MINUTE ITEM

This Calendar Item No. 38 was approved as Minute Item No. 38 by the State Lands Commission by a vote of 2 to 0 at its 5/22/86 meeting.

CALENDAR ITEM

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LITIGATION AND TITLE DISPUTE SETTLEMENT AGREEMENT
REGARDING LANDS IN THE HARBOR DISTRICT OF
THE CITY OF LOS ANGELES, CALIFORNIA,
LOS ANGELES COUNTY

PARTIES TO THE AGREEMENT:

CITY OF LOS ANGELES, directly and acting through its Board of Harbor Commissioners (City)

STATE OF CALIFORNIA, acting by and through the State Lands Commission (State)

SOUTHERN PACIFIC TRANSPORTATION COMPANY (Southern Pacific)

In 1911, the State granted to the City of Los Angeles, in trust, certain property in the Harbor District (Stats. 1911, Ch. 656, P. 1256, as amended and supplemented by statutes in 1915, 1917, 1921, 1929, 1945, 1951, 1967, 1970, 1979 and 1985). In 1981, Southern Pacific Transportation Company (Southern Pacific) initiated litigation seeking to quiet title to lands which the City claimed pursuant to the grant.

This item recommends settlement of that litigation by the approval of, and authorization to execute, the Litigation and Title Dispute Settlement Agreement ("Agreement"), which has been proposed by the above-named parties. The Agreement contemplates the resolution of the title controversies by means of an exchange of lands and mutual conveyances and a payment by the City for the value of claims to other lands and certain improvements. The land exchange will be made on an equal-or-greater-value basis in favor of the City and State.[1/]

[1/] The 1979 amendment (Stats. 1979, Ch. 926) to the City's grant authorized exchanges of land, upon certain conditions, in order that title and boundary disputes could be resolved within one particular area within the Harbor District. The 1985 amendment of the grant (Stats. 1985, Ch. 923) authorized such exchanges throughout the Harbor District.

(PAGES 197-197.7 ADDED 05/21/86)

(NON-SUBSTANTIVE REVISION 06/02/86)

BACKGROUND OF THE DISPUTE

In 1887, pursuant to former Civil Code section 474, Southern Pacific obtained a Surveyor General's permit authorizing it to use an area along the waterfront of the Port of Los Angeles for railroad purposes. The area covered by the permit was 200 feet wide and about four miles long, and it constitutes a major part of the waterfront in the Port of Los Angeles. The permit area covered both sovereign tide and submerged lands and uplands not owned by the State.

At the same time as it was acquiring the Surveyor General's permit, Southern Pacific was also acquiring tideland surveys and tideland locations which partially overlapped the areas described in the permit. A number of these overlapping sources of title were at issue in the People, et al. v. California Fish Company series of decisions by the Supreme Court. Following those decisions, the City and Southern Pacific in 1917 entered into an agreement to resolve many of their remaining disputes regarding title to properties in the port.

Since acquiring the permit and since the 1917 agreement, Southern Pacific has used the property as though it were the owner. Southern Pacific has both filled the property and improved the bed for its tracks. Southern Pacific also subleased the property to other companies.

In November 1962, the City filed an action to condemn a parcel in the Port, a part of which was within the permit area. (City of Los Angeles v. Southern Pacific Company, et al., L.A.S.C. No. 807294.) Southern Pacific defended on the basis that the permit had, in effect, conveyed title to the railroad.

The judgment of the Superior Court was that the permit did not convey to Southern Pacific a compensable title interest in sovereign tide and submerged lands. The court also held, however, that Southern Pacific was entitled to the reasonable current market value of its improvements to the property. Those improvements were primarily dirt fill and riprap.

In the late 1970's, the City became concerned over Southern Pacific's uses of the two large remaining portions of the permit area. In particular, Southern Pacific had leased parts of the permit area, and the City notified those lessees that the rentals for the use of such property should be paid to the City. Southern Pacific thereupon initiated this litigation in 1981. (Southern Pacific Transportation Company v. City of Los Angeles, et al., L.A.S.C. No. C313569.)

In the lawsuit, Southern Pacific sought to quiet title to the property described in the permit on the basis of the permit itself and the 1917 agreement. However, as the parties investigated their respective cases, they came to agree that substantial questions exist as to the probable outcome of the litigation. First, the legal effect of the 1887 Surveyor General's permit and the earlier case is difficult to assess. Second, although accurate maps and surveys of the area exist, there are major disagreements regarding their proper interpretation. In particular, there is disagreement regarding which lands within the permit area were uplands and which were tidelands at the time the permit was granted.

