

MINUTE ITEM 24

W 24642
AD 162
Fossum
Saggese

APPROVE A COMPROMISE TITLE SETTLEMENT AGREEMENT
REGARDING CERTAIN REAL PROPERTY IN THE
CITY OF HUNTINGTON BEACH, ORANGE COUNTY,
PURSUANT TO THE KAPILOFF LAND BANK ACT

Calendar Item 24 was presented by Curtis Fossum. This was an item that was before the Commission last July. At that time the Commission asked that it be put over for a period of time which would give opponents an opportunity to review the appraisal and comment upon it. Additionally, the opponents had filed suit challenging the project and had asked that the item be postponed pending completion of the litigation.

That litigation has now been resolved in the trial court and the Court of Appeal ruled in favor of the property owner and against the opponents. During that time the staff of the Commission conducted an additional analysis of the property, both with in-house experts as well as private consultants. The offer from Destiny II was increased to \$110,000. Nancy Saggese, of the Attorney General's Office, as well as SLC staff feels that this amount is equal to or greater than the value of the State's claim to the property.

Ms. Saggese also gave a brief history of the item advising it is the settlement of a claim on a public trust easement within a 1.7 acre parcel of land.

Barbara Devlin and Marilyn Willsie of the Huntington Harbor Homeowner's Association spoke in opposition to the project. Ms. Devlin presented various documents to be put into the record.

Patricia Snyder, the attorney representing Destiny II, and Jon Coultrup, owner of Destiny II, spoke in support of the project.

After a lengthy discussion it was voted to approve the compromise title settlement agreement regarding certain real property in the City of Huntington Beach, Orange County, pursuant to the Kapiloff Land Bank Act.

Approved 3-0

Barbara Devlin
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(714) 846-3771

February 8, 1992

Gray Davis, State Controller, Chairman
Leo T. McCarthy, Lieutenant Governor, Commissioner
Thomas W. Hayes, Director of Finance, Commissioner

Re: Destiny II Development

Gentlemen:

I am appealing to you today not to give up this Land Trust Easement on the Destiny II development in Huntington Beach for \$110,000.00. This was supposed to be open space from day one, limited to uses for navigation, fishing and marina. Mr. Ahadpour, the owner of the land from 1980 to 1990 had knowledge from the day he bought the property that there was a Land Trust Easement on the property. According to deed transactions the sale to Mr. Coultrup occurred the day after the Coastal Commission turned down my appeal March 16, 1990. Mr. Ahadpour was still the owner until then and they hid from anyone the knowledge of the 1980 letter mentioned in Deputy Robert Collins letter and Mr. Ahadpour knew that the 1985 letter did not address the issues.

The whole flaw in the Staff report is that the Staff Report is merely looking at this as an unfortunate problem, and honest mistake, and that they are trying hard to do justice and provide equity. Its understandable that you didn't have all the facts about all of the lies, fraud & deceit the developers committed.

On page 5, Item D states "The parties have a Good Faith and Bona Fide dispute as to their respective interest and claims within the subject property." How can this be true if there is FRAUD involved as the Attorney General indicated and as we now know based on the January 1980 Letter to Virtue and Scheck.

Well, it is NOT an honest mistake--it is out and out Fraud ab Initio. Just ask Deputy Attorney General Collins, just read his report--I have brought copies with me if you haven't seen it, --just look at the knowledge that Mr. Ahadpour had at the very beginning and his underhanded and fraudulent power play. They just can't throw themselves at your mercy now and ask for Anything! They should be estopped from asking for or getting AN'YTHING!

Marilyn Willsie, who is with me today, called the State Lands Commission and was told by an employee that if Mr. Ahadpour or Mr. Coultrup had asked in advance for the Land Trust Easement to be lifted it would have been denied them.

On page 7 of Attorney Collins letter, in the last paragraph he states "Moreover it is inconceivable that the title companies were unaware of the existence of the public trust easement over the subject property. Given my experience with title companies; also believe that Destiny II developer and its predecessors in interest including Coultrup and Mr. Ahadpour were aware of the easement claims."

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There have been nothing but lies, deceit, fraud and cover-up on this project I will start with Mr. Ahadpour and how the question of fraud, deceit or concealment applies to Mr. Ahadpour, the original owner. On page 6, Attorney Collins says he found in the files a letter dated January 28, 1980 stating "This is to advise you that the area of concern shown on your map is within tide land location 221 patented by the State on January 6, 1903." Attorney Collins called us when he discovered the letter (attached to a legal style brief attached hereto as Exhibit D). This letter was to the law firm of Virtue and Scheck in Newport Beach, CA. in answer to a letter from Attorney Scott McConnel (also attached as Exhibit C). Mr. Collins told us that he tried to contact the law firm of Virtue and Scheck but the firm no longer exists. He then said he called Mr. McConnell and was told that Attorney McConnell had no idea why he wrote the letter, that it was either for a client or an attorney in the firm but after ten years he really had no idea. Attorney Collins then asked us if we could find any relationship that might have existed between Mr. Ahadpour and/or the Huntington Harbour Beach Club and the Law Firm of Virtue and Scheck. We went to Orange County Superior Court and we researched the files. Lo and behold. We discovered that an Attorney from the law firm of Virtue and Scheck, Tim Paone (who was a Planning Commissioner for the City of Huntington Beach and who stepped down from the planning board specifically to continue representing the Huntington Harbour Beach Club and Marina) was representing Huntington Harbour Beach Club and Marina in a lawsuit filed in December 1979 (Orange County Superior Court No. 32 62 76. One of the allegations in this lawsuit was that this property was on State Tidelands (See page 17 from Lawsuit, Exhibit E in legal style brief). In my opinion it is obvious that the allegation was the reason that Virtue and Scheck wrote the January 18, 1990 letter to the State Lands Commission. So from January 28, 1990 Mr. Tim Paone of the law firm of Virtue and Scheck knew about the Land Trust Easement on the property. In August of 1980 Mr. Ahadpour purchased the property and the lawsuit continued with Mr. Ahadpour continuing using Mr. Paone as his attorney until June of 1981.

I prepared a legal style brief proving knowledge to Attorney is Knowledge to the Client. This is a Conclusive Rule of Law! I presented this legal style brief to the City of Huntington Beach on February 6, 1992.

On November 4, 1991 I appeared before the City Council of Huntington Beach and read them part of Attorney Collins letter. The whole council was stunned when I read excerpts from the letter. The City Manager said that I and the Attorney General had made serious accusations and that the City would have to study them and get back to me and have a conference about the issues we raised. To date I have not heard one word from the City! So since the City Attorney was not interested in doing any work on this matter, (and I am not a lawyer) I decided to do the work for the City Attorney and research Agency.

Attorney Collins claimed that he believed that Destiny II, Coultrup and Mr. Ahadpour were aware of the easement claims. I felt then and feel that the Attorney Collins was indicating that FRAUD had been committed in this matter. Fraud to me is when one knows about something and tries to deceive you--that's what most people would claim as fraud. But I also looked it up in the dictionary. The definition of FRAUD according to Funck & Wagnalls New Comprehensive International Dictionary of the English Language (1973): (1.) Deception in order to gain by another's loss... (4.) Law: Any artifice or deception practiced to cheat, deceive, or circumvent another to his injury... Synonyms: artifice, cheat, cheating, deceive, deception, dishonesty, duplicity, imposition, imposture, swindle, swindling, treachery, treason, trick. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another... "

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As I mentioned before, I prepared a legal style brief for the City Council showing that Mr. Ahadpour knew from the day he purchased the property that there was a land trust easement on the property because his attorney and agent Mr. Tim Paone of Virtue and Scheck knew it. This is a conclusive rule of law; it actually does not matter even if Mr. Paone did or did not tell Mr. Ahadpour about it. And to my knowledge, Mr. Ahadpour has not made any denials that his attorney actually did not inform him that I know about.

