

MINUTE ITEM
This Calendar Item No. 55
was approved as Minute Item
No. 55 by the State Lands
Commission by a vote of 3
to 0 at its 3/27/90
meeting.

CALENDAR ITEM

55

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03/27/90
AD 110 W 24474
PRC 7390 W 503.971
PRC 7391 J. Sekelsky

CALENDAR ITEM

AUTHORIZE A COMPROMISE TITLE SETTLEMENT AND EXCHANGE
AGREEMENT BETWEEN THE STATE AND PORT COSTA MATERIALS, INC.;
AUTHORIZE A LEASE TO PORT COSTA MATERIALS, INC.; AND AUTHORIZE
A PUBLIC AGENCY PERMIT TO THE EAST BAY REGIONAL PARK DISTRICT;
CONCERNING LANDS LOCATED IN AND ALONG THE CARQUINEZ STRAITS
NEAR THE TOWN OF PORT COSTA, CONTRA COSTA COUNTY.

BACKGROUND:

A title dispute exists between the State, acting by and through the State Lands Commission ("State"), and Port Costa Materials, Inc., a California corporation ("Port Costa"), concerning ownership of approximately one hundred sixty-eight (168) acres of real property in and along the Carquinez Straits near the town of Port Costa in Contra Costa County ("Subject Property"). The Subject Property consists of two parcels lying on either side of Southern Pacific Railroad tracks, together with the right to cross said tracks, and is shown for reference purposes only on Exhibit "A", and is more particularly described in Exhibit "B", attached hereto and by this reference incorporated herein. Port Costa is the record owner of the Subject Property, and claims ownership as a successor in interest to recipients of a State patent conveying lands included within Tideland Survey No. 32, issued in 1877 ("TLS 327"), and a Mexican rancho grant.

Commission staff has conducted a study of the evidence of title to the Subject Property, and has concluded that approximately eighteen (18) acres of the Subject Property, in its last natural condition, consisted of tidelands and submerged lands in the Carquinez Straits of San Francisco Bay. Staff has further concluded that that portion of the lands purportedly

CALENDAR PAGE	381
MINUTE PAGE	764

conveyed by TLS 32 which encompasses the Subject Property lay within two miles of the City of Martinez. The Act of April 4, 1870 (Statutes of 1869-1870, page 875), prohibited the sale of any tidelands within two miles of any town or village. Staff therefore contends that TLS 32 was invalid to convey the State owned lands within the Subject Property, and that even if TLS 32 were found to be valid to convey all or a portion of the tidelands, as they last naturally existed, within the Subject Property, said tidelands would have passed into private ownership subject to a public trust easement retained by the State. Staff further contends that the State had no authority to transfer any submerged lands, lying below the ordinary low water mark as it last naturally existed, within the Subject Property, and that any such submerged lands remain in sovereign fee ownership of the State.

Port Costa disagrees with Staff's conclusions as to the character and location of the lands within TLS 32; and contends that TLS 32 was valid to convey fee title to the lands described therein, and that even if TLS 32 were originally defective, any such defects were cured by subsequent State actions. Further, Port Costa contends that the State's public trust easement extends only over those lands which presently lie below the ordinary high tide line.

Approximately seven (7) acres of tidelands and submerged lands within the Subject Property have been filled over the years as a result of railroad construction, and more recently, haphazard placement of rock, earth, and debris, and brick in conjunction with the operation of the Port Costa brickworks on the adjacent upland. Port Costa contends that the shoreline of the Subject Property has been affected by natural accretions. As a result of these activities, there is substantial doubt as to the true location of the boundary between State interests and Port Costa ownership within the Subject Property.

PROPOSED SETTLEMENT

Port Costa has offered to resolve the above described title dispute by written agreement in compromise settlement of legal and evidentiary issues. The staff of the State Lands Commission recommends approval of the proposed settlement in substantially the form of agreement now on file with the Commission.

While the agreement sets forth all the specific terms and conditions of the settlement, a brief summary of the principal terms and conditions is set forth below.