The parties also agree that continuing the litigation will require both a substantial amount of time and a substantial expenditure of funds. Further, without a resolution of the litigation, none of the parties can make improvements on the property. Therefore, the parties determined that it is in their best interests, and the best interest of the public, to resolve this dispute through compromise and settlement. Following extensive and protracted negotiations, representatives of the parties have reached an agreement in principle for resolving the title questions presented here.

The basic elements of the settlement are the following:

1. With regard to the tidelands located with the permit area, Southern Pacific will acknowledge that the public trust easement held by the City and the State is paramount both to any interest conveyed to Southern Pacific by the permit and to any other interest of Southern Pacific in those tidelands. Parcel 1 of Exhibit "A" of the Agreement (Wilmington Property) describes the area to which this provision applies.

2. The City and the State acknowledge the validity of the Surveyor General's permit of 1887 and allow Southern Pacific to continue to occupy and use the tidelands in the permit area until the Port determines that the property is needed for harbor purposes.

3. The City and State will convey to Southern Pacific three parcels as described in both Exhibits "F" and "G" of the Agreement. These parcels are to be conveyed free of the public trust. In exchange, Southern Pacific will convey

the property described in Exhibit "E". That area will be held by the City subject to the public trust. The area conveyed to the City is substantially greater than that conveyed to Southern Pacific (1.3± acres versus one-third acre), and as part of the Agreement the City shall compensate Southern Pacific for their claims to the additional area. This exchange and compensation will result in a new boundary between the City's trust property and Southern Pacific's property which will enhance the ability of the City to provide public access to the Ports O'Call development on the waterfront of the Harbor.

4. The City shall pay $1.4 million to Southern Pacific. This sum compensates Southern Pacific (a) for the value of its improvements (fill, riprap and ballast) on those lands to which it is acknowledging the superiority of the public trust (b) for Southern Pacific's claim to the additional area described in paragraph 3 and (c) for settlement value of the Southern Pacific claims. The City will take possession of the property in the area of Ports O'Call and will begin plans for uses associated with Ports O'Call. The City will not take possession of the other areas for several years.

The properties being exchanged are in the immediate vicinity of each other. The City and Southern Pacific have both reviewed and appraised the value of these properties, and agree that, based on equal area, the rights and interests received by the City and State are equal to or greater in value than the interests being relinquished and extinguished. The staff of the State Lands Commission has reviewed this matter, and agrees with this determination by the City and Southern Pacific. The Attorney General's Office has advised the staff as to the applicable legal principles throughout the settlement process. In the course of the negotiations, a question arose concerning the possible presence of hazardous materials on the property being conveyed to the City. Investigations by the City have revealed no evidence of such materials on these parcels. In the event that any such materials are found on the parcels in the future, the Agreement provides that Southern Pacific is primarily responsible for any cleanup or treatment required by law. By letter dated April 22, 1986, the Attorney General's Office has advised that pursuant to law, the State would not be liable for the removal or treatment of hazardous materials if they were discovered on the parcels because the State does not own or operate them.

Copies of the Settlement Agreement, and its exhibits and all other documents necessary to accomplish the foregoing transaction, including the staff analysis thereof, are on file in the office of the State Lands Commission. By this reference, they are incorporated within this Calendar item by reference. Approval of this item will allow execution of the documents in substantially the form in which they are on file.

This Settlement Agreement is exempt from the requirements of the Subdivision Map Act, pursuant to Section 66412(e) of the Government Code. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutory exempt project. The project is exempt because it involves settlements of title and boundary problems. (Authority: P.R.C. 21080.11.) The agreement is also exempt from the provisions of the California Coastal Act, pursuant to Section 31416(c) of the P.R.C.

This settlement proposal has been reviewed and approved in its entirety by the Office of the California Attorney General as to compliance with applicable laws and rules and regulations of the State Lands Commission.

The following findings, declarations, approvals, and authorizations are specifically authorized by the Legislature in Chapter 926 of the Statutes of 1979 and Chapter 923 of the Statutes of 1985.