Attorney Collins also accuses Chicago Title of knowing about this land trust easement and even goes on to mention that "former SLC employees Don Davidson and James Dorsey who are now working with the title companies were aware of this."

I have an article from the Orange County Register dated 11-2-91 stating that 14 homes were built on land set aside as public domain, five years ago. County officials and the developer point the finger at Chicago Title Ins. Co. How many times has Chicago Title done this and they weren't caught, you and the citizens weren't vigilant. It was the citizens who caught this and making them pay only \$110,000 is letting them get away with a mere slap on the wrist paying "a mere pittance for what they could not have obtained before had they even tried.

If they had been lucky they would have gotten away without our finding out. Now that you've found out are you going to let them get away with what you would not even let them get away with in the beginning if you knew. But they knew, they knew all along that they could not build if they asked so why not go ahead and maybe no one will notice the mistake and they can get by with fraud again or if they get caught maybe they'll be luck enough to find a tender-hearted person that'll slap their wrists and make them pay only \$110,000 for what they could not have gotten away with for any amount of money if they had been honest in the beginning. Obviously there was no incentive for them not to try, and, of course, if they get away with it, there's no incentive for them not to do the same thing all over again. Clearly they have a pattern of doing this. This isn't the first time and it won't be the last time they do it, IF YOU LET THEM GET AWAY WITH IT--what company wouldn't want to pay \$110,000 to make a large profit on something that they knew in advance that they should not even start?

You will note in Attorney Collins letter on page 7 that in May of 1990 the State Lands staff sent another letter that rescinded the 1985 letter and Attorney Collins states "It is my understanding that Destiny II became aware of this 1990 letter after ground stabilization work at the property had been commenced but prior to above-ground construction."

So I guess that Destiny II decided "let's go ahead and build on it even though the law says we can't but we'll probably get away with it. Nobody will probably notice. The State has not the time or money and the little guys can be trampled upon and what citizen is going to find this out and use his or her time, money and effort to defeat us anyway. Hey, even if we lose we'll only have to pay a pittance and still make a fortune. They'll let us off the hook. I guarantee it."

The way I see it if you let them have it for this, then your're going along with it too.

They have a problem now because they had knowledge from the very beginning and yet they went ahead and broke the law and they might well be on the stick to the developer for 5 to 7 million dollars and I'm sure that is what they are really interested in. That's the bottom line. They surely are not interested in you, me, the little people, or the State of California.

You have before you today a title insurance company who has a practice of not finding evidence of protected lands which benefit the public. You have an owner, Mr. Ahadpour, who knew from one that there was a tideland easement on this property and you have a developer, Mr. Coultrup who has lied to the Coasta Commission about the geological setbacks, inflating them from 25 feet to 142 feet, and having one edge of one building on the fault, who submitted papers from his geologist with a 10,000 year fossil dating error trying to take the project out of the Alquist Priolo Act, and a 43 foot surveying error which just happend to place the earthquake faults between the two buildings, when in reality, the fault goes under the corner of one building. The City now admits these errors. Mr. Coultrup even lied under penalty of perjury to the Dept. of Real Estate in stating that his project was not in a special studies zone and that no geological studies were done on the project.

Indeed, you must know the only reason that they are agreeing to pay you anything even now is because we caught them and found them out. (Knowing about the Land Trust Easement from the very beginning as they did you don't really think they'd ever have offered you anything at all unless they had to, do you?

DON'T LET them steal this land for a pittance just because we caught them with their hands in the "Cookie Jar"--our COOKIE JAR. It belongs to the Citizens of Huntington Beach and the entire State of California.!!

We have filed our appeal in the Supreme Court. Please do not make a decision now until we have exhausted our remedies in this matter. You OWE that to the citizens of Huntington Beach who have hired a lawyer and paid their own money to fight this in Court because you would not be getting a dime unless we citizens had spent our own money to fight this Fraud. Mr. Coultrup and Mr. Ahadpour knew about all of these problems and they went ahead. Mr. Coultrup kept saying "I'm doing it at my own risk." Now he's really saying, oh take pity on me and get me off the hook. Don't reward him now for doing it "at his own risk."

Please realize that we turned down \$150,000 from the Title Ins. Co and another \$100,000 from Mr. Coultrup for a total of \$250,000 just for ourselves alone because we are fighting on Principles. Please don't sell us Short.

I also want to mention here that Destingy II will ALSO be asking for a release of more state tidelands on this property. I have a copy of the April 12, 1984 Coastal Commission Report in which Commission Nutter on page B-3 asks "These greenbelts area that are provided in the schematic in the area where the buildings are not now proposed to go. Are those areas assured of remaining open space? Liz Fuchs answer is "Yes." Gentlemen, we do not want the release of any more State Tidelands Easement on any more of this property. We know that all of this land should be open space and we want the rest of the property to remain open space and to be used for "navigation, fishing and commerce" as promised on April 12, 1984. We want, indeed we demand, a guarantee of this from the State Lands Commission. . . you are supposed to represent us, the

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citizens of the State of California, not just the title insurance co , or Mr. Ahadpour or the Japanese company, Destiny II, that bought the property from Mr. Coultrup. They are all culpable and charged with the knowledge by the Attorney General's office and if there is a wrong the Japanese company, Destiny II can sue Coultrup and Ahadpour for fraud and the State Lands Commission should not be releasing this state lands easement and thereby rewarding Ahadpour, Coultrup and Destin y II at the expense of the state.

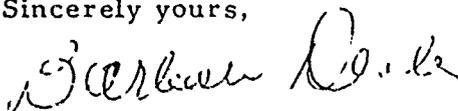
I suggest that you request a formal opinion from the Attorney General's office as to whether the State would have liability if it maintained its public trust easement and 2. whether the State can require the developer to compensate the State fully for its violation of the public trust easement.

I would also like to know what is the value of the property. Attorney Collins claimed \$6,000,000 and I feel that \$110,000 is not at all related to a \$6,000,000 valuation. It was \$6,000,000 for its use for condos and \$4,000,000 for its use as a marina. In September the Staff justified \$60,000 just for a small part of the property. They felt only a small part of the property was tideland. That argument has been discarded and that changes the whole value of the property. I believe there is a \$2,000,000 difference . I would like this explained to me.

I am asking for at least a delay or a continuance while it is still before the State Supreme Court. Let the Supreme Court decide it. Please don't be premature and pull the rug out from under the Court. If we win the lawsuit and its remanded to the City for reconsideration the City will have a perfect right to insist that the developer get the proper letter from the State Lands Commission stating that the property does not have a land trust easement on it.

Thank you.

Sincerely yours,



Barbara Devlin

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A LEGAL STYLE BRIEF REGARDING THE LEGAL RELATIONSHIP BETWEEN FERYDOUN AHADPOUR, ATTORNEY TIM PAONE, AND THE LAW FIRM OF VIRTUE AND SCHECK AND THE KNOWLEDGE IMPUTED TO EACH THEREBY IN REGARD TO THE STATE TIDELANDS EASEMENT ON THE HUNTINGTON HARBOUR BEACH AND RACQUET CLUB AND ITS CONDOMINIUM DEVELOPMENT.