1. Port Costa will quitclaim to State any right, title, and interest held by Port Costa in a parcel of approximately eleven (11) acres, lying waterward of the current mean high tide line ("State Parcel"), shown for reference purposes only on Exhibit "C", attached hereto;
2. Port Costa will grant to the State fee ownership of approximately eight (8) acres of upland property commonly known as White's Resort ("White's Resort Parcel") which abuts and has access to the Carquinez Scenic Highway, a public road, shown for reference purposes only on Exhibit "C", attached hereto, together with any easements or rights to pass over the Southern Pacific Railroad tracks appurtenant thereto; and
3. In exchange for the Port Costa quitclaim and grant deed described above, the State will quitclaim to Port Costa any interest it may have in the Port Costa Parcel, including approximately seven (7) acres of filled-tide or submerged lands, which have been, and will continue to be, used in conjunction with production of bricks and aggregate at the Port Costa Brickworks, and which are shown for reference purposes only on Exhibit "C", attached hereto.

Precise legal description of the State Parcel, White's Resort Parcel, and the Port Costa Parcel, will be based, in part, upon a survey which has been submitted to Contra Costa County for recording. When the County has accepted the survey for recording, final legal descriptions of the three parcels will be completed by staff.

Staff has appraised the interests to be exchanged in this proposed title settlement, and is of the opinion that the value of the lands to be received by the State is equal to or greater than the value of the lands to be relinquished by the State. This proposed settlement agreement will be exempt from the requirements of the California Environmental Quality Act ("CEQA") as a statutorily exempt project pursuant to Public Resources Code Section 21080.11.

PORT COSTA LEASE

Port Costa wishes to lease approximately 2.1 acres within and adjacent to the State Parcel for purposes of constructing a barge off-loading facility to transport raw materials for use in the manufacture of brick and aggregate. There will be no conveyance of petroleum or hazardous materials across the lease premises. Staff has negotiated a lease for this purpose, a copy of which is on file in the office of the State Lands Commission, the essential terms of which are as follows:

CALENDAR ITEM NO. 55 (CONT'D)

1. Term of twenty years, beginning May 1, 1990, and ending April 30, 2010;
2. Rent to be \$1,890 per year, subject to modification by Lessor at five year intervals;
3. Liability insurance to be provided in the amount of \$500,000, and a surety bond in the amount of \$5,000.

This lease will be categorically exempt from CEQA as a new construction of a small structure, Class 3, pursuant to CEQA Guidelines Section 15303.

EAST BAY REGIONAL PARK DISTRICT PERMIT

The East Bay Regional Port District would like to add the White's Resort Parcel, and the fishing pier located within the State Parcel adjacent to the White's Resort Parcel, to their shoreline park system. Staff therefore proposes to issue to the District a 49-year public agency permit for public access and park purposes. This permit would be categorically exempt from CEQA as an existing facility, Class 1, pursuant to CEQA Guidelines Section 15301.

CONCLUSION

Staff believes that the proposed Compromise Title Settlement and Exchange and leases outlined above will result in providing greater public access to the State's lands and will avoid the substantial costs and uncertainties of litigation which would otherwise be necessary to resolve the title dispute, and therefore recommends approval of the agreement, the lease to Port Costa, and the public agency permit to the East Bay Regional Park District.

AB 884: N/A

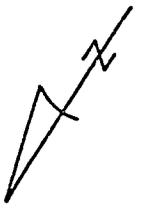
EXHIBITS: A. Plat of Subject Property.
B. Legal description of Subject Property.
C. Plat of State Parcel, White's Resort Parcel, and Port Costa Parcel.

IT IS THEREFORE RECOMMENDED THAT THE COMMISSION:

1. FIND THAT APPROVAL OF THE PROPOSED COMPROMISE TITLE SETTLEMENT AND EXCHANGE AGREEMENT ON FILE IN THE OFFICES OF THE STATE LANDS COMMISSION IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. 21090.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.

