

MINUTE ITEM

This Calendar Item No. 28  
was approved as Minute Item  
No. 28 by the State Lands  
Commission by a vote of 3  
0 at its 117 1990  
meeting.

CALENDAR ITEM

28

A 11  
S 7

01/17/90  
W 503.1189  
AD 34  
J. Sekelsky  
Plummer

AUTHORIZATION TO STIPULATE TO FINAL JUDGMENT  
IN UNITED STATES OF AMERICA v. 75.45 ACRES  
OF LAND, MORE OR LESS, SITUATE IN THE  
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA,  
ET AL, UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA, CIVIL NO.  
C-80-1903 WWS

This condemnation involves filled and unfilled State owned tidelands and submerged lands in the Carquinez Straits which are occupied by an existing wharf used for off-loading jet fuel. These lands are described in Exhibit "A" and shown on site map, Exhibit "B", attached hereto. These lands were leased by the Commission to the Holly Corporation under PRC 2408. That lease expired on May 27, 1979 and Holly remained in holdover status until May 1980. At that time, the Federal Government took control of the facility pursuant to this condemnation.

The condemnation includes uplands, tidelands, and submerged lands. A portion of the condemnation parcel was included within State Tideland Sale No. 32; Commission staff has disputed the validity of that sale on the grounds that it violated the Constitutional prohibition against sales of tidelands within two miles of a town or village (Martinez), and because it purported to convey lands which were in fact submerged lands. The State therefore claims an interest in those condemnation parcels which lie waterward of the last natural location of the ordinary high water mark; specifically, Tracts 102, 109, and 110.

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CALENDAR ITEM NO. 28 (CONT'D)

Staff of the Commission and the Attorney General's office have been negotiating with representatives of the United States Attorney and the Army Corps of Engineers in an attempt to resolve issues concerning the State's interest in this condemnation. A settlement proposal, which consisted of an exchange of land between the State and Federal Government, was presented to the Commission at its September 26, 1985 meeting and approved as Minute Item No. 31. Subsequent to the Commission's approval of the settlement, the Federal Government determined it was unable to carry through with the proposed land exchange. Continued negotiations have resulted in the following settlement proposal:

- 1) The United States will take, via the condemnation, all of the State's right, title, and interest in Tract 102, 109 and 110. This taking will be subject to the conditions that the property will not be used for non-federal purposes or commercial concessions, other than marine terminal uses, without the prior written permission of the Commission. The United States does not anticipate commercial use at this time.
- 2) In settlement of the State's claimed sovereign interests taken by the United States in the condemnation, as described in the Stipulation for Final Judgement on file in the office of the Commission, the U.S. will pay the sum of \$262,500 into the Kapiloff Land Bank Fund. Staff has conducted an appraisal of its interests in Tracts 102, 109, and 110, and has determined that the value of the interests to be given up by the State is equal to or less than \$262,500.

The approval of this Settlement does not have any potential for resulting in a physical change in the environment and therefore is not a project as defined by the CEQA.

AB 884: N/A

OTHER PERTINENT INFORMATION:

1. 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 because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

Authority: PRC 21065 and 14 Cal. Adm. Code 15378.

CALENDAR ITEM NO. 2 B (CONT'D)

2. In approving acceptance of the payment by the United States of \$262,500 into the Kapiloff Land Bank Fund, the Commission is acting as trustee of the Kapiloff Land Bank Fund pursuant to P.R.C. 8610.

- EXHIBITS:
- A. Description, Condemnation Parcels, Contra Costa County.
  - B. Site Map, Condemnation Parcels.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PRC 21065 AND 14 CAL. ADM. CODE 15378.
2. FIND THAT IT IS IN THE BEST INTERESTS OF THE STATE TO ENTER INTO THE STIPULATION FOR FINAL JUDGMENT ON FILE IN THE OFFICES OF THE STATE LANDS COMMISSION AND THAT THIS SETTLEMENT WILL AVOID THE COSTS, DELAYS, AND UNCERTAINTIES OF LITIGATION.
3. FIND THAT THE SETTLEMENT EMBODIED IN THE STIPULATION OF FINAL JUDGMENT ON FILE IN THE OFFICES OF THE STATE LANDS COMMISSION IS CONSISTENT WITH THE REQUIREMENTS OF LAW AND PROVIDES COMPENSATION FOR THE TAKING OF STATE-OWNED INTERESTS IN TIDELANDS AND SUBMERGED LANDS EQUAL TO THE VALUE OF THOSE INTERESTS IN THOSE LANDS.
4. AUTHORIZE THE CALIFORNIA ATTORNEY GENERAL TO EXECUTE THE STIPULATION FOR FINAL JUDGMENT SUBSTANTIALLY IN THE FORM ON FILE IN THE OFFICES OF THE STATE LANDS COMMISSION, AND MAKE NECESSARY APPEARANCES ON BEHALF OF THE STATE LANDS COMMISSION, IN THE CASE OF UNITED STATES OF AMERICA v. 75.45 ACRES OF LAND, MORE OR LESS, SITUATE IN THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, ET AL, UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, CIVIL NO. C-08-1903 WWS.
5. AUTHORIZE AND DIRECT THE STAFF OF THE STATE LANDS COMMISSION, AND/OR THE CALIFORNIA ATTORNEY GENERAL, TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE STATE LANDS COMMISSION TO CONSUMMATE THE SETTLEMENT EMBODIED IN THE STIPULATION FOR FINAL JUDGMENT ON FILE IN THE OFFICES OF THE STATE LANDS COMMISSION.