I.

LEGAL PROPOSITION:

THE ATTORNEY - CLIENT RELATIONSHIP IS ONE OF PRINCIPAL AND AGENCY.

FACTS:

Tim Paone of the firm of Virtue and Schëck was representing the Real Party in Interest, Huntington Harbour Beach Club and Marina in the case of Huntington Harbour Residents, et al vs. City of Huntington Beach, et al and Huntington Harbour Beach Club and Marina, Real Party in Interest, Case No 32 62 76 Orange County Superior Court [See Filing dated Jan. 22, 1981 (Exhibit A, Attached Hereto.)

While the case was in the courts Mr. Ahadpour purchased the property on August 23, 1980 and continued to be represented by Tim Paone of Virtue and Schëck as his attorney at law. (See Filing dated Jan. 22, 1981 Exhibit A Attached Hereto).

The date of purchase of the Huntington Harbour Beach Club and Marina by Ferydoun Ahadpour was August 23, 1980. (See the Declaration of Ferydoun Ahadpour dated 12 April 1985 Attached Hereto as Exhibit B)

LEGAL CITATIONS:

California Civil Code Section 2332:

"§ Notice to agent, when notice to principal.

As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other."

"The general rule that notice to an agent is imputed to the agent's principal applies to attorneys at law acting as their client's agents. The basis for this rule is the presumption which is conclusive when it arises, that the agent has fulfilled his or her duty to communicate to his or her principal all knowledge which he or she has with respect to the subject matter of the agency... Thus ordinarily a person is held to know what his or her attorney knows and should communicate to him or her... Letters sent to the attorney must be regarded as sent to the client... Similarly, knowledge of defects of titled acquired by an attorney during negotiations for the purchase of land for his or her client is constructive notice to the client." (7 Cal.Jur. 3rd, Attorneys at Law, Section 101)

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"(4) The general rule of agency is that notice to or knowledge possessed by an agent is imputable to the principal (Civ. Code, §2332; see Freeman v. Superior Court, 44 Cal 2d 533, 537-538 (282 p. 2d 857); Rest., Agency § 9, 272-282) "Chapman College v. Wagener (1955) 45 Cal. 2d. 796, 802; 291 P. 2d 445.

"(5) This rule ordinarily applies in the relation of an attorney and client." (Lazzarevich v. Lazzarevich, 39 Cal. 2d 48, 50 (244 P. 2d 1); see Freeman v. Superior Court, 44 Cal. 2d 533-538 (282 P. 2d 857); 4 A.L.R. 1592.) "Chapman College v. Wagener (1955) 45 C. 2d. 796, 802; 291 P. 2d 445.

CONCLUSIONS:

THE PRINCIPAL IN THIS CASE IS FERYDOUN AHADPOUR AND THE AGENT WAS HIS ATTORNEY, TIM PAONE, CO-COUNSEL WITH THE LAW FIRM OF VIRTUE AND SCHECK

THE ATTORNEY-CLIENT (PRINCIPAL-AGENT) RELATIONSHIP WAS INITIATED AT LEAST ON AUGUST 23, 1980 (AS PROVEN ABOVE) AND LASTED AT LEAST UNTIL JUNE 1981

II

LEGAL PROPOSITION:

KNOWLEDGE TO AN ATTORNEY IN A LAW FIRM IS ALSO IMPUTED TO CO-COUNSEL IN THE FIRM. THEY ARE CO-AGENTS AND CO-PRINCIPALS.

FACTS:

Attorney Tim Paone was representing Huntington Harbour Beach Club and Marina (See Exhibit A, Attached Hereto) and on January 18, 1980 Attorney Scott McConnell of the firm of Virtue and Scheck wrote a letter to the State Lands Commission (See Exhibit C, Attached Hereto) asking if the land was "subject to the state tidelands trust."

On January 28, 1980 the State Lands Commission wrote to Attorney McConnell of Virtue and Scheck "This is to advise the area of concern shown on your map is within tide land location 221 patented by the State on January 6, 1903." (See Exhibit D, Attached Hereto.)

"A junior attorney member of the firm of Virtue and Scheck wrote the letter to the State and they are considered and conclusively presumed under the law to be co-counsel and co-agents in this matter. (Cf. Infra on "Legal Citations.")

(The Plaintiffs in the case have been making the allegation all along that the land in question was tidelands. See Page 17 of the Original Complaint Attached Hereto as Exhibit E.)

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LEGAL
CITATIONS:

"Notice to one of two or more joint agents is notice to all. (Wade on Law of Notice, sec, 681; Fulton Bank v. New York etc. Canal Co., 4 Paige, 127; North River Bank v. Aymar, 3 Hill, 262; Bank of United States v. Davis, 2 Hill 451; National Security Bank v. Cushman, 121 Mass. 490.) Like other copartners, each is at the same same time a principal and an agent for all the others." Wittenbrock v. Parker (1894) 102 Cal 93, 100.

"An attorney is an agent for his client within the scope of his employment, and two or more attorneys practicing together as copartners are joint agents as to the business transacted for their clients as such copartners." Wittenbrock v. Parker (1894) 102 Cal 93, 99, 100.

CONCLUSION:

ATTORNEY TIM PAONE WAS CO-COUNSEL IN THE LAW FIRM OF VIRTUE AND SCHECK AND HANDLING A COURT CASE INVOLVING THE HUNTINGTON HARBOUR BEACH CLUB AND MARINA AND THEREFORE A LETTER TO VIRTUE AND SCHECK AND KNOWLEDGE TO IT RE THE STATE TIDELANDS EASEMENT ON THE HUNTINGTON HARBOUR BEACH CLUB AND MARINA WAS IMPUTED TO MR. PAONE AS CO-COUNSEL.

III

LEGAL
PROPOSITION:

THE KNOWLEDGE OF THE ATTORNEY IS IMPUTED TO HIS CLIENT. THIS IS A CONCLUSIVE RULE OF LAW, IT IS NOT A REBUTTABLE PRESUMPTION.

FACTS:

Attorney Tim Paone, who was representing Mr. Ahadpour, had in his possession a letter from the State Lands Commission stating "This is to advise the area of concern shown on your map is within tide land location 221 patented by the State of January 6, 1903." (See Exhibit D Attached Hereto.)

LEGAL
CITATIONS:

"§ 101. Imputation to client of attorney's knowledge
The general rule that notice to an agent is imputed to the agent's principal applies to attorneys at law acting as their clients' agents. The basis for this rule is the presumption, which is conclusive when it arises, that the agent has fulfilled his or her duty to communicate to his or her principal all knowledge which he or she has with respect to the subject matter of the agency. The fact that the knowledge or notice of the agent was not communicated to the principal does not affect the operation of the general rule, since all that is necessary to charge the principal with constructive notice is that the agent obtain the knowledge while acting in the scope of his or her employment. Thus, ordinarily a person is held to know what his or her attorney knows and should communicate to him or her." 7 Cal Jur 3d (Rev) Attorneys a Law Sec 101,

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CITATIONS:

"(6) An agent's knowledge . . . is imputed to his principal. (Blair v. Wessinger, 39 Cal. App. 269, 273 (178 P. 545); Preleski v. Farganiasz, 97 Conn. 345 (116 A. 593, 595); Baruch v. Bucklet, 167 App. Div. 113 (151 N. Y. S. 853, 855); Shrader v. Porter, 210 Ky. 429 (276 S. W. 115); Harding v. Home Inv. & Sav. Co., 49 Idaho 64 (286 P. 920, 922, 297 P. 1101); Klundt v. Sands, 54 S. D. 421 (223 N. W. 338.)" Columbia Pictures Corp. v. DeToth, (1948) 87 C. A. 2d 620, 630, 631.

