MINUTE ITEM
This Calendar Item No. 80
was approved as Minute Item
No. 80 by the State Lands
Commission by a vote of 3
at its 8-22-90
meeting.

CALENDAR ITEM

A 26

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W 24414
AD 128
Fossum
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Grimmett
Crow

TITLE SETTLEMENT AND EXCHANGE AGREEMENT
REGARDING LANDS IN AND ALONG DISAPPOINTMENT SLOUGH,
MOSHER SLOUGH, PIXLEY SLOUGH, AND BEAR CREEK,
CITY OF STOCKTON, SAN JOAQUIN COUNTY

PARTIES: State Lands Commission

A. G. Spanos Construction, Inc.

Spanos Park Development Co., L. P.

Greenbriar Partners

BACKGROUND

This calendar item recommends settlement, among the above-named parties, of title claims of the State regarding the existence of historical tide and submerged lands within the subject property. The subject property (as shown on Exhibits "A" and "B") is located in the northwesterly corner of the City of Stockton, south of Eight-Mile Road, north of Bear Creek, and lies both easterly and westerly of a one-mile stretch of Interstate Highway 5 (I-5). The area westerly of I-5 involves portions of Bishop Tract (Reclamation District 2042). The proposed development of the area, commonly referred to as Spanos Park, involves approximately 1,354 acres of primarily farm land which is ultimately planned to include a 7,460 residential unit development, preservation of all 66.9 acres of high quality wetlands on site, and creation of 23.4 acres of

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wetlands and riparian habitat on site and an additional eight (8) acres off site for a total of 90.3 acres.

The proposed settlement will transfer to the State 90.3 acres of wetlands and riparian habitat areas. In addition, fee title underlying the levees along the waterways and portions of Bear Creek east of I-5 will also come to the State, thereby assuring public access to and along these navigable waterways. The Private Parties' obligations, including the wetlands mitigation plan, which are conditions of their Corps permit and any flood control responsibilities, are not affected by the proposed settlement agreement.

Portions of the Spanos Park area were the subject of swamp and overflowed land surveys and were subsequently patented by the State as described below.

S&O Survey 475 (San Joaquin) involving 317.61 acres in the E/2 of Section 1, T2N, R5E, MDM was applied for by James C Smith pursuant to Chapter 235, Statutes of 1858; the application was approved February 4, 1859 and paid for by virtue of Reclamation District 61. An S&O patent was issued on August 24, 1870 to Thomas Yolland.

S&O Survey 927 (San Joaquin) involving 224.64 acres in the fractional W/2 of Section 1, T2N, R5E, MDM was applied for by J. A. Long pursuant to Chapter 397, Statutes of 1863; the application was approved June 14, 1864 and paid for by virtue of Reclamation District 61. An S&O patent was issued on April 7, 1874 to Sabin Harris & James M. Learned.

S&O Survey 931 (San Joaquin) involving 310.44 acres in the E/2 of Section 2, T2N, R5E, MDM was applied for by James C. Smith pursuant to Chapter 397, Statutes of 1863 and paid for by virtue of Reclamation District 61. An S&O patent was issued on April 7, 1874 to Sabin Harris & James M. Learned.

S&O Survey 1265 (San Joaquin) involving 310.44 acres in the W/2 of Section 2, T2N, R5E, MDM was applied for by George D. Roberts pursuant to Chapter 415, Statutes of 1868 and paid for by virtue of Reclamation District 61. An S&O patent was issued on March 21, 1874 to Sabin Harris.

The area encompassed by these patents was included within the "Plat showing the subdivision of Two Bodies of Land 'NOTORIOUSLY SWAMP & OVERELOWED (sic)' East of the Mount Diablo Meridian in Township 1, 2, 3, 4, & 5 North and Township 1 South of Mount Diablo Base Line." This 1872 plat was a perimeter

segregation survey of federal public lands and private grants (ranchos) from the federally granted swamp and overflowed lands of the Sacramento/San Joaquin Delta. The plat made no attempt to segregate, by survey, the sovereign tidally navigable waterways from the swamp and overflowed lands.