2. FIND THAT, WITH RESPECT TO THE PROPOSED COMPROMISE TITLE SETTLEMENT AND EXCHANGE AGREEMENT:
- A. THE AGREEMENT IS IN THE BEST INTEREST OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION; THE ENHANCEMENT OF THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND THE UPLAND; AND THE PROTECTION, PRESERVATION, AND ENHANCEMENT OF THE TIDELANDS AND SUBMERGED LANDS AND PUBLIC ACCESS THERETO, PURSUANT TO THE PUBLIC TRUST.
 - B. THE INTERESTS RECEIVED BY THE STATE IN THE STATE PARCEL AND THE WHITE'S RESORT PARCEL ARE OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF THE INTEREST IN THE PORT COSTA PARCEL BEING RELINQUISHED BY THE STATE.
 - C. THE TIDELANDS AND SUBMERGED LANDS WITHIN THE PORT COSTA PARCEL HAVE BEEN IMPROVED, RECLAIMED, AND FILLED, HAVE BEEN EXCLUDED FROM THE PUBLIC CHANNELS, AND ARE NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING AND ARE NO LONGER, IN FACT, TIDELAND OR SUBMERGED LAND.
 - D. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS WITHIN THE SUBJECT PROPERTY.
 - E. THE PROPOSED AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND FACT UPON WHICH THE DISPUTE IS BASED.
 - F. THE AGREEMENT IS IN LIEU OF THE COSTS, DELAYS, AND UNCERTAINTIES OF TITLE LITIGATION, AND IS CONSISTENT WITH AND IS AUTHORIZED BY APPLICABLE PROVISIONS OF LAW.
 - G. ON THE EFFECTIVE DATE OF THE AGREEMENT AND CONSISTENT WITH ITS TERMS, THE PORT COSTA PARCEL WILL NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THE PUBLIC TRUST INTEREST THEREIN MAY BE TERMINATED.
3. AUTHORIZE STAFF TO COMPLETE AND APPROVE LEGAL DESCRIPTIONS OF THE STATE PARCEL, THE WHITE'S RESORT PARCEL, AND THE PORT COSTA PARCEL, WITHOUT FURTHER COMMISSION ACTION.

4. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGEMENT, AND RECORDATION ON BEHALF OF THE COMMISSION OF THE FOLLOWING DOCUMENTS:
 - A. THE COMPROMISE TITLE SETTLEMENT AND EXCHANGE AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION.
 - B. A PATENT FOR THE PORT COSTA PARCEL IN CONTRA COSTA COUNTY, CALIFORNIA, DEPICTED ON EXHIBIT "C", FREE OF THE PUBLIC TRUST.
 - C. CERTIFICATES OF ACCEPTANCE OF A QUITCLAIM OF PORT COSTA'S INTEREST IN THE STATE PARCEL AND A GRANT DEED TO THE WHITE'S RESORT PARCEL.
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, INCLUDING THE EXECUTION, ACKNOWLEDGEMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AND PAYMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE COMPROMISE TITLE SETTLEMENT AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.
6. FIND THAT APPROVAL OF THE PROPOSED PORT COSTA LEASE IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 3, NEW CONSTRUCTION OF SMALL STRUCTURES, PURSUANT TO 14 CAL. CODE REGS. 15303.
7. APPROVE AND AUTHORIZE THE EXECUTION AND RECORDATION OF THE PORT COSTA LEASE, A COPY OF WHICH IS ON FILE IN THE OFFICES OF THE COMMISSION.
8. FIND THAT APPROVAL OF THE PROPOSED PUBLIC AGENCY PERMIT TO THE EAST BAY REGIONAL PARK DISTRICT IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES, PURSUANT TO 14 CAL. CODE REGS. 15301.
9. APPROVE THE EXECUTION AND ISSUANCE TO THE EAST BAY REGIONAL PARK DISTRICT OF A 49 YEAR PUBLIC AGENCY PERMIT FOR PUBLIC ACCESS AND PARKS PURPOSES AS SET FORTH ABOVE.