EXHIBIT "A"

LAND DESCRIPTION

TRACT No. 109

Parcel 1

The land referred to herein is situated in the State of California, County of Contra Costa, unincorporated, described as follows:

Commencing at a concrete monument set at an angle point on the line of high tide as said line of high tide is shown upon "Map of Resurvey of Tideland Survey No. 32, Contra Costa County, California, made under the provisions of Chapter 430, Statutes of 1915, to correct errors in original survey" dated January 1927, State Lands Commission File No. 14-6-5 and 6 (said concrete monument being opposite approximate Southern Pacific Railroad Station 2620+82; running thence along said line of high tide as shown on the aforesaid map the following courses and distances:

- (1) South 38° 45' East 329.3 feet,
- (2) South 62° 15' East 1130.0 feet,
- (3) South 42° 00' East 235.1 feet,
- (4) South 59° 02' 30" East 525.89 feet;

thence, leaving said line of high tide and running North 30° 57' 30" East 304.50 feet to a line of low tide as shown on map above referred to and the true point of beginning of the parcel of land to be described; thence North 65° 30' West along said line of low tide 85.54 feet; thence South 30° 57' 30" West 182.00 feet, more or less, to the northeasterly right of way line of the Southern Pacific Railroad; thence South 59° 02' 30" East along the said northeasterly right of way line, 140.00 feet, more or less, to the southwesterly prolongation of the southeasterly line of that certain 8.138-acre parcel of land described by unrecorded Lease No. 2408.1 Public Resources Code Series, dated June 22, 1959, by and between the State of California and Chandler Lloyd, trustee, and described as Tract III in instrument recorded December 2, 1974 in Book 7378 at page 462 Official Records, said southeasterly line having a bearing of South 30° 57' 30" West and a distance of 494.77 feet measured from an angle point therein; thence North 30° 57' 30" East 310.00 feet, more or less, along said southwesterly prolongation to a line of low tide as shown on the map referred to herein; thence North 65° 30' West along said line of low tide 55.35 feet to the true point of beginning.

Parcel 2

Commencing at a concrete monument set at an angle point on the line of high tide as said line of high tide is shown upon "Map of Resurvey of Tideland Survey No. 32, Contra Costa County, California, made under the provisions of Chapter 430, Statutes of 1915, to correct errors in original survey" dated January 1927, State Lands Commission File No. 14-6-5 and 6 (said concrete monument being opposite approximate Southern Pacific Railroad Station 2620+82; running thence along said line of high tide as shown on the aforesaid map the following courses and distances:

- (1) South 38° 45' East 329.3 feet,
- (2) South 62° 15' East 1130.0 feet,
- (3) South 42° 00' East 235.1 feet,
- (4) South 59° 02' 30" East 525.89 feet; thence, leaving said

line of high tide and running North 30° 57' 30" East 304.50 feet to a line of low tide as shown on map above referred to and the true point of beginning of the parcel of land to be described; thence North 65° 30' West along said line of low tide 85.54 feet; thence North 30° 57' 30" East 111.62 feet; thence North 59° 02' 30" West 61 feet; thence North 30° 57' 30" East 122 feet; thence South 59° 02' 30" East 91 feet; thence North 30° 57' 30" East 277 feet; thence North 59° 02' 30" West 420 feet; thence North 30° 57' 30" East 300 feet; thence South 59° 02' 30" East 950 feet; thence South 30° 57' 30" West 300 feet; thence North 59° 02' 30" West 420 feet; thence South 30° 57' 30" West 494.77 feet to said line of low tide; thence North 65° 30' West along said line of low tide 55.35 feet to the true point of beginning.