Neither the S&O county surveys nor the U.S. segregation plat indicated the existence of any waterways within the subject area However, certain subsequent maps indicate the existence of waterways within the subject property. The present physical condition of the Spanos Park property indicates that most of the lands are under agricultural use and range from an elevation of just below sea level to just above ten feet.

The State contends that portions of the subject property were, at the time of the admission of the State of California into the Union, and in its natural condition thereafter, traversed by tidal sloughs in the vicinity of today's Disappointment Slough, Mosher Slough, Bear Creek and Pixley Slough. The State further contends that, as lands of the factual and/or legal character of tidelands and submerged lands, portions of the subject property are subject to a public trust ownership, consisting of a fee or an easement, or both, for water-related commerce, navigation, fisheries, recreation, and other public trust purposes. The State further contends that portions of the subject property, due to previous reclamation and flood control activities, are navigable or subject to tidal action and have taken on the characteristics of navigable waters and have been used by fish and waterfowl and as waterways for navigation and fishery by the public for a period in excess of the five-year period for vesting of prescriptive rights (State of Calif. v Superior Ct. of Placer County (Fogerty), 29 Cal. 3d 240 (1981).

Portions of the subject property consist of lands, which in the past were covered by tidal waters tributary to Disappointment Slough, which have been filled or reclaimed. Said lands are not subject to tidal action or useable for the purposes of commerce, navigation or fishing, and are not reasonably susceptible of use or required for public trust purposes. Other portions of the subject property are to be filled and reclaimed as part of a program of flood control. Still other portions of the subject property are to be part of a wetlands preservation, creation, and mitigation project to create improved wetland habitat, which are conditions of U.S. Army Corps Permit No. 9995, dated November 20, 1989.

The State has independently evaluated its claims of sovereign interest in the subject property both as to economic value of such claims and value to the public's trust needs in the parcel or the areas claimed to be owned by the State. The historical location of the State's public trust interest claim is no longer practical for public trust needs and constitutes a relatively small portion of Disappointment Slough and its tributaries. In compromise and settlement of their respective claims and in recognition of the present condition of and plans for the subject property, the State and Private Parties have agreed to relocate the State's trust interest to a location which is compatible with the condition of the property and enhances the environmental values of the trust property. By locating the State's trust interest in and adjacent to the present bed of Disappointment Slough, Mosher Slough, Bear Creek and portions of Pixley Slough, this exchange will assure appropriate public access and add to and confirm the program being carried out by State and Federal agencies to maintain and improve the lands as ecologically valuable wetlands. The State has determined that the value of the economic and public trust interest it is receiving in the "Wetlands Parcel" as described in Exhibit "C" and depicted on Exhibit "B" and in the "Bear Creek parcels", as described in exhibits "D" and "E" and depicted on Exhibit "B", is equal to or greater than the value of the State's interest being given up in the "Upland Parcel" in which the State is to terminate its claimed sovereign public trust interest, as described in Exhibit "F" and depicted on Exhibit "B".

There is a bona fide dispute between the State and Private Parties as to the existence, extent, nature and location of their respective rights, titles, and interests in the subject property. A resolution of the Private Parties' rights, titles, and interests in the subject property would require costly, protracted, and vigorously disputed litigation with uncertain results if the controversy could not be resolved by settlement. The parties hereto consider it expedient and necessary and in the best interests of the State, the public, and Private Parties to resolve this title dispute by compromise settlement, thereby avoiding the anticipated substantial costs, time requirements, and uncertainties of litigation. In the interest of settlement, the State and Private Parties have conducted independent studies and evaluations of the title evidence, the principles of law, and the merits of the State's and Private Parties' legal positions.

AGREEMENT

The representatives of the parties after many months of discussions have reached an agreement to settle the title issues involving State claims within the subject property. The State is authorized by Division 6 of the P.R.C., including Section 6307, to enter into exchanges of interest in real property held by the State by reason of its sovereignty.

The elements of the proposed agreement may be summarized as follows.

(1) Private Parties will quitclaim to the State all of their right, title and interest in the Subject Property described in Exhibits "C", "D", and "E."