EXHIBIT: A. Sketch Map of Agreement.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE SETTLEMENT AGREEMENT AND THE SUBJECT TRANSACTION ARE EXEMPT FROM THE CALIFORNIA COASTAL ACT, THE SUBDIVISION MAP ACT AND FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 AS A STATUTORY EXEMPT PROJECT PURSUANT TO P.R.C. 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.

2. APPROVE AND AUTHORIZE THE EXECUTION OF THE LITIGATION AND TITLE DISPUTE SETTLEMENT AGREEMENT WITH EXHIBITS REGARDING LANDS IN THE HARBOR DISTRICT OF THE CITY OF LOS ANGELES, CALIFORNIA, AMONG THE CITY OF LOS ANGELES, STATE OF

CALIFORNIA AND SOUTHERN PACIFIC TRANSPORTATION COMPANY, TOGETHER WITH THE IMPLEMENTING CONVEYANCES, COPIES OF WHICH AGREEMENT WITH EXHIBITS ARE ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND ARE INCORPORATED WITHIN THIS CALENDAR ITEM BY REFERENCE.

3. FIND THAT THE EXCHANGE OF LANDS, AND RIGHTS AND INTERESTS THEREIN, SET FORTH IN THE SETTLEMENT AGREEMENT REFERRED TO ABOVE IS IN THE BEST INTEREST OF THE STATE AND THE PUBLIC AND IN FURTHERANCE OF THE PUBLIC TRUST PURPOSES OF COMMERCE, NAVIGATION AND FISHERY; THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THESE TRUST PURPOSES, BUT RATHER WILL ENHANCE AND ENLARGE THE PUBLIC RIGHTS AND UTILIZATION OF THE WATERWAYS INVOLVED IN THIS SETTLEMENT.

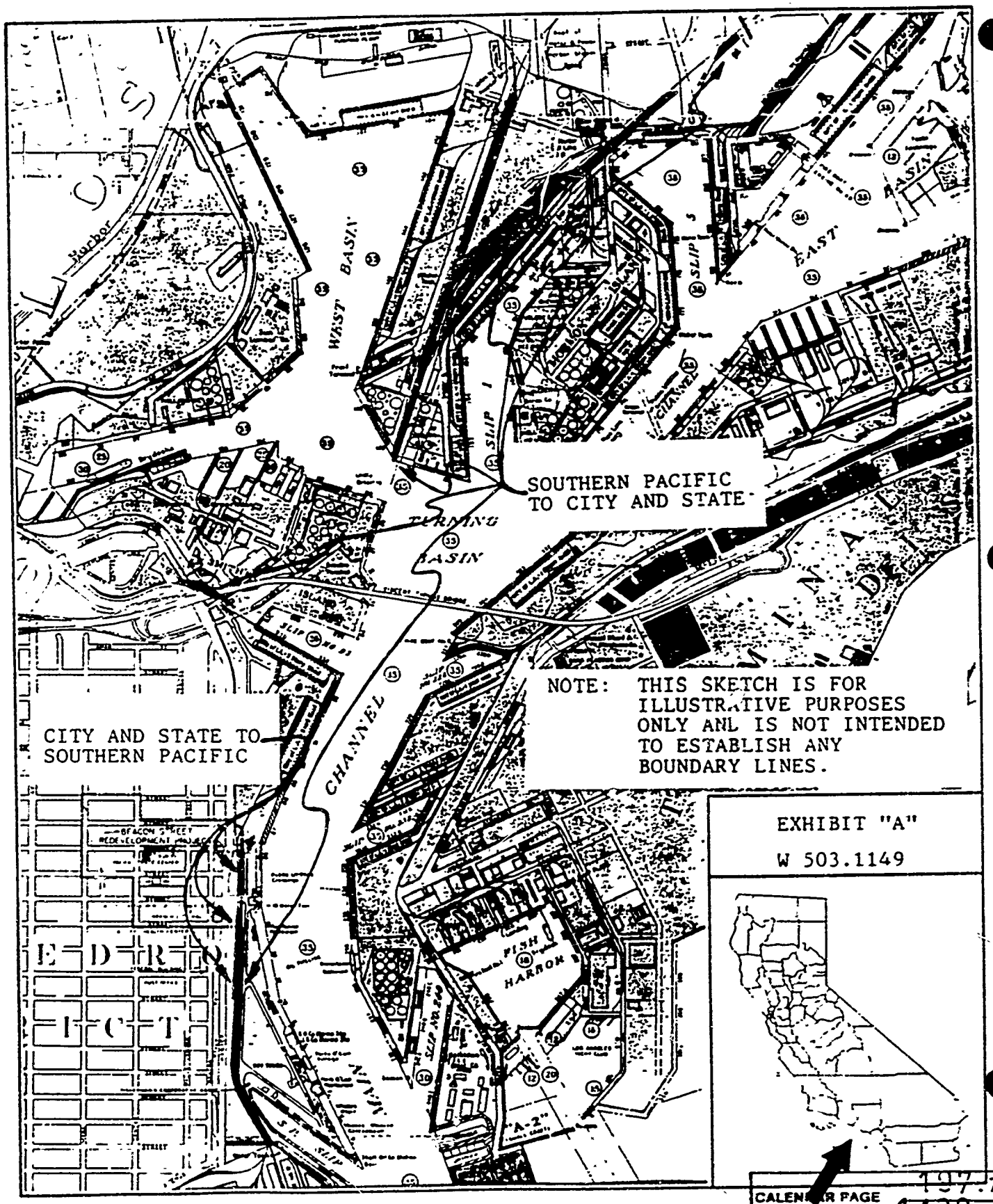
4. FIND THAT THE VALUE OF THE TITLES AND INTERESTS IN THE LANDS ACQUIRED BY THE CITY AND STATE FROM SOUTHERN PACIFIC IS EQUAL TO OR GREATER THAN THE VALUE OF THE CITY'S AND STATE'S TITLES AND INTERESTS IN THE LANDS BEING EXTINGUISHED, REMOVED AND RELINQUISHED AS A RESULT OF THIS SETTLEMENT.