"(7) This rule of law is not a rebuttable presumption. It is not a presumption at all. It is a rule which charges the principal with the knowledge possessed by his agent. (2 Am. Jur. § 369, p. 289; anno. 4. A. L. R. 1592, 38 A. L. R. 821.)" Columbia Pictures Corp. v. DeToth, (1948) 87 C. A. 2d 620, 631; 197 P. 2d 580.

"(11) The rule rests on the premise that the agent has acquired knowledge which it was his duty to communicate to his principal, and the presumption is that he has performed that duty. (Ibid.: Lazzarevich v. Lazzarevich, 39 Cal. 2d 48, 50 (244 P. 2d 1).)

(12) While under our law the presumption is deemed conclusive for the purposes of civil actions (Wittenbrock v. Parker, 102 Cal. 93, 104 (36 P. 374, 41 Am. St. Rep. 172, 24 L. R. A. 197)" Freeman v. Superior Court (1955) 44 C. 2d 539, 538; 282 P. 2d 872).

"As stated above, notice to an agent in course of a transaction is constructive notice to the principal, and it will not avail the latter to show that the agent failed to communicate to him what he was told. (Williamson v. Brown, 15 N. Y. 359) This constructive notice, when it exists, is irrebutable. It is not merely prima facie evidence, for then it could be rebutted. It is conclusive against the truth of the fact, as said by Gibson, J. in Weidler v. Farmers' Bank, 11 Serg. & R. 134: "Constructive notice is not prima facie evidence of actual knowledge of the fact; the presumption of notice, if it arises at all, being conclusive even against the truth of the fact." Watson v. Sutro. (1890) 86 C 500, 523.

CONCLUSION:

MR AHADPOUR'S ATTORNEY AND AGENT, TIM PAONE KNEW THAT THE HUNTINGTON HARBOUR BEACH CLUB AND MARINA HAD A STATE TIDELANDS EASEMENT ON IT, THEREFORE MR. AHADPOUR KNEW THAT THE HUNTINGTON HARBOUR BEACH CLUB AND MARINA HAD A STATE TIDELANDS EASEMENT ON IT.

IV.

LEGAL PROPOSITION:

THE KNOWLEDGE OF THE ATTORNEY IS IMPUTED TO THE CLIENT EVEN IF HE DIDN'T ACTUALLY GIVE IT TO THE CLIENT.

FACTS:

Attorney Tim Paone of the law firm of Virtue and Scheck had been representing Mr. Ahadpour in Case No. 32 62 76 Orange County Superior Court Huntington Harbour Residents, et al., v City of Huntington Beach, et al. as Attorney for Real Party in Interest, Huntington Harbour Beach Club and Marina since Mr. Ahadpour purchased the property on August 23, 1980. (See Exhibits A and B Attached Hereto).

LEGAL CITATIONS:

"§ 101. Imputation to client of attorney's knowledge
The general rule that notice to an agent is imputed to the agent's principal applies to attorneys at law acting as their client's agents. (28. Hunter v. Watson (1859) 12 C 363; Bierce v Red Bluff Hotel Co. (1866) 31 C 160; Donald v Beals (1881) 57 C 399; Watson v Sutro (1890) 86 C 500, 25 P 64; Wittenbrock v Parker (1894) 102 C 93, 36 P 374; Otis v Zeiss (1917) 175 C 192, 165 P 524; Rauer v Hertweck (1917) 175 C 278; 165 P 946; Bogart v George K. Porter Co. (1924) 193 C 197, 223 P 959, 31 ALR 1045; Estate of Rule (1944) 25 C2d 1, 152 P2d 1003, 155 ALR 1319 (disapproved on other grounds by Parsons v Bristol Development Co., 62 C2d 861, 44 Cal Rptr 767, 402 P 2d 839) (applying rule to attorney for executors); Lazzarevich v Lazzarevich (1952) 39 C2d 48, 244 P2d 1; Freeman v Superior Court of San Diego County (1955) 44 C2d 533, 282 P 2d 857; Chapman College v Wagener (1955) 45 C 2d 796, 291 P 2d 445.) "The basis for this rule is the presumption, which is conclusive when it arises, that the agent has fulfilled his or her duty to communicate to his or her principal all knowledge which he or she has with respect to the subject matter of the agency. The fact that the knowledge or notice of the agent was not communicated to the principal does not affect the operation of the general rule, since all that is necessary to charge the principal with constructive notice is that the agent obtain the knowledge while acting in the scope of his or her employment. Thus, ordinarily a person is held to know what his or her attorney knows and should communicate to him or her." 7 Cal Jur 3d (Rev) Attorneys At Law Section 101,

" 4. Imputed Notice

§ 8:56. Notice to an Agent--General Rule

The knowledge of an agent generally is imputed to the principal, and the principal is deemed to know all facts known by the agent. Since the agent has a duty to communicate to his principal all information received during the course and scope of his agency, it is presumed that the agent performed this duty even though the information was not actually transmitted to the principal. . . . (McKenney v Ellsworth (1913) 165 C 326, 329-331 P 75; Christie v Sherwood (1896) 113 C 526, 530-532, 45 P 820; Wittenbrock v

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Parker (1894) 102 C 93, 99-100, 36 P 374; Powell v Goldsmith (1984) 152 CA 3d 746, 750-751, 199 CR 554; Northern Natural Gas Co. v Superior Court (1976) 64 CA3d 983, 992, 134 CR 850; Columbia Pictures Corp. v DeToth (1948) 87 CA2d 620, 630, 197 P2d 580; Kelley v British Commercial Ins. Co. (1963) 221 CA2d 554, 557-560, 34 CR 564; Hanlon v Western Loan & Bldg Co. (1941) 46 CA 2d 580, 595-597, 116 P 2d 465; Atkinson v Foote (1919) 44 CA 149, 165-167, 186 P 831. In civil cases the presumption that the agent communicated his knowledge to his principal is conclusive. Freeman v Superior Court of San Diego County (1955) 44 C2d 533, 537, 282 P2d 857.)" Real Estate Law 2d § 8:56

"(4) It is also well-settled law in this state that notice given to or possessed by an agent within the scope of his employment and in connection with and during his agency, is notice to the principal. (Sec. 2332, Civ. Code; Bogart v. George K. Porter Co., 193 Cal. 197 (31 A. L. R. 1045, 223 Pac. 959); Waldeck v Hedden, 89 Cal. App. 485 (265 Pac. 340).) In the case of Shamlian v. Wells, 197 Cal. 716 (265 Pac. 340), it was held as follows: "The general rule is well settled that the knowledge of the agent in the course of his agency is the knowledge of the principal. (1 Cal. Jur. 846, and cases cited.) It rests on the assumption that the agent will communicate to his principal all information acquired in the course of his agency, and when the knowledge of the agent is ascertained the constructive notice to the principal is conclusive. (1 Cal. Jur. 853, and cases cited.)

