhibit "C" hereof, subject to the common law trust for commerce, navigation and fisheries.

3. The Parties agree and will confirm that the Private Parties who are successors in interest to the United States Patents No. 1045 and No. 2608 are vested with fee title or a lesser interest in the Uplands of the Agreement Area, such uplands agreed to be Parcels 1C, 2A, 2B, 3, 4A and 4B, as shown in Exhibit "C", subject to current, valid and binding, exceptions, reservations, easements, covenants, conditions, liens, public and governmental rights-of-way.

4. The Private Parties will grant to the City in trust, Parcel 1C, as shown on Exhibit "C", in fee simple, free of all encumbrances. The common law trust for commerce, navigation and fisheries shall attach to Parcel 1C and it shall become part of the City's Tideland Grant.

5. The Parties agree to and will confirm the existence of a public access and recreational easement over Parcel 2A, as shown on Exhibit "C", by virtue of implied dedication. In addition, the Private Parties will dedicate non-exclusive easements in said Parcel to the City, in trust, for public access and recreational use. In consideration of this confirmation and dedication, the State and City will agree to the continual maintenance by Private Parties of the seawall which is presently located on said Parcel.

6. The City will convey all right, title and interest in Parcel 2B, as shown on Exhibit "C", to the Private Parties. In consideration thereof, Private Parties will grant in fee simple to the City for street and parking purposes, Parcels 4A and 4B, as shown on Exhibit "C", free and clear of all encumbrances.

The Agreement and conveyances thereunder are authorized by Section 6307 of the P.R.C. and Chapter 846, Statutes of 1979.

Since the exchange is for the purpose of settling a title dispute, it is exempt from the preparation of an EIR under the provisions of P.R.C 21065, 14 Cal. Adm. Code 15037 and 2 Cal. Adm. Code 2903(d).

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The proposed exchange is for the purpose of settling a title dispute, and the Private Parties remain subject to all lawful requirements of public agencies for permits, mitigation, use, or otherwise, independent of this Agreement.

An evaluation has been made by the Commission's staff which shows that the State will receive lands and interests in lands equal or greater in value than those lands and interests in lands claimed by the State and to be surrendered by this Agreement.

For the above reasons and since the Agreement, once implemented, will enhance and enlarge public rights in the Agreement area and increase the utilization of the waterways for trust purposes, the staff believes that the Agreement is in the best interests of the State.

The Office of the Attorney General concurs in these opinions and has approved the Agreement.

EXHIBITS:
A. Site Map.
B. Boundary Line Description.
C. Agreement Area Parcel Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THIS TRANSACTION IS IN SETTLEMENT OF TITLE AND BOUNDARY LITIGATION AND DETERMINE THAN AN EIR HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH REPORT IS NOT REQUIRED UNDER THE PROVISIONS OF P.R.C. 21065, 14 CAL. ADM. CODE 15037 AND 2 CAL. ADM. CODE 2903(d).

2. APPROVE THE SAN LUIS REY RIVER BOUNDARY SETTLEMENT AND EXCHANGE AGREEMENT - BLA NO. 192 AND AUTHORIZE THE EXECUTION OF SAID AGREEMENT ON BEHALF OF THE STATE LANDS COMMISSION IN SUBSTANTIALLY THE FORM OF THE COPY OF THE AGREEMENT ON FILE WITH THE COMMISSION.

3. FIND THAT THE EXCHANGE OF LANDS, INTERESTS IN LANDS, AND RIGHTS SET FORTH IN THE AGREEMENT ARE IN THE BEST INTEREST OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION AND FOR THE OTHER PURPOSES SPECIFIED IN SECTION 2 OF CHAPTER 846, STATUTES OF 1979; THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING IN THE WATERS INVOLVED BUT WILL IN FACT ENHANCE

AND ENLARGE PUBLIC RIGHTS AND UTILIZATION OF SAID WATERWAYS FOR TRUST PURPOSES; AND THAT THE STATE WILL RECEIVE LANDS AND INTERESTS IN LANDS EQUAL TO OR GREATER IN VALUE THAN ANY LANDS OR INTERESTS IN LANDS RELINQUISHED BY THE STATE PURSUANT TO SAID AGREEMENT.

4. AUTHORIZE THE STATE LANDS COMMISSION STAFF AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE TERMS AND PROVISIONS OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, EXECUTION OF ALL DOCUMENTS, MAPS, TITLE AND ESCROW INSTRUCTIONS, AND APPEARANCES IN ANY LEGAL PROCEEDINGS BROUGHT CONCERNING THE ABOVE TRANSACTION.