CARQUINEZ STRAIT

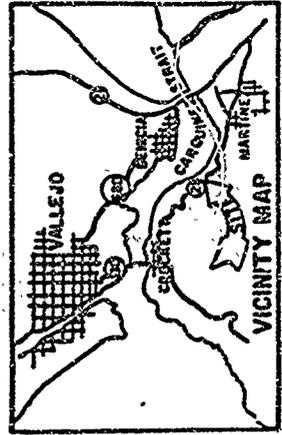
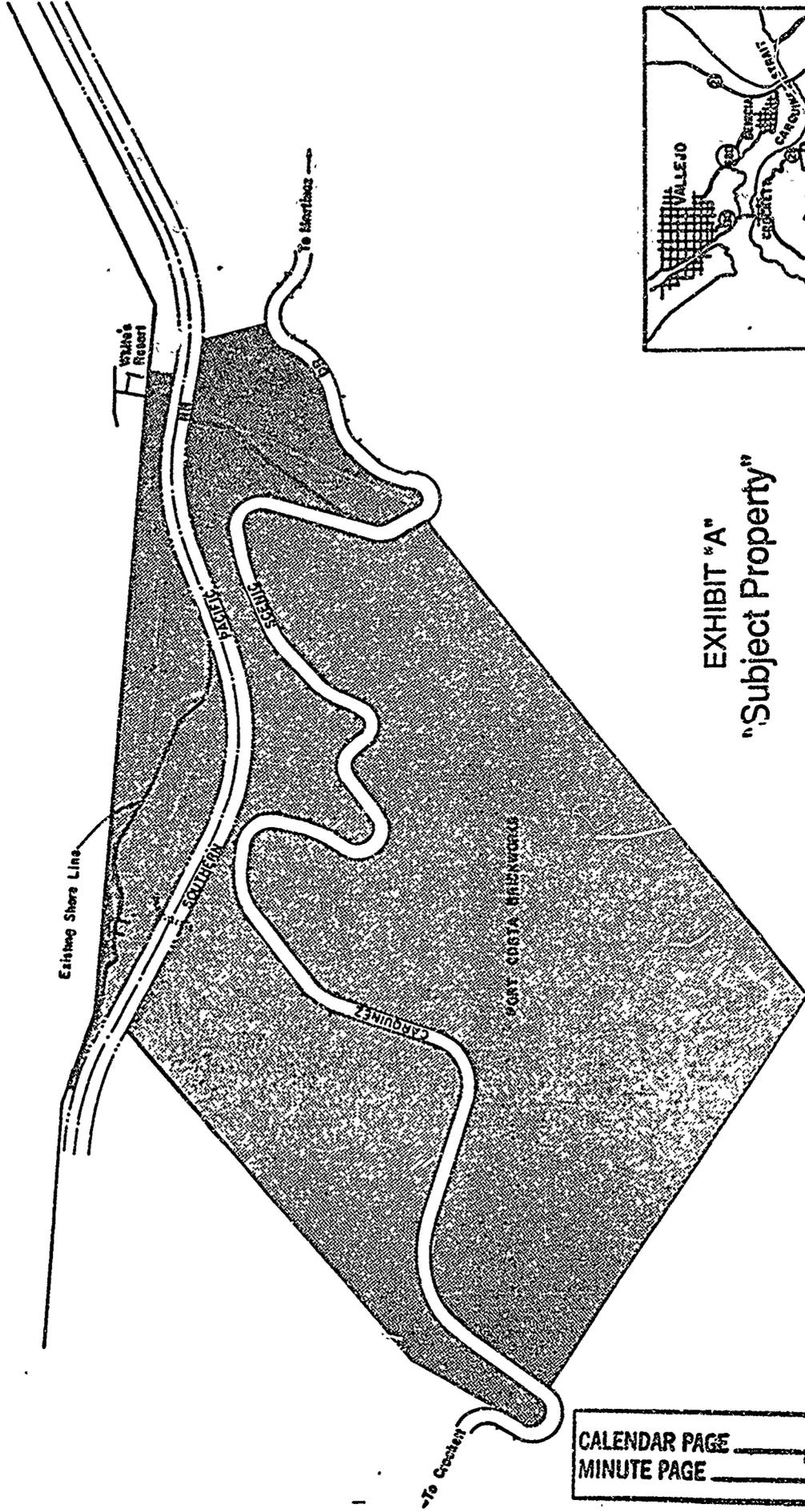