In the case of Watson v. Sutro, 86 Cal. 500 (24 Pac. 176, 25 Pac. 64), it was held as follows: "Knowledge by notice to attorney or counsel or agent acquired during the negotiations for a purchase is constructive notice to their principal. If it were otherwise, it would cause great inconvenience and notice would be avoided in every case by employing agents. (See cases cited in 2 Lead. Cas. Eq., pt. 1, pp. 133, 134.) That notice to the principal has been held in this state ever since Connelly v. Peck, decided in 1856, and reported in 6 Cal. 348; followed in May v. Morell, 12 Cal. 91; Stanely v. Green, 12 Cal. 148; Hunter v. Watson, 12 Cal. 363 (73 m. Dec. 543). (See other cases referred to in Gear's California Index-Digest, 97.) Notice to counsel or attorney is constructive notice to client. (Bierce v. Red Bluff Co., 31 Cal. 161, decided in 1866 and Donald v. Beals, 57 Cal. 399.) All these cases in regard to an agent apply to an attorney or counsel; for they are a species of agent. Justice Bradley, in "The Distilled Spirits Case, 11 Wall. 367 (20 L. Ed. 167)", states the principle on which the rule rests: 'The general rule,' says the learned judge, 'that a principal is bound by the knowledge of his agent is based upon the principle of law that it is the agent's duty to communicate to his principal the knowledge which he has respecting the subject matter of the negotiations, and the presumption will be that he will perform that duty. It will be of no avail to the purchaser that the agent omitted to communicate what he ascertained to his principal. (Williamson v. Brown, 15 N. Y. 359.) In other words, one who acts through another will be presumed to know all that the agent learns during the transaction, whether it is actually communicated to him or not. There is no difference in this respect between actual and constructive notice;

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CITATIONS:

for if there were, an agent would be employed whenever it was convenient to remain in ignorance." (Bank of United States v. Davis, 2 Hill (N. Y.), 451-461.) " Early v. Owens, 109 Cal. App. 490, 494, 495.

"Notice to Either Principal or Agent Imputed to Both. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought in good faith and the exercise of ordinary care and diligence to communicate to the other" (CC § 2332).

"Principal Chargeable with and Bound by Knowledge of or Notice to Agent. A principal is chargeable with, and is bound by the knowledge of, or notice to his or her agent received while the agent is acting within the scope of his or her authority and in reference to a matter over which the authority extends." (Trane Co. v Gilbert (1968) 267 Cal App2d 720, 727, 73 Cal Rptr 279; Columbia Pictures Corp. v DeToth (1948) 87 Cal App2d 620, (30, 197 P 2d 580).)

" Knowledge or Notice Imputed Although No Actual Communication. The fact that an agent may or may not have reported information to the principal is immaterial when the agent was acting in the course of his or her employment and the information was acquired by the agent in the transaction of the principal's business." (Trane Co. v Gilbert (1968) 267 Cal App2d 720, 727, 73 Cal Rptr 279).

"The facts constituting knowledge, or want of it, on the part of the agent are proper subjects of proof, and are to be ascertained by testimony as in other cases, but, when ascertained, the constructive notice thereof to the principal is conclusive, and cannot be rebutted by showing that the agent did not in fact impart the information so required. (Watson v. Sutro, 86 Cal. 500.) " Wittenbrock v Parker (1894) 102 C 93, 36 P 374, 101, 102

"§ 8:56. Notice to an Agent--General Rule
Page 378, footnote 19.

In an action against the principal, both principal and agent are deemed to have notice of whatever either has notice of and ought in good faith and in the exercise of ordinary care and diligence to communicate to the other. CC § 2332 GHK Associates v Mayer Group, Inc. (1990) 224 CA3d 856, 881 fn 3, 274 CR 168. " California Real Estate 2d § 8:56, 46.

CONCLUSION :

MR. AHADPOUR HAD KNOWLEDGE FROM HIS ATTORNEY, MR. PAONE, THAT THE HUNTINGTON HARBOUR BEACH CLUB AND MARINA PROPOSED DEVELOPMENT HAD A STATE TIDELANDS EASEMENT--EVEN IF MR. PAONE DID NOT ACTUALLY INFORM MR. AHADPOUR OF THIS (AND TO MY KNOWLEDGE MR. AHADPOUR IS NOT EVEN CLAIMING THAT HIS ATTORNEY, MR. PAONE, DID NOT ACTUALLY SO INFORM HIM.)

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LEGAL PROPOSITION:

THE KNOWLEDGE OF THE ATTORNEY IS IMPUTABLE TO THE CLIENT EVEN IF THE ATTORNEY OBTAINED THE KNOWLEDGE BEFORE HE STARTED WORKING FOR THE CLIENT... IF HE HAD IT IN HIS MIND AND IF THE KNOWLEDGE WAS IMPORTANT TO THE CLIENT.

FACTS:

Attorney Tim Paone obtained the knowledge that there was a land Trust Easement on this property on January 28, 1980 while he was working on the case of Huntington Harbour Residents, et al vs. City of Huntington Beach, et al and Huntington Harbour Beach Club and Marina, Orange County Superior Court Case No. 32 62 76 and he was representing the Real Party in Interest, Huntington Harbour Beach Club and Marina. (See Exhibit A, attached Hereto). Mr. Ahadpour bought the club on August 23, 1980, seven months after Mr. Paone received the information from the State Lands Commission and while he was still working on the above named case and Mr. Ahadpour continued using Mr. Paone as his attorney of record in this case. Mr. Ahadpour probably hired Mr. Paone when he kept him on as Attorney of Record after buying the Club. Obviously the knowledge of a Land Trust Easement limiting development to marina, commerce and navigation (and not allowing residential development) was important to Mr. Paone's client, Mr. Ahadpour. (It was obviously Vital Information for Mr. Ahadpour to have before Mr. Ahadpour would want to begin a Multimillion Dollar construction project!)

LEGAL CITATIONS:

"4. (§ 103) Knowledge of Agent Prior to Employment.

To be imputable, the knowledge or notice must ordinarily be acquired by the agent after the creation of the agency, for until he becomes an agent he is under no obligation to communicate any information to the principal, and the presumption that he will do so fails. .. knowledge acquired prior to the employment or in prior transactions may be imputed, if it is shown that, because of the close connection of the transactions, such knowledge was present in the mind of the agent at the time he acted for the principal. (Cook v. Mesmer (1912) 164 C. 332, 338, 128 P. 917; Wittenbrock v. Parker (1894) 102 C. 93, 102, 36 P. 374; Columbia Pictures Corp. v. DeToth (1948) 87 C. A. 2d 620, 631, 197 P. 2d 580; Eagle Indem. Co. v. Industrial Acc. Com. (1949) 92 C. A. 2d 222, 225, 206, P. 2d 877; see 3 Am. Jur. 2d, Agency § 287.) The Restatement broadly declares that it is ordinarily immaterial when the agent obtained the knowledge, the real issue being whether he has the knowledge in mind when it becomes relevant in his work for the principal. (Rest. 2d, Agency § § 276, 269; see also Rest. 2d, Agency § 281.)" Agency and Employment. 4 § 103, 100.

"... the principal's liability is based on the fact that his agent had relevant knowledge. Since the mind of the agent cannot be divided into compartments, the principal should be bound by whatever knowledge the agent has, irrespective of its source or time of acquisition, unless it is the kind of knowledge which the agent can properly disregard in the specific case because of having acquired it confidentially."