TRACT 110

The land referred to herein is situated in the State of California, County of Contra Costa, unincorporated, described as follows:

Commencing at a concrete monument set at an angle point on the line of high tide as said line of high tide is shown upon "Map of Resurvey of Tideland Survey No. 32, Contra Costa County, California, made under the provisions of Chapter 430, Statutes of 1915, to correct errors in original survey" dated January 1927, State Lands Commission File No. 14-6-5 and 6, said concrete monument being opposite approximate Southern Pacific Railroad Station 2620+82; running thence along said line of high tide as shown on the aforesaid map the following courses and distances:

- (1) South 38° 45' East 329.3 feet,
- (2) South 62° 15' East 1130.0 feet,
- (3) South 42° 00' East 235.1 feet,
- (4) South 59° 02' 30" East 525.89 feet; thence, leaving said

line of high tide and running North 30° 57' 30" East 304.50 feet to a line of low tide as shown on map above referred to; thence North 65° 30' West along said line of low tide 85.54 feet; thence

South 30° 57' 30" West 182.00 feet, more or less, to the northeasterly right of way line of the Southern Pacific Railroad to the true point of beginning; thence continuing South 30° 57' 30" West 100.00 feet to the southwesterly right of way line of the Southern Pacific Railroad; thence South 59° 02' 30" East along the said southwesterly right of way line 140.00 feet, more or less, to the southwesterly prolongation of the southeasterly line of that certain 8.138-acre parcel of land described by unrecorded Lease No. 2408.1 Public Resources Code Series, dated June 22, 1959, by and between the State of California and Chandler Lloyd, Trustee, and described as Tract III in instrument recorded December 2, 1974 in Book 7378 at page 462 Official Records, said southeasterly line having a bearing of South 30° 57' 30" West and a distance of 494.77 feet measured from an angle point therein; thence North 30° 57' 30" East 100.60 feet along said southwesterly prolongation to the northeasterly right of way line of the Southern Pacific Railroad; thence North 59° 02' 30" West 140.00 feet, more or less, to the true point of beginning.

END OF DESCRIPTION

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TRACT NO. 102

Parcel 1

The land referred to herein is situated in the State of California. County of Contra Costa, unincorporated, described as follows:

Portion of the Rancho Canada Del Hambre (northern part), described as follows:

Beginning at a concrete monument on the northerly line of the right of way of the county highway leading from Port costa to Martinez, which monument bears North  $56^{\circ} 01'$  East, 30 feet from Station 720 plus 12.00 P.C. of said county highway survey, and from which monument the center of a curve to the right with a radius of 190 feet bears South  $56^{\circ} 01'$  West; thence following the northerly line of the right of way of the county highway, southerly along said curve, a distance of 312.32 feet; thence, tangent to said curve South  $60^{\circ} 12'$  West, 31.54 feet; thence South  $29^{\circ} 48'$  East, 45 feet to a point, from which point the center of a curve to the left with a radius of 35 feet bears South  $29^{\circ} 48'$  East; thence southerly along said curve, a distance of 51.15 feet; thence tangent to said curve, South  $23^{\circ} 32'$  East, 28.76 feet; thence South  $66^{\circ} 28'$  West, 35 feet to a point, from which point the center of a curve to the right, with a radius of 150 feet, bears South  $66^{\circ} 28'$  West; thence southerly along said curve, a distance of 158.21 feet; thence tangent to said curve, South  $36^{\circ} 54'$  West, 164.53 feet to the point of curve of a curve to the left with a radius of 90 feet; thence southerly along said curve, a distance of 78.71 feet thence, tangent to said curve, South  $13^{\circ} 12.5'$  East, 30.37 feet to the point of curve of a curve to the right with a radius of 340 feet; thence southerly along said curve, a distance of 241.67 feet; thence, tangent to said curve, South  $27^{\circ} 31'$  West, 196.30 feet to the point of curve of a curve to the left with a radius of 30 feet; thence easterly along said curve, a distance of 80.42 feet; thence tangent to said curve, North  $53^{\circ} 55'$  East, 207.34 feet to the point of curve of a curve to the left with a radius of 560 feet; thence northeasterly along said curve, a distance of 241.74 feet; thence tangent to said curve, North  $29^{\circ} 11'$  East, 208.69 feet to a point; thence South  $60^{\circ} 49'$  East 10 feet to a point from which point the center of a curve to the right with a radius of 330 feet bears South  $60^{\circ} 49'$  East; thence northeasterly along said curve, a distance of 112.31 feet; thence tangent to said curve, North  $48^{\circ} 41'$  East, 68.53 feet to the point of curve of a curve to the right with a radius of 280 feet; thence northeasterly along said curve, a distance of 91.30 feet; thence tangent to said curve, North  $67^{\circ} 22'$  East, 266.42 feet to a concrete monument on the northerly side of the right of way of the county highway; from which Monument Station 747 plus 35.24 P.C. of said county highway survey bears south  $22^{\circ} 38'$  East, a distance of 30 feet; thence