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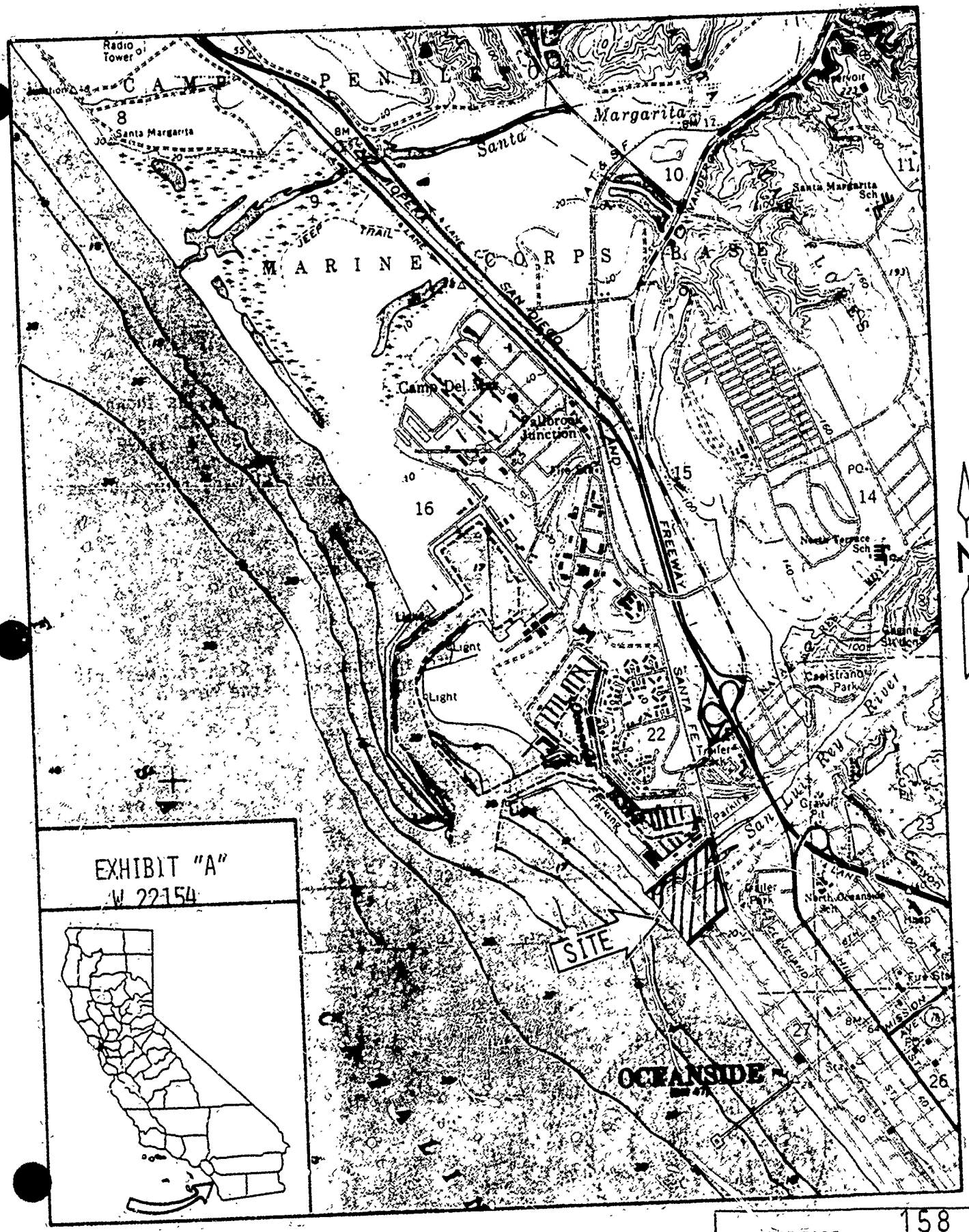

EXHIBIT "A"
W 22154

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EXHIBIT "B"

COMMENCING at the most southerly corner of Lot 11, Block 1, as shown on that certain map entitled "Strand Tract Addition" filed as Map No. 936, San Diego County Recorders Office, thence S 54°38'30" W 233.99 feet to the POINT OF BEGINNING, thence along the common boundary between the uplands and the granted tidelands the following four courses:

1. N 34°55'04" W 528.67 feet
2. N 55°04'56" E 25.50 feet
3. N 49°46'12" E 516.18 feet, and
4. N 55°10'03" E 456.31 feet to an intersection with the westerly right-of-way of the AT&SF Railroad and the end of the herein described common boundary.