(2) The State will quitclaim to Private Parties all right, title and interest of the State in the subject property, excluding the interests described in Subparagraph 1, above. The trust termination findings involving the Pixley Slough redirection and reclamation areas will be effective upon execution and recordation of a document of the Executive Officer of the Commission stating that the said work has been completed.

(3) The quitclaim described in Subparagraph 2, above, is intended to terminate any State sovereign interest, including the public trust for commerce, navigation, and fisheries, in the subject property.

(4) This Agreement shall in no way operate to relieve Spanos of its obligations under Army Corps of Engineers Permit No. 9995, dated November 20, 1989, or any amended or superseding Army Corps of Engineers Permit. Spanos shall have the right to enter the property for purposes of complying with the terms and conditions of said Army Corps of Engineers Permit, and the Streambed Alteration Permit issued by the California Department of Fish and Game, notification number II 203 89/90, issued 11/13/89. Spanos shall be entitled to retain a temporary easement for these purposes, consistent with its obligations under those permits.

(5) The Private Parties agree that if and when it becomes necessary to modify or change the position of the levees, the Private Parties will execute necessary instruments at that time to reflect the new location(s).

OTHER PERTINENT INFORMATION

This title settlement agreement proposal has been reviewed and approved by the Commission staff and the Office of the Attorney General as to compliance with applicable laws, rules, and regulations of the State Lands Commission.

An EIR (State Clearinghouse #87032415) involving the Spanos Park Development was certified by the City of Stockton on August 2, 1988 and tentative map [TM 56-89] approved with related CEQA findings by the City on December 7, 1989

U.S. Army Corps Permit # 9995 was issued for the Spanos Park project on November 28, 1989.

California Department of Fish and Game streambed alteration agreement, notification # II 203 89/90, was issued November 13, 1989.

The proposed title settlement agreement is exempt from the pr visions of the Subdivision Map Act (Gov. Code § 66412(e) and the California Environmental Quality Act (P.R.C. § 21080.11).

EXHIBITS:
- A. Location Map
- B. Site Map
- C. Wetlands Parcel Description
- D. Bear Creek Parcel 1 - Land Description
- E. Bear Creek Parcel 2
- F. 1-3 Upland 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 AS A STATUTORY EXEMPT PROJECT, PURSUANT TO P.R.C. 21080.11, FOR SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.

2 FIND THAT WITH RESPECT TO THE PROPOSED TITLE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE (PURSUANT TO P.R.C. 6307) OF THE STATE'S SOVEREIGN AND PUBLIC TRUST INTERESTS WITHIN THE PORTION OF THE SPANOS PARK DEVELOPMENT DESCRIBED IN EXHIBIT "F" FOR THE LANDS TO BE CONVEYED TO THE STATE AS DESCRIBED IN EXHIBITS "C", "D" and "E":

A. THE AGREEMENT IS IN THE BEST INTERESTS OF THE STATE FOR THE BENEFIT OF PUBLIC TRUST USES AND PURPOSES WHICH INCLUDE NAVIGATION, FLOOD CONTROL PROTECTION, AND THE

IMPROVEMENT AND PROTECTION OF THE ENVIRONMENT FOR FISHERIES, RECREATION, SCIENTIFIC STUDY, OPEN SPACE, AND ECOLOGICAL PRESERVATION OF THE TIDELANDS AND SUBMERGED LANDS AND PUBLIC ACCESS THERETO, PURSUANT TO THE PUBLIC TRUST.

B. THAT THE INTERESTS IN LAND RECEIVED BY THE STATE ARE OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF THE PROPERTY INTERESTS TO BE RELINQUISHED BY THE STATE.

C. THAT, EXCEPT FOR THOSE LANDS TO BE RECLAIMED AS PART OF THE FLOOD CONTROL PROJECT REDIRECTING PIXLEY SLOUGH INTO BEAR CREEK, UPON RECORDATION OF THIS AGREEMENT THE LANDS DESCRIBED IN EXHIBIT "F" SHALL HAVE BEEN FILLED OR RECLAIMED, AND ARE NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION OR FISHERIES AND ARE NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS.