northeasterly along a tangent curve to the right, with a radius of 130 feet, a distance of 19 feet; thence leaving the northerly line of the right of way of the county highway, North 15° 20' East, 198.02 feet; thence North 31° 02' East, 148.98 feet to a point on the southerly line of the right of way of the Southern Pacific Railroad company; thence along said right of way line, North 58° 58' West, 754.10 feet to a point; thence leaving said right of way line of the Southern Pacific Railroad Company, South 31° 02' West, 215.74 feet to a point on the northerly line of the right of way of the county highway; thence along said right of way line, South 33° 59' East, 57.62 feet to the point of beginning.

Parcel 2

The land referred to herein is situated in the State of California, county of Contra Costa, unincorporated, described as follows:

Portion of the Rancho Canada Del Hambre (northern part), described as follows:

Commencing at Station "B" as referred to in the deed from G. W. McNear Inc., to John A. DeMartini, recorded June 10, 1953, in Book 2139 of Official Records, page 319; thence from said point of commencement North 52° 49' 53" East along the exterior line of the 508.4-acre parcel described in said deed to DeMartini, a distance of 122.13 feet to the westerly line of the county road leading from Martinez to Crockett, from which point the center of a curve to the right bears North 76° 30' 49" East, 100 feet; thence northerly, along said curve, an arc distance of 71.20 feet to the true point of beginning of the parcel of land herein described; thence from said true point of beginning along said county road, as follows: North 27° 18' 30" East, 196.30 feet; northerly along the arc of a tangent curve to the left having a radius of 270 feet, an arc distance of 191.912 feet; North 13° 25' West, 30.37 feet; South 76° 35' West, 20 feet from which point the center of a curve to the right bears North 76° 35' East, 180 feet; northerly along said last mentioned curve, an arc distance of 157.42 feet; North 36° 41' 30" East, tangent to the last curve, 164.53 feet; northerly along the arc of a tangent curve to the left having a radius of 60 feet, an arc distance of 63.286 feet; North 23° 44' 30" West, 28.76 feet; South 66° 15' 30" West, 25 feet from which point the center of a curve to the right bears North 66° 15' 30" East, 185 feet; northerly along said last mentioned curve, an arc distance of 270.363 feet; North 59° 59' 30" East, 31.54 feet; northerly along the arc of a tangent curve to the left having a radius of 85 feet, an arc distance of 139.724 feet; North 55° 48' 30" East, 45 feet; North 34° 11' 30" West, 189.79 feet; South 55° 48' 30" West, 15 feet, from which point the center of a curve to the left bears South 55° 48' 30" West, 95 feet; westerly along said last mentioned

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curve, an arc distance of 88.237 feet; North  $87^{\circ} 24' 30''$  West, 99.91 feet; northwesterly along the arc of a tangent curve to the right having a radius of 125 feet, an arc distance of 115.555 feet; North  $34^{\circ} 26' 30''$  West, 57.80 feet; westerly along the arc of a tangent curve to the left having a radius of 75 feet, an arc distance of 51.924 feet; North  $74^{\circ} 06' 30''$  West, 86.94 feet; northwesterly along the arc of a tangent curve to the right having a radius of 125 feet, an arc distance of 100.029 feet; North  $28^{\circ} 15' 30''$  West, 44.025 feet; northwesterly along the arc of a tangent curve to the left having a radius of 75 feet, an arc distance of 49.698 feet; North  $66^{\circ} 13' 30''$  West, 446.219 feet; North  $23^{\circ} 46' 30''$  East, 15 feet from which point the center of a curve to the left bears South  $23^{\circ} 46' 30''$  West, 120 feet; along said last mentioned curve, an arc distance of 89.872 feet, from which point the center of a compound curve to the left bears South  $18^{\circ} 39' 30''$  East, 185 feet; southwesterly along said compound curve, an arc distance of 212.136 feet; South  $5^{\circ} 38' 30''$  West, 47.02 feet; South  $84^{\circ} 21' 30''$  East, 5 feet from which point the center of a curve to the right bears North  $84^{\circ} 21' 30''$  West 117.5 feet; southwesterly and westerly, along said last mentioned curve, an arc distance of 194.29 feet; thence leaving said county road South  $9^{\circ} 38' 08''$  West, 47.195 feet; thence South  $1^{\circ} 44' 48''$  West, 114.418 feet; thence South  $2^{\circ} 54' 18''$  West, 325.973 feet; thence South  $11^{\circ} 10' 48''$  West, 249.013 feet; thence South  $60^{\circ} 28' 27''$  East, 555.50 feet; thence South  $50^{\circ} 09' 07''$  East, 356.453 feet; thence South  $40^{\circ} 58' 57''$  East, 248.807 feet; thence South  $46^{\circ} 49' 52''$  East, 137.176 feet; thence North  $89^{\circ} 06' 20''$  East, 131.133 feet to the true point of beginning.