END OF DESCRIPTION

Prepared H. H. Kunneke Checked F. del Lopez

Reviewed Gary A. Wilson Date 10/25/79

LICENSED LAND SURVEYOR
GARY A. WILSON
No. 3752
STATE OF CALIFORNIA

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(Rev. 10/26/79)

W 22154

EXHIBIT "C"

Parcel 1(a) and 1(b) to City in Trust

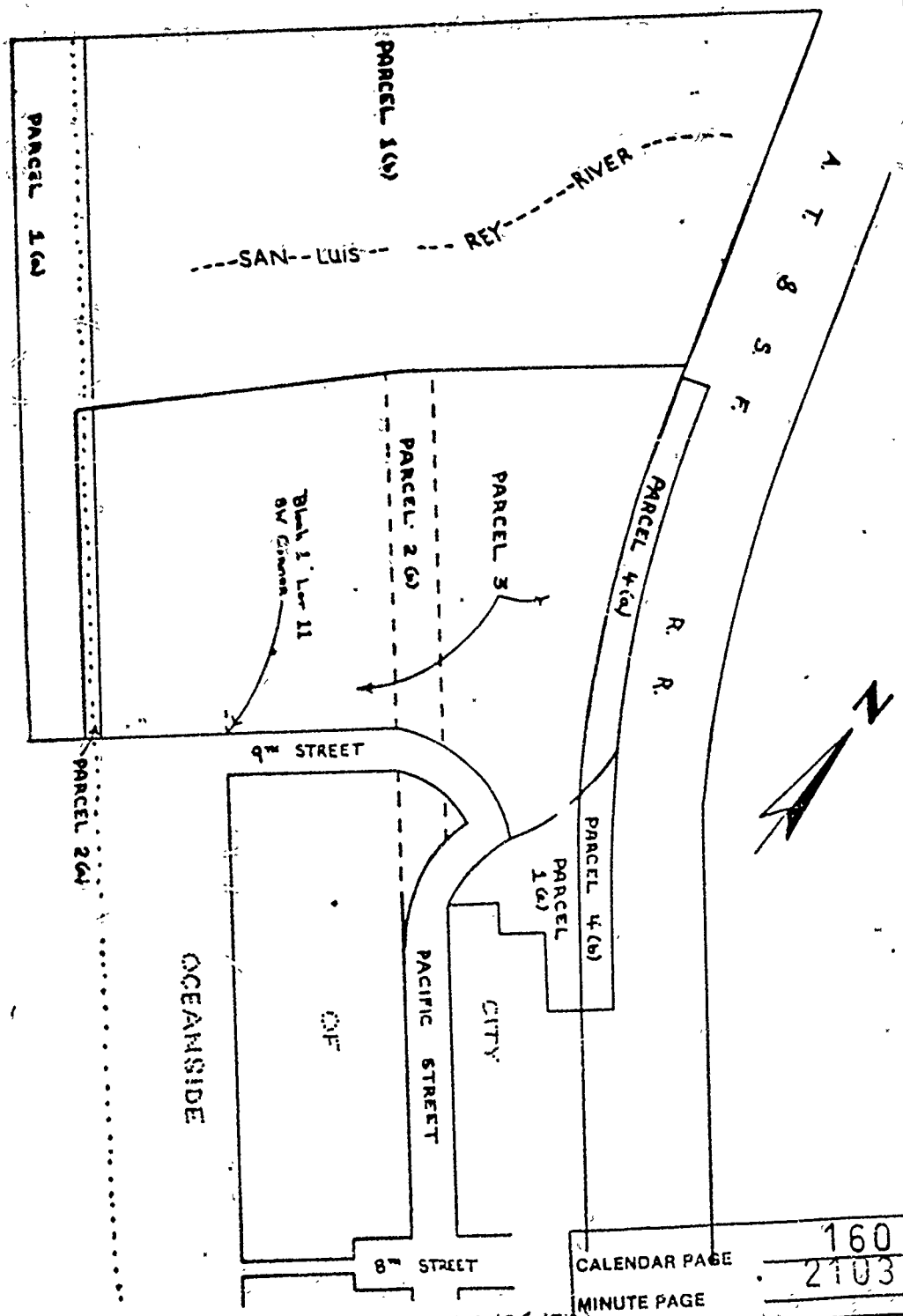
Parcel 1(c) to City of Oceanside in Trust

Parcel 2(a) Public Access Easement to City in Trust

Parcel 2(b) to Northcoast Village

Parcel 3 to Northcoast Village

Parcel 4(a) and 4(b) to City of Oceanside



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(Rev. 10/26/7[illegible])