D. THAT AS TO THOSE LANDS TO BE RECLAIMED AS PART OF THE FLOOD CONTROL PROJECT REDIRECTING PIXLEY SLOUGH INTO BEAR CREEK, THE TERMINATION OF PUBLIC TRUST INTERESTS WILL BE MADE PURSUANT TO THE RECORDATION OF A WRITTEN DOCUMENT EXECUTED BY THE EXECUTIVE OFFICER OF THE COMMISSION STATING THAT THOSE LANDS HAVE BEEN RECLAIMED AND SEVERED FROM THE PUBLIC CHANNELS AND ARE NO LONGER IN FACT TIDE OR SUBMERGED LANDS

E. THAT UPON THE EFFECTIVE DATE OF THIS AGREEMENT AND CONSISTENT WITH ITS TERMS, THE STATE LANDS COMMISSION FINDS THE PROPERTY TO BE CONVEYED BY THE STATE WILL NO LONGER BE NECESSARY OR USEFUL FOR PURPOSES OF THE PUBLIC TRUST AND, THEREFORE, IN FURTHERANCE OF A REASONABLE SETTLEMENT OF A DISPUTED SOVEREIGN RIGHTS CLAIM, THE PUBLIC TRUST RIGHTS AND INTERESTS MAY BE TERMINATED.

3. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGEMENT, AND RECORDATION OF THE SETTLEMENT AGREEMENT AS DESCRIBED HEREIN, SUBSTANTIALLY IN THE FORM AS PROVIDED IN THE "SPANOS PARK TITLE SETTLEMENT AND EXCHANGE AGREEMENT", A COPY OF WHICH IS ON FILE IN THE SACRAMENTO OFFICE OF THE COMMISSION.

4. AUTHORIZE THE EXECUTIVE OFFICER TO DETERMINE THE COMPLIANCE OF THE PRIVATE PARTIES WITH THE REDIRECTION OF PIXLEY SLOUGH AS PROVIDED IN THEIR [illegible] PERMIT AND TO EXECUTE NECESSARY DOCUMENTS CONSISTENT WITH THE TERMS OF THE AGREEMENT.

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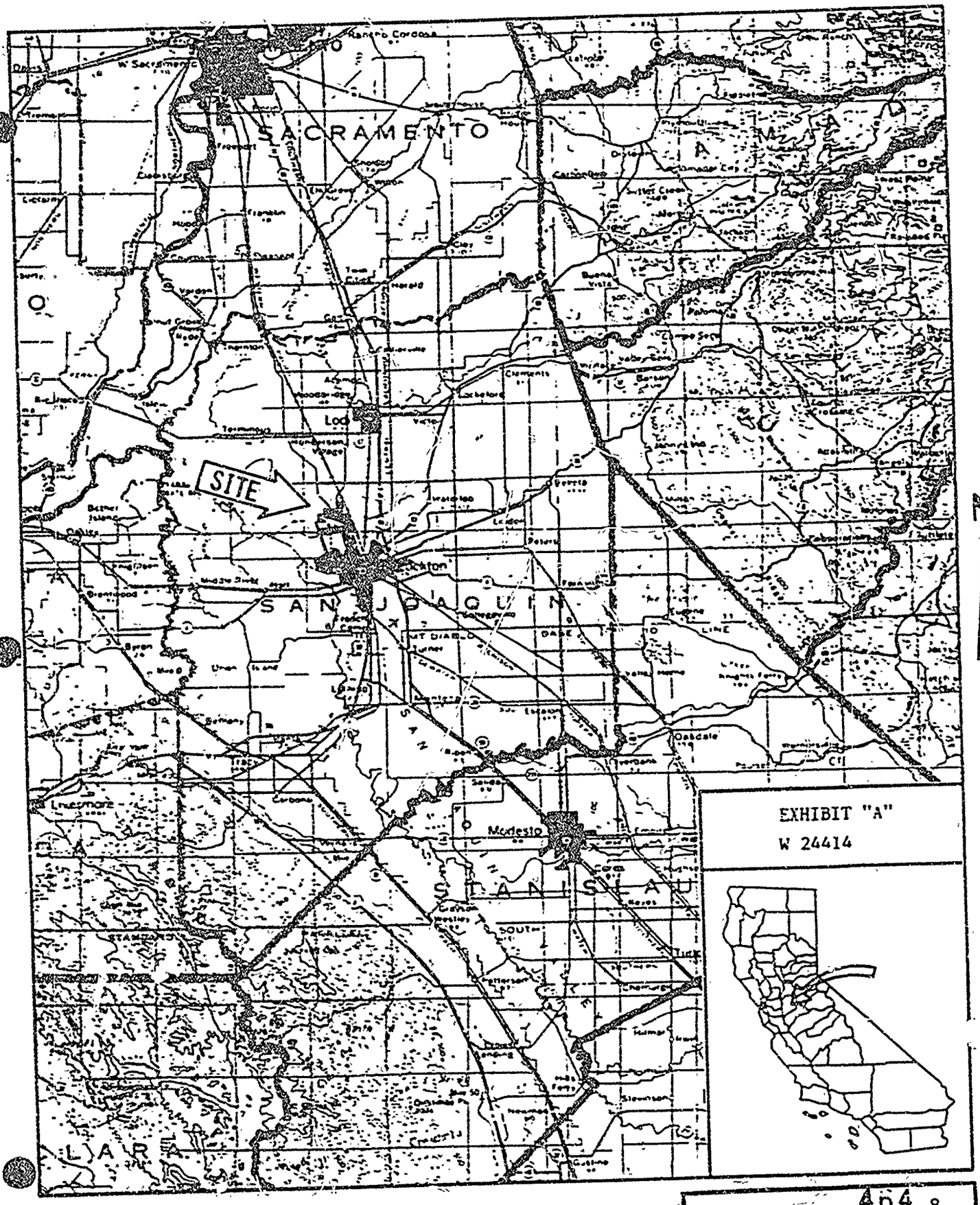
5 AUTHORIZE THE STAFF OF THE COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ANY AND ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE FOREGOING TRANSACTION, INCLUDING, BUT NOT LIMITED TO, THE EXECUTION OF DOCUMENTS AND APPEARANCE IN ANY LEGAL PROCEEDINGS CONCERNING THE SETTLEMENT.