EXCEPTING THEREFROM any portion of Parcel One or Parcel Two lying landward of the ordinary high water mark.

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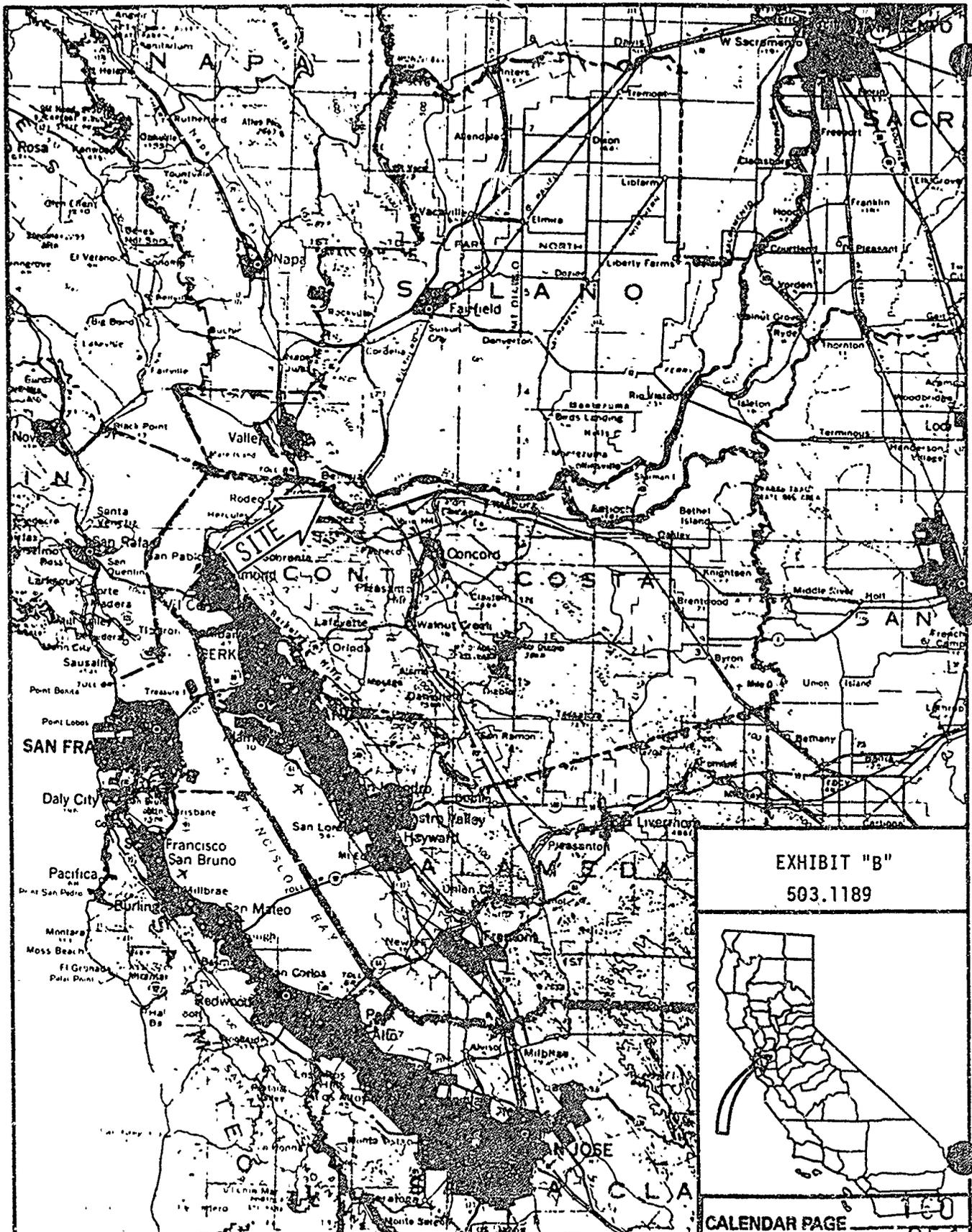


EXHIBIT "B"

503.1189



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