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"§ 269. Time When Notification Must be given.

To be effective as notice, a notification must be given to or by an agent during the time when the agent has power to affect his principal by giving or receiving such notification.

Comment: a. The principal may be affected by the knowledge which the agent acquired before the beginning of the agency relation (see § 276), and to the extent that a notification results in the agent's having knowledge, the principal is affected by it to the same extent as if the agent had obtained the information from other sources." Agency Second ss 269

"Notice to an agent, notice to his principal.

The principle is elementary, that notice to an agent of facts arising from or connected with the subject matter of the agency, is constructive notice to the principal, where the notice comes to the agent while he is concerned for the principal and in the course of the very transaction; and many authorities hold that the rule extends to cases where the notice was imparted to the agent so near before the transaction that he must be presumed to recollect it. (See Le Neve v. Le Neve, 1 Ves. Sr. 64; Lead. Cas. in Eq. Pt. 1, p. 106; Story on Agency, Sec. 140; Astor v. Wells, 4 Wheat. 466, Fuller v. Bennett, 2 Ware, 402; Sheldon v. Cox, 2 Eden, 224; Jackson v. Sharp, 9 Johns. 162; Reed's Appeal, 34 Penn. 207; Bracken v. Miller, 4 Watt & Serg. 102; Jackson v. Winslow, 9 Cow. 13; Jackson v. Leek, 19 Wend. 339; Willard Eq. 249; Bank U. S. v. Davis, 2 Hill, 461; Mech. Bank v. Seton, 1 Pet. 309.) "Bierce v. Red Bluff Hotel Co. (1866) 31 C 160, 165.

"Knowledge possessed by an agent while he occupies that relation and is executing the authority conferred upon him as to matters within the scope of his authority, is notice to his principal, although such knowledge may have been acquired before the agency was created, if it appears that such knowledge was present in his mind at the time he acted for the principal." (Cooke v. Mesmer, 164 Cal. 332, 228 (128 Pac. 917); Christie v. Sherwood, 113 Cal. 526 530 (45 Pac. 820).) "Bogart v. George K. Porter Co. (1924) 193 C 197, 210

"(8) While it is generally stated that before knowledge will be imputed, the agent must gain the knowledge in a transaction within the scope of his authority, that is neither a complete nor a correct statement of the rule. It is well-settled that the rule that notice to the agent is notice to the principal, extends to cases where the notice was imparted to the agent so near before the transaction in question that he must be presumed to recollect it. (Wittenbrook v. Parker, 102 Cal 93 136 Pac. 374, 24 L. R. A. 197); Bierce v. Red Bluff Hotel Co., 31 Cal. 160; Cooke v. Mesmer, 164 Cal. 332 (128 Pac. 917).)" Hanlon v. Western Loan & Bldg Co. (1941) 46 C. A. 2d 580, 596, 597

LEGAL
CITATIONS :

"Principal Charged with Agent's Knowledge Acquired Before Agency

The facts and procedural background of Columbia Pictures Corp. v DeToth (1948) 87 Cal App 2d 620, 197 P 2d 580, are discussed under Knowledge or Notice of Agent Imputed to Principal, supra. In De Toth, the court held that the fact that the agent not acquire his knowledge of the standard contract used by plaintiff during the course of the agency, but before the agency existed, did not affect the application of the rule (p 631). The court held that the principal is charged with knowledge that the agent acquires before the commencement of the relationship when that knowledge can reasonably be said to be present in the mind of the agent while acting for the principal (p 631).

CONCLUSIONS:

MR. AHADPOUR HAD KNOWLEDGE OF THE STATE TIDELANDS EASEMENT ON THE HUNTINGTON HARBOUR BEACH CLUB AND MARINA 'S PROPOSED DEVELOPMENT EVEN IF MR. PAONE OBTAINED THE INFORMATION SOMETIME BEFORE HE OFFICIALLY BECAME MR. AHADPOUR'S ATTORNEY AND AGENT.

VI

LEGAL
PROPOSITION :

MR. AHADPOUR WAS LEGALLY INVOLVED IN THE HUNTINGTON HARBOUR BAY AND RACQUET CLUB CONDOMINIUMS DEVELOPMENT AS LATE AS 4/5/90 AS THE CITY OF HUNTINGTON BEACH'S FOUNDATION PERMIT No. 004674 WAS ISSUED TO OWNER: FERYDOUN AHADPOUR (See Exhibit F, Attached Hereto) AND BOTH MR. AHADPOUR AND HIS PREVIOUS ATTORNEY, MR. TIM PAONE, HAD KNOWLEDGE OF THIS STATE TIDELANDS EASEMENT AT THAT DATE.

FACTS:

Previous knowledge of the State Tidelands Easement on the Huntington Harbour Bay and Racquet Club Condominium Development was known to both Mr. Ahadpour and his previous Attorney and Agent; Tim Paone for sometime. (See previous Legal Propositions, Citations and Conclusions.)

Mr. Ahadpour was actively involved in the construction of the Condominium Development Project in spite of his knowledge of the State Tidelands Easement as late as April 4, 1990 because the Foundation Permit No. 004674 shows Owner as Ferydoun Ahadpour and it is signed on 4-5-90 by initials which I assume are the initials of Mr. Ahadpour. (Photocopy attached hereto as Exhibit F).

CONCLUSION:

MR. AHADPOUR CAN NEITHER DISCLAIM KNOWLEDGE OR OR INVOLVEMENT IN THE HUNTINGTON HARBOUR BAY AND RACQUET CLUB CONDOMINIUMS DEVELOPMENT OR THE STATE TIDELANDS EASEMENT EVEN AS OF DATE 4/5/90.

Name, Address, and Telephone Number of Attorney(s)

TIM PAONE
VIRTUE & SCHECK, INCORPORATED
17 Corporate Plaza Drive
P.O. Box 2950
Newport Beach, CA 92660
(714) 644-9030

(For Use of Court Clerk Only)

FILED

JAN 22 1981

LEE A. BRANCH, County Clerk
By Pro Deputy

ATTORNEY BAR # 69253
ATTORNEY FOR: Real-Party-in-Interest

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

HUNTINGTON HARBOUR RESIDENTS
et al.,

CASE NO. 326276

NATURE OF CASE (state fully):

PLAINTIFF(S)

Declaratory and Injunctive
Relief and Writ of Mandate

CITY OF HUNTINGTON BEACH,
et al.,

DEFENDANT(S)

COUNTER AT ISSUE MEMORANDUM
(Rule 206, Calif. Rules of Court) (105)

Specify one or more of the following:

Trial Setting Conference Required (Rule 200(a))

Trial Conference Requested (See Rule 200 before Requesting)

Exempt Short Cause (Rule 207.1) - Set for trial only

Time estimated for trial: (If more than 1 day, number of days) 5 days
NOTE: 5 hrs. = 1 trial day. (If 5 hours or less, number of hours) _____ hours

Do you demand a jury trial? NO
~~YES OR NO~~

NOTE: No case will be set for trial as a short cause matter unless ALL PARTIES join in estimate of trial time of 5 hours or less. Rule 207.1 authorizes judge to declare mistrial if case is not completely tried within 5 hours

Is this case entitled to legal preference in setting? Yes Code Section CCP 1062; Public Resource Code 1167.2 and 21168.3
~~YES OR NO~~

ALL ATTORNEYS OF RECORD OR PARTIES APPEARING IN PERSON ARE LISTED BELOW.