5. FIND AND DECLARE THAT TO THE EXTENT THAT THERE ARE SOVEREIGN LANDS WITHIN THE PROPERTY DESCRIBED IN EXHIBITS "F" AND "G" TO THAT SETTLEMENT AGREEMENT, SUCH LANDS HAVE BEEN IMPROVED, FILLED, RECLAIMED AND EXCLUDED FROM THE PUBLIC NAVIGATIONAL CHANNELS; ARE NO LONGER AVAILABLE, USEFUL OR SUSCEPTIBLE OF BEING USED FOR COMMERCE, NAVIGATION AND FISHING OR OTHER TRUST PURPOSES; ARE NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS; AND THEREFORE, IN FURTHERANCE OF A HIGHLY BENEFICIAL PUBLIC PROGRAM OF HARBOR DEVELOPMENT, SHALL BE FREED FROM THE PUBLIC TRUST, UPON THE EXECUTION OF THE SETTLEMENT AGREEMENT BY ALL THE PARTIES IN ACCORDANCE WITH ITS TERMS, PROVIDED THAT SUCH AGREEMENT AND THIS TRANSACTION ARE CONSUMMATED AS PROVIDED FOR THEREIN AND WITHIN THE TIME SPECIFIED THEREIN.

6. AUTHORIZE THE EXECUTION OF A STATE PATENT TO SOUTHERN PACIFIC, AS TO THE LANDS AND INTERESTS REFERRED TO IN EXHIBIT "G" OF THE SETTLEMENT AGREEMENT PURSUANT TO THE TERMS AND CONDITIONS SPECIFIED THEREIN.

7. AUTHORIZE THE ACCEPTANCE AND RECORDATION OF THE CONVEYANCES TO THE STATE (AND CITY) BY SOUTHERN PACIFIC AS PROVIDED IN THAT SETTLEMENT AGREEMENT.

8. AUTHORIZE THE STAFF OF THE COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ANY AND ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE FOREGOING TRANSACTION, INCLUDING, BUT NOT LIMITED TO EXECUTION OF DOCUMENTS IN SUBSTANTIALLY THE FORM IN WHICH THEY ARE ON FILE, AND TO MAKING APPEARANCES IN ANY LEGAL PROCEEDING CONCERNING THAT TRANSACTION.


SOUTHERN PACIFIC
TO CITY AND STATE
CITY AND STATE TO
SOUTHERN PACIFIC
NOTE: THIS SKETCH IS FOR ILLUSTRATIVE PURPOSES ONLY AND IS NOT INTENDED TO ESTABLISH ANY BOUNDARY LINES.
EXHIBIT "A"
W 503.1149
WEST BASIN
EAST BASIN
TURNING BASIN
CHANNEL
FISH HARBOR
Harbor
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