EXHIBIT "A"
"Subject Property"

CALENDAR PAGE	387
MINUTE PAGE	770

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EXHIBIT B

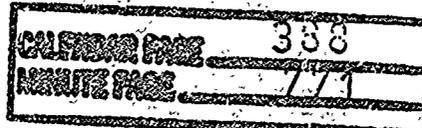
DESCRIPTION:

All that certain real property in the County of Contra Costa, State of California, described as follows:

PARCEL ONE:

A portion of Tide Land Survey No. 32, Contra Costa County, California, more particularly described as follows:

Beginning at a point on the Northeastly boundary line of the Southern Pacific Railroad Company's right of way at the most westerly corner of that certain 5.444 acre tract of tide land conveyed to the Southern Pacific Company, a corporation, by Alexander Smith and Mary Smith, his wife, by deed dated August 24, 1928, as the same is of record in book 144 of Official Records, page 227, records of Contra Costa County, California, from said point of beginning the concrete monument referred to in said deed bears South $33^{\circ} 36' 15''$ West, 101.91 feet from said monument, the most westerly corner of that certain parcel of land described as Parcel Two in that certain Agreement of Sale executed February 28, 1927 by Port Costa Development Company, a corporation, to Port Costa Brick Works, a corporation, recorded March 23, 1931, in book 281 of Official Records, page 13, bears South $22^{\circ} 15' 30''$ East, 107.39 feet, from said point of beginning the center of a curve to the right with a radius of 1102.51 feet bears North $6^{\circ} 11'$ East; thence from said point of beginning, running along said curve and said right of way line in a Northwesterly direction, a distance of 11.55 feet; thence, tangent to said curve, North $23^{\circ} 13'$ West, a distance of 200 feet to a point and from which point the center of a curve to the left with a radius of 1189.51 feet bears South $65^{\circ} 47'$ West; thence running along said curve in a Northwesterly direction, a distance of 639.43 feet; thence, tangent to said curve, North $54^{\circ} 01'$ West, a distance of 347.00 feet to a point, and from which point the center of a curve to the right with a radius of 1102.51 feet bears North $35^{\circ} 59'$ East; thence running along said curve in a Northwesterly direction, a distance of 925.56 feet; thence, tangent to said curve, North $5^{\circ} 55'$ West, a distance of 936.00 feet to a point, and from which point the center of a curve to the left with a radius of 1189.51 feet bears South $84^{\circ} 05'$ West; thence running along said curve in a Northwesterly direction, a distance of 240.46 feet; thence, leaving the right of way line hereinabove referred to, North $72^{\circ} 30' 03''$ East, a distance of 34.86 feet to a point on the Northeastly boundary line of Tide Land Survey No. 32, as said tide land survey is shown on that certain map entitled, "Map of Re-survey of Tide Land No. 32, Contra Costa County, California", filed April 20, 1927 in Map book 20, page 450 to 496, inclusive, records of Contra Costa County, California; thence running along the Northeastly boundary line of Tide Land Survey No. 32, South $15^{\circ} 33' 30''$ East, a distance of 331.28 feet; thence South $28^{\circ} 30'$ East, a distance of 2018.82 feet to the most northerly corner of the 5.444 acre tract hereinabove referred to; thence running along the Northwesterly boundary line of said tract, South $66^{\circ} 11'$ West, a distance of 125.14 feet to the point of beginning.