(Indicate whether attorney for Plaintiff or Defendant)

	NAME	ADDRESS	TELEPHONE
Attorney for Plaintiff	Jeffrey M. Oderman RUTAN & TUCKER	401 Civic Ctr. Dr. West Santa Ana, CA 92702	(714) 835-2200
Attorney for Defendant	Gail Hutton City Attorney	P.O. Box 190 Huntington Beach, CA 92648	(714) 536-5555
Attorney for Real Party In Interest	Tim Paone VIRTUE & SCHECK	P.O. Box 2950 Newport Beach, CA 92660	(714) 644-9030
Attorney for			

EXHIBIT "A"

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DECLARATION OF FERYDOUN AHADFOUR

I, FERYDOUN AHADFOUR, hereby state:

1. I am and at all times relevant hereto have been the majority stockholder in Huntington Harbour Beach Club and Marina doing business as Huntington Harbour Bay & Racquet Club (hereafter "Club"), a defendant in this case. Each fact set forth herein is personally known to me and I have first-hand knowledge of each such fact. If called as a witness, I could and would testify to each such fact under oath.

2. On August 23, 1980, I purchased the Club from Byron Tarnutzer and Dennis French, who between them owned 100% of the stock in Huntington Harbour Beach Club and Marina. Before the purchase I was shown the Conditions, Covenants and Restrictions ("CC&Rs") recorded in connection with the Club. Of particular interest to me was a provision in the CC&Rs which indicated that use of the Club as an athletic, social or recreational facility was mandated only until June 30, 1983. I also saw Tract Map 4880 before I purchased the Club. In particular, the language appearing on the first page of the Map showed me that the Club property could be used for both commercial and non-commercial uses. (A true and correct copy of Tract Map 4880 is attached hereto and incorporated herein by reference as Exhibit "3").

3. Based on my review of these two documents, I purchased the Club. My review of the Club financial records before I purchased the Club indicated that the Club had been unprofitable while operated as an athletic, social and recreational Club. In fact, the financial records of the Club revealed a loss of hundreds of thousands of dollars annually. I understood that the

-i-

EXHIBIT "B"

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1 CC&Rs allowed different uses of Club property after June 1983,
2 and I felt that the development of the property for other uses
3 would produce revenue while at the same time allow continued
4 operation of the Club. I purchased the property relying on the
5 CC&Rs and would not have purchased the property if I were not
6 confident it could be developed. The Club was losing substantial
7 sums of money and I was not about to throw my money away by in-
8 vesting in a losing venture. (A true and correct copy of the
9 CC&Rs is attached hereto and incorporated herein by reference as
10 Exhibit "2").

11 4. After purchasing the Club I began to develop plans
12 for developing portions of Club property. After years of going
13 through the approval process before both city and state govern-
14 ments, we obtained approval from the Huntington Beach City Council
15 and the California Coastal Commission. Our plans contemplate
16 constructing 42 condominium units on portions of the parking lot
17 of the Club and on which commercial buildings (a marina office
18 and shower facility) presently exist and have existed for over a
19 decade. (True and correct copies of photographs of the Club
20 property as it currently exists and the proposed development plan
21 are attached hereto as Exhibit "1").

22 5. Ever since I purchased the Club I have been respon-
23 sive to the residents' concerns. For example, when I took over
24 the Club, the previous owner had a plan to expand the boat slips
25 in the marina. Residents who lived in the homes directly across
26 from the marina opposed this plan and filed a lawsuit, Case No.
27 32-62-76 in Orange County Superior Court. I decided not to pursue
28 this expansion in order to accommodate these residents' concerns.

6/11 -
7/10 to
5/11/84

1 I also worked with the members of the Huntington Harbour Property
2 Owners Association, Inc. ("HHPOA"), an organization of residents
3 in Huntington Harbour to accommodate their concerns. That
4 organization supports my proposed development on Club property
5 and also supported my previous plan for 54 guest cottages. (A
6 true and correct copy of a letter from the HHPOA to the mayor and
7 City Council of Huntington Beach is attached as Exhibit "4").

Handwritten notes on the left margin:
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- 1000

8 6. Ever since I purchased the Club property in 1980, I
9 have been unable to accomplish what I intended with respect to
10 development of the property. I have attempted to build condomin-
11 iums on the property and improve the Club facilities in order to
12 operate the Club at a profit and maintain an asset for the entire
13 Huntington Harbour community. The plaintiffs, none of whom own
14 homes that are adjacent to the Club, have attempted to stop me
15 every step of the way and have demonstrated a personal interest
16 in preventing me from doing what I want with my own property.
17 This lawsuit prevents me from obtaining a construction loan to
18 begin the development.

Handwritten note on the left margin:
- 1000

19 7. I am losing money daily on the Club in interest
20 payments alone. Interest payments for the loan on the Club total
21 approximately F.A. 30,000 \$24,000 a month.

Handwritten notes on the left margin:
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22 I declare under penalty of perjury that the foregoing is
23 true and correct.

24 Executed this 12 day of April, 1985, at Newport
25 Beach, California.

Handwritten signature: *S. A. Hadjipao*
Stamp: FERRYDOUN AHEAD FOUR CALENDAR PAGE MINUTE PAGE 557
0325L 16932

VIRTUE & SCHECK

LAWYERS

INCORPORATED

DAVID BAKER	SCOTT E. MCCONNELL
WILLIAM J. BREWER	ROGER L. NEU
ROBERT E. CALLAHAN	JOSEPH C. OBECH
CAIDWELL R. CAMPBELL	TIM PAONE
ROBERT D. FEIGINER	EDGARE SCHECK
MICHAEL J. GENOVESE	BERNARD E. SCHNEIDER
PAUL B. GEORGE	GERALD M. SHAW
MICHAEL C. GERHIG	PAUL J. SHETLER
THOMAS M. GIESER	SUE I. STOTT
VIRGINIA GUTE	BRUCE C. STUART
SUSAN W. HALDEMAN	JOHN VIRTUE
JOHN J. KENDRICK	PAUL F. WALDAU

January 18, 1980

California State Lands Commission
Attn: Betty Louie
1807 13th Street
Sacramento, CA 95814

Dear Ms. Louie:

Pursuant to our telephone conversation of January 17, 1980, enclosed you will find a copy of the map of Tract No. 4880, a portion of Huntington Harbour. As I mentioned to you on the phone, we are interested in ascertaining whether or not the area shaded in red on page 2 of this map is subject to the state tidelands trust. It is my understanding that you will be able to determine this for us.

Please note that the pierhead line which forms one boundary of the shaded area and the boat slips contained in the shaded area have been sketched onto the map by me. Of course, the sketch is not completely accurate with respect to the number or size of the boat slips in the subject area or the exact location of the current pierhead line. Rather, the sketch is merely an attempt to show the orientation which the existing slips have to the shoreline and the approximate location of the pierhead line.

If you have any questions, please do not hesitate to contact me. Thank you very much for your help and cooperation in this matter.

Very truly yours,

VIRTUE & SCHECK, INCORPORATED

EJ: Scott McConnell
Scott McConnell

SM/vl

Enclosure

RECEIVED
STATE LANDS COMMISSION
JAN 22 1 27 PM '80

EXHIBIT "C"

CALENDAR PAGE

WHITE PAGE

January 23, 1980

File Ref.: SD 80 1 22

Virtue and Scheck, Inc.
P. O. Box 2950
Newport Beach, CA 92660

Attn: Mr. Scott McConnell

Dear Mr. McConnell:

In response to your letter of January 18, 1980, the State Lands Commission's staff has reviewed the area shaded in red on the map of Tract No. 4880.