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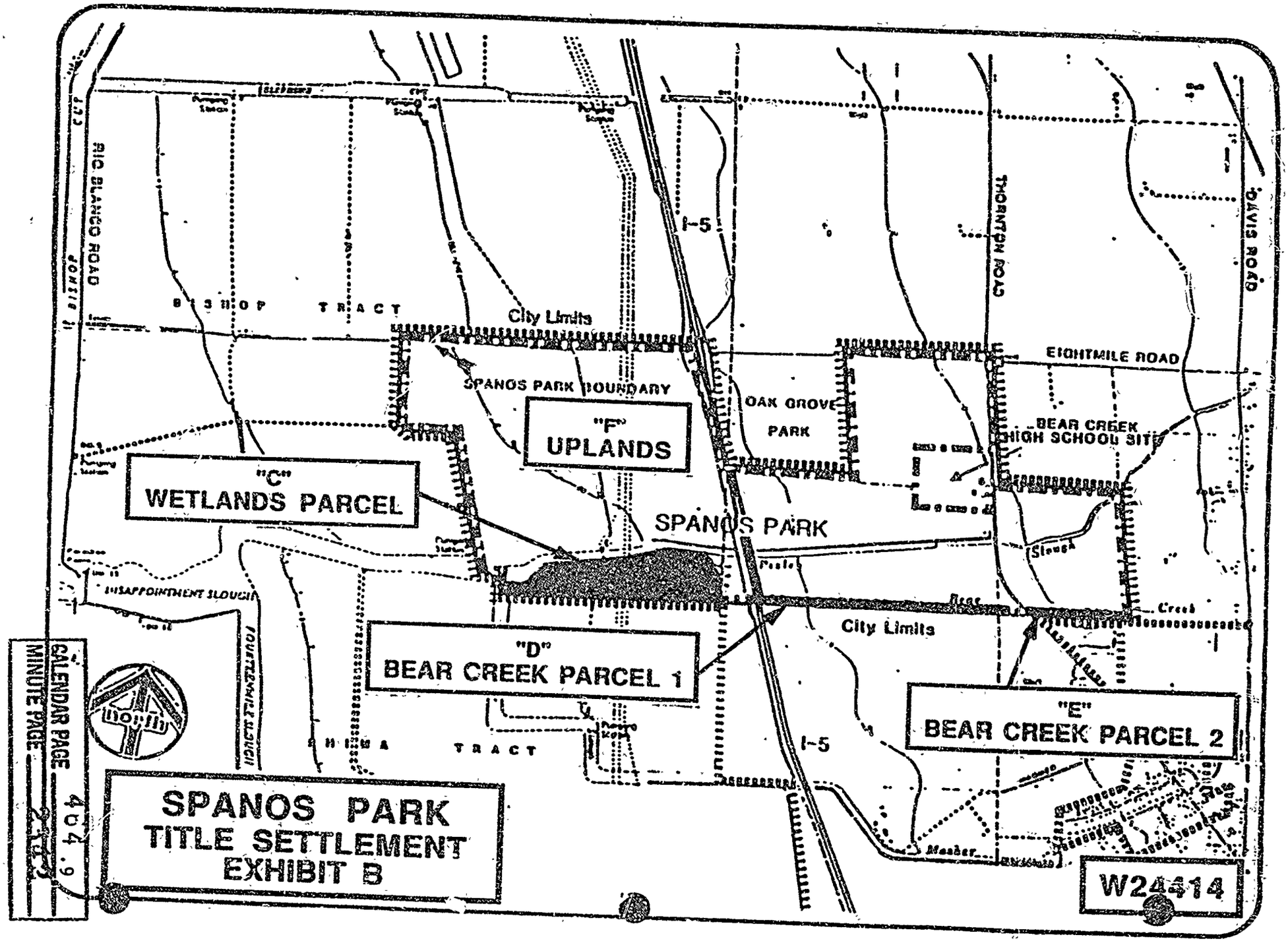
SPANOS PARK
TITLE SETTLEMENT
EXHIBIT B
"C"
WETLANDS PARCEL
"F"
UPLANDS
"D"
BEAR CREEK PARCEL 1
"E"
BEAR CREEK PARCEL 2
SPANOS PARK
SPANOS PARK BOUNDARY
OAK GROVE
PARK
BEAR CREEK
HIGH SCHOOL SITE
City Limits
City Limits
I-5
I-5
EIGHTMILE ROAD
THORNTON ROAD
DAVIS ROAD
RIO BLANCO ROAD
BISHOP TRACT
SHIMA TRACT
DISAPPOINTMENT SLOUGH
FOURTEENMILE SLOUGH
Slough
Creek
Mosher
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EXHIBIT "C"