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PARCEL TWO:

All that land situate in the Rancho Canada Del Norte Y Los Bolsas, Northern Part, particularly described as follows:

Beginning at an iron pipe set at the most southerly corner of Tract No. 2, which corner is designated as corner No. 1 of that certain 9.79 acre tract of land conveyed by G. W. McNear and Ananda M. McNear, his wife, to Associated Oil Company, a corporation, by that certain deed recorded in book 140 of Deeds, page 210, records of Contra Costa County, California; thence South $76^{\circ} 16' 40''$ West, a distance of 917.70 feet to a concrete monument set on the southerly line of the right of way of the State highway leading from Fort Costa to Martinez, and the point of beginning of the hereinafter described tract of land; thence North $08^{\circ} 0'$ East, a distance of 450.00 feet; thence South $73^{\circ} 31' 30''$ East, a distance of 1868.03 feet to a point on the Southwesterly line of the right of way of the Southern Pacific Railroad Company; thence running along said line, South $5^{\circ} 48'$ East, a distance of 826.14 feet; thence on a curve to the left with a radius of 1202.51 feet, and tangent to last mentioned course, a distance of 1009.42 feet; thence South $53^{\circ} 53' 45''$ East, a distance of 347.00 feet; thence on a curve to the right with a radius of 1089.51 feet, and tangent to the last mentioned course, a distance of 585.68 feet; thence South $23^{\circ} 05' 45''$ East, a distance of 200 feet; thence on a curve to the left with a radius of 1202.51 feet, and tangent to the last mentioned course, a distance of 174.99 feet; thence leaving said Southwesterly line of the right of way of the Southern Pacific Railroad Company, South $43^{\circ} 52'$ West, a distance of 271.15 feet to a point on the Northerly line of the right of way of the aforesaid state highway, and from which point the center of a curve to the left with a radius of 180 feet bears South $43^{\circ} 52'$ West; thence running along said curve in a Northwesterly direction, a distance of 147.03 feet; thence South $87^{\circ} 36'$ West, a distance of 34.85 feet; thence on a curve to the right with a radius of 345.00 feet, and tangent to the last mentioned course, a distance of 293.04 feet; thence North $44^{\circ} 16'$ West, a distance of 101.00 feet; thence on a curve to the left with a radius of 230.00 feet and tangent to the last mentioned course, a distance of 149.53 feet; thence North $81^{\circ} 31'$ West, a distance of 116.39 feet; thence on a curve to the left with a radius of 280.00 feet and tangent to the last mentioned course, a distance of 169.74 feet; thence South $63^{\circ} 45'$ West, a distance of 41.28 feet; thence on a curve to the right with a radius of 40 feet, and tangent to last mentioned course, a distance of 100.87 feet; thence crossing said state highway North $61^{\circ} 45'$ West, a distance of 70.00 feet to a point on the West line thereof; thence leaving said line North $71^{\circ} 13' 54''$ West, a distance of 2586.43 feet; thence North 2001.00 feet to a point on the southerly line of the right of way of the aforesaid state highway; thence crossing said state highway, North $2^{\circ} 54'$ East, a distance of 50.00 feet to a point on the Northerly line of said right of way, and from which point the center of a curve to the right with a radius of 65.00 feet bears North $2^{\circ} 54'$ East; thence running along said curve to the right, a distance of 198.64 feet; thence North 08° East, a distance of 88.00 feet to the point of beginning. Containing an area of 158.77 acres of land and being "

a portion of Rancho Canada del Hombre, Northern Part.