W24414

LAND DESCRIPTION

WETLANDS PARCEL

Description of land to be conveyed from Spanos to the State Lands Commission (West Side of Interstate Highway Route No. 5 to Westerly Property Line). Being a portion of Section 1, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, being more particularly described as follows:

COMMENCING at the Southeast corner of Section 1, Township 2 North, Range 5 East, Mount Diablo Base and Meridian as shown on that certain Map of Survey filed in Book 28 of Surveys, at page 134, San Joaquin County Records; thence North 89 degrees 14 minutes 50 seconds West along the South line of Section 1, 123.00 feet to the point of TRUE BEGINNING; thence North 89 degrees 14 minutes 50 seconds West along said section line, 4441.51 feet to the Southwest corner of said section 1; thence North 02 degrees 13 minutes 41 seconds East along the Westerly line of Section 1, 263.77 feet; thence North 86 degrees 54 minutes East, 418.00; thence North 49 degrees 35 minutes East, 510.00 feet; thence North 12 degrees 06 minutes 00 seconds West, 65.00 feet; thence North 83 degrees 19 minutes East, 1530.25 feet; thence North 78 degrees 00 seconds East, 937.56 feet, thence South 85 degrees 30 minutes East, 995.00 feet, thence along a 1173.00 foot radius curve to the right, having a central angle of 32 degrees 40 minutes 45 seconds, (a long chord which bears South 17 degrees 41 minutes 09 seconds East, 660.00 feet), an arc distance of 669.03 feet; thence South 01 degree 20 minutes 46 seconds East, 405.00 feet to the point of TRUE BEGINNING and containing 83.09 acres more or less.

END OF DESCRIPTION

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EXHIBIT "D" W24414

LAND DESCRIPTION

BEAR CREEK PARCEL #1

Description of land to be conveyed from Spanos to the State Lands Commission (East side of I-5 to West side Thornton Road). A portion of Sections 5 and 6, Township 2 North, Range 6 East, Mount Diablo Baseline and Meridian, being more particularly described as follows:

BEGINNING at the section corner common to Sections 5, 6, 7, and 8, Township 2 North, Range 6 East, Mount Diablo Baseline and Meridian, as shown on that certain Map of Survey filed in Book 28 of Surveys, page 134, San Joaquin County Records; thence North 89 degrees 21 minutes 44 seconds West along the South line of said Section 6, 2647.68 feet to the South one-quarter corner of said Section 6; thence North 89 degrees 14 minutes 50 seconds West along said South line, 2348.96 feet to the East right-of-way line of Interstate Highway Route No. 5; thence North 14 degrees 49 minutes 56 seconds West along said East right-of-way line, 130.17 feet; thence North 89 degrees 10 minutes 10 seconds East, 892.02 feet; thence South 88 degrees 53 minutes 40 seconds East, 60[illegible].08 feet; thence South 88 degrees 01 minute 40 seconds East, 200.64 feet; thence South 88 degrees 53 minutes 00 seconds East, 203.98 feet; thence South 89 degrees 10 minutes 20 seconds East, 1000.13 feet; thence South 89 degrees [illegible]9 minutes 50 seconds East, 193.19 feet; thence South 88 degrees 45 minutes 40 seconds East, 199.76 feet; thence South 8[illegible] degrees 20 minutes 10 seconds East, 1003.25 feet; thence South 88 degrees 45 minutes 40 seconds East 199.76 feet; thence South 89 degrees 20 minutes 11 seconds East, 451.63 feet; thence North 85 degrees 03 minutes 20 seconds East, 481.11 feet; thence North 89 degrees 30 minutes 30 seconds East, 66.59 feet to the West right-of-way line of Thornton Road (80 feet wide); thence South 44 degrees 30 minutes 07 seconds East along said West right-of-way line, 242.02 feet to the South line of said Section 5; thence South 89 degrees 39 minutes 14 seconds West along the South line of said Section 5, 630.72 feet to the POINT OF BEGINNING. Containing 18.03 acres, more or less.

END OF DESCRIPTION

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EXHIBIT "E"

W24414

LAND DESCRIPTION

BEAR CREEK PARCEL #2

Description of land to be conveyed from Greenbriar to the State Lands Commission (East side Thornton Road to Easterly property line). A portion of Section 5, Township 2 North, Range 6 East, Mount Diablo Baseline and Meridian, being more particularly described as follows:

COMMENCING at the section corner common to Sections 5, 6, 7, and 8, Township 2 North, Range 6 East as shown on that certain Map of Survey filed in Book 28 of Surveys, page 134, San Joaquin County Records; thence North 89 degrees 39 minutes 14 seconds East along the South line of said Section 5, 742.22 feet to the East right-of-way line of Thornton Road (80 feet wide), also being the TRUE POINT OF BEGINNING; thence North 44 degrees 30 minutes 07 seconds West along said East right-of-way line, 242.51 feet; thence North 89 degrees 24 minutes 58 seconds East 284.95 feet; thence North 89 degrees 19 minutes 38 seconds East, 600.00 feet; thence South 38 degrees 55 minutes 52 seconds East, 198.13 feet; thence North 89 degrees 19 minutes 38 seconds East, 200.00 feet; thence North 89 degrees 28 minutes 48 seconds East, 585.78 feet; thence North 88 degrees 26 minutes 06 seconds East, 185.03 feet to the East line of the Southwest one-quarter of said Section 5; thence South 05 degrees 33 minutes 03 seconds East along said East line, 181.30 feet to the South line of said Section 5; thence South 89 degrees 39 minutes 14 seconds West along said South line, 1901.28 feet to the TRUE POINT OF BEGINNING. Containing 8.00 acres, more or less.

END OF DESCRIPTION

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