EXCEPTING THEREFROM all that certain tract of land lying within the boundary of the present state highway leading from Port Costa to Martinez, more particularly described as follows:

A strip of land 60 feet in width lying 30 feet on each side of the following described center line; Commencing at the same point of beginning as the above described 138.77 acre tract; thence South $00^{\circ} 0'$ West, a distance of 88.00 feet; thence South $2^{\circ} 0'$ East, a distance of 65 feet; thence South $2^{\circ} 54'$ East, a distance of 95 feet to the point of beginning of the center line of the aforesaid strip of land 60 feet in width; thence from said point of beginning, South $07^{\circ} 06'$ East, a distance of 403.90 feet; thence on a curve to the right with a radius of 450 feet and tangent to last mentioned course, a distance of 359.99 feet; thence South $15^{\circ} 48'$ East, a distance of 566.99 feet; thence on a curve to the left with a radius of 200 feet, and tangent to the last mentioned course, a distance of 305.20 feet; thence North $76^{\circ} 46'$ East, a distance of 472.39 feet; thence on a curve to the right with a radius of 200 feet and tangent to the last mentioned course, a distance of 113.26 feet; thence South $70^{\circ} 47'$ East, a distance of 400.40 feet; thence on a curve to the right with a radius of 250.00 feet and tangent to the last mentioned course, a distance of 198.75 feet; thence South $25^{\circ} 14'$ East, a distance of 102.08 feet; thence on a curve to the right with a radius of 110.00 feet, and tangent to last mentioned course, a distance of 184.15 feet; thence South $70^{\circ} 41'$ West, a distance of 143.64 feet; thence on a curve to the right with a radius of 300 feet, and tangent to the last mentioned course, a distance of 106.47 feet; thence North $88^{\circ} 59'$ West, a distance of 67.71 feet; thence on a curve to the left with a radius of 95 feet, and tangent to last mentioned course, a distance of 263.63 feet; thence South $67^{\circ} 59'$ East, a distance of 194.09 feet; thence on a curve to the right with a radius of 100 feet, and tangent to last mentioned course, a distance of 157.08 feet; thence South $22^{\circ} 01'$ West, a distance of 48.80 feet; thence on a curve to the left with a radius of 85 feet, and tangent to last mentioned course, a distance of 183.96 feet; thence North $78^{\circ} 01'$ East, a distance of 81.08 feet; thence on a curve to the right with a radius of 300 feet, and tangent to last mentioned course, a distance of 138.75 feet; thence South $75^{\circ} 29'$ East, a distance of 179.69 feet; thence on a curve to the right with a radius of 300 feet, tangent to last mentioned course, a distance of 99.48 feet; thence South $56^{\circ} 29'$ East, a distance of 249.44 feet; thence on a curve to the right with a radius of 500 feet and tangent to last mentioned course, a distance of 135.27 feet; thence South $40^{\circ} 59'$ East, a distance of 82.77 feet; thence on a curve to the right with a radius of 100 feet; and tangent to last mentioned course, a distance of 199.99 feet; thence South $73^{\circ} 36'$ West, a distance of 471.05 feet; thence on a curve to the left with a radius of 80 feet, and tangent to last mentioned course, a distance of 63.34 feet to a point, from which point said strip of land 70 feet in width, being 40 feet on the West side and 30 feet on the East side of said center line; thence South $28^{\circ} 16'$ West, a distance of 157.34 feet. Containing an area of 8.77 acres of land. Being all the right of way of the State Highway lying within the first above described parcel of land under paragraph numbered 2.



CARQUINEZ STRAIT

Existing Shore Line

Port Costa Lease Area

White's Resort Fishing Pier

STATE PARCEL
10.658± Acres

Filled Area 7.388± Acres

White's
Resort
Parcel
8.402±
Acres
(Upland)

To Nantitas

To Creech

FORT COSTA PARCEL
PORT COSTA BRICKWORKS

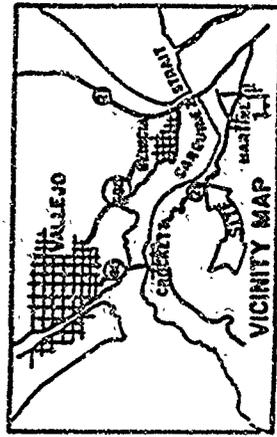


EXHIBIT "C"

CALENDAR PAGE	389
MINUTE PAGE	774

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