This is to advise that the area of concern shown on your map is within tide land location 221 patented by the State on January 5, 1903.

I trust this information answers your questions.

Sincerely,

BETTY K. LOUIE
Land Agent
(916) 322-7823

Enclosure

cc: D. Hadly

BKL/nyo

EXHIBIT "D"

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1 Party In Interest applied for or the City of Huntington Beach
2 purported to approve a variance from the City's parking require-
3 ments to permit such deficient parking, nor was any substantial
4 evidence submitted to Defendant City Council which would have
5 justified its approval of CUP 79-20 in the face of the deficient
6 parking situation.

7 WHEREFORE, Plaintiffs pray for judgment as hereinafter
8 set forth.

9
10 FIFTH CAUSE OF ACTION

11 (Violation of State/Tidelands
12 Trust, Navigational Servitude)

13 32. Plaintiffs refer to and incorporate herein by this
14 reference the allegations set forth in Paragraphs 1-14 of this
15 pleading.

16 33. Real Party In Interest owns and operates a private
17 club. The boat slips presently on the subject property and the
18 additional 26 slips authorized to be constructed under CUP 79-20
19 are to be reserved for the private use of Real Party In Interest's
20 members and guests. The general public has no right to use such
21 boat slips.

22 34. Huntington Harbour, including the portion of the
23 subject property where the existing boat slips and those authorized
24 to be constructed under CUP 79-20 are located, is State tidelands,
25 subject to the provisions of Article X, Section 4 of the California
26 Constitution, which provides, in pertinent part, that "No individual
27 partnership, or corporation, claiming or possessing the frontage
28 or tidal lands of a harbor, bay, inlet, estuary, or other navigable

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CITY OF HUNTINGTON BEACH

2000 MAIN ST.
HUNTINGTON BEACH, CA 92645

№ 094672

DEPARTMENT OF
COMMUNITY DEVELOPMENT
P.O. BOX 100 - CALIFORNIA BEACH
(714) 328 5241

NOTICE OF PERMIT

Permit Number: 016457
Prop. Address: 4121 BARNER
OR BUILDING
Permit: BUILDING USE: CEROPS
Contractor:
COULTEOP CONSTRUCTION
13901 SEAL BEACH BLV 300
SEAL BEACH CA 92740
Ph. (714) 300-0000
St. No. 294672-B City Lic. 016457
Architect or Engineer:
WALSH ENGINEERING
17292 GOLDBERGER
H.B. CA 92647
Ph. (714) 384-3846
St. No. 020435

Foundation only

Project: 500-CARAGE FOR 10 UNIT

Site: 4121 BARNER
No. Stories: 1
No. Families: 1
Valuation: 30,132
Bldg. Code: RCM
Occ. Load:
Park. Spaces:
COUNTY PERMIT YES

Issued: 04/20/90
Authorized: RBC 04/05/90

Permit/Receipt # 0-016457

DATE	AMOUNT	ACCOUNT	DESCRIPTION	AMOUNT	ACCOUNT
04/20/90	10.00	RAAC021470000	PROCESSING	10.00	RAAC023410600
04/20/90	0.00	RAAC021470000	PENALTY	0.00	RAAC023463000
04/20/90	0.00	RAAC023671100	PARK & REC.	0.00	RCRC021475500
04/20/90	17.42	RAAC 030201100	TOTAL FEE	17.42	

Permit/Receipt # 0-016457

IF OR THROUGH THE WORKER'S COMPENSATION INSURANCE
I am to complete and file with the Department of Industrial
Performance of the work by which this permit is issued, I shall not employ any person to
be become subject to Worker's Compensation Law.

Licensee's declaration
I am licensed under provisions of Chapter 9 (commencing with Section 2000) of Division
and Professional Code, and my license is in full force and effect.
I am licensed under provisions of Chapter 9 (commencing with Section 2000) of Division
and Professional Code, and my license is in full force and effect.
I am licensed under provisions of Chapter 9 (commencing with Section 2000) of Division
and Professional Code, and my license is in full force and effect.

THIS BOX FOR REGISTER VALIDATION ONLY

OWNER-BUILDER DECLARATION
I hereby affirm that I am exempt from the Contractor's License Law for the following reason
(See 2031.5) Business and Professions Code: Any city or county which requires a permit
to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also
requires the applicant for such permit to file a signed statement that he is exempt
pursuant to the provisions of the Contractor's License Law (Chapter 9) commencing with
Section 2000) of Division 3 of the Business and Professions Code, or that he is exempt
pursuant to the basis for the stated exemption. Any violation of Section 2031.5 by any
applicant for a permit subject to the applicant to a civil penalty of not more than the
penalty set forth in 20307.
 I, as owner of the property, or my employee with wages at least one commensurate,
will do the work, and the structure is not intended or altered for sale. (See 2031.5
Business and Professions Code; The Contractor's License Law does not apply to an owner
of property who builds or improves thereon, and who does such work himself or through
his family or employees, provided that such improvements are not intended or altered for sale.
If, however, the building or improvement is sold within one year of completion, the
applicant shall have the burden of proving that he did not build or improve for the
purpose of sale.
 I, as owner of the property, am exclusively contracting with licensed contractors to
construct the project. (See 2031.5 Business and Professions Code; The Contractor's License
Law does not apply to the owner of property who builds or improves thereon, and who
contracts for such projects with a contractor(s) licensed pursuant to the Contractor's License
Law.
 I am exempt under Sec. _____, B. & P.C. for the
reason: _____

CONSTRUCTION LENDING AGENCY
I hereby affirm that there is a construction lending agency for the performance of the work
under this permit is issued (See 2031, civ. c.).
Name: _____
Address: _____
I hereby affirm that I have read this declaration and state that the above information is correct.
I agree to comply with all city ordinances and state laws relating to construction
for the construction of the project mentioned in this permit.
Signature of Applicant or Agent: _____
CALENDAR PAGE _____
MINUTE PAGE _____

EXHIBIT "F"

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE



300 SOUTH SPRING STREET, 5th FLOOR
LOS ANGELES, CA 90013
(213) 346-2000

(213) 346-2705

September 6, 1991

PATRICIA SNYDER, Esq.
LEVINSON & LIEBERMAN, Inc.
9401 Wilshire Boulevard, Suite 1250
Beverly Hills, CA 90212

Re: Proposed Destiny II Settlement Agreement, Tract
No. 11881, Lots 2, 3, 4 and 5.

Dear Ms. Snyder:

As you are aware, I have been assigned to review the proposed Destiny II agreement. In doing so, I have investigated the facts you claim support such agreement, which are cited in your letter to Alan Scott dated April 18, 1991. I have also considered the points made in Jonathan Lehrer-Graiver's letter of August 9, 1991, on behalf of certain homeowners who contend that the agreement should not be approved. Based upon this preliminary investigation it is my conclusion that I cannot at this time recommend approval of the agreement. The purpose of this letter is to set forth the reasons for my conclusion.

A. The Characterization of the Land.

You contend that the subject property was never tidelands. In support of this contention, you cite the report of James R. Dorsey, dated March 17, 1991, which concludes "since September 9, 1850, the subject property was not tidelands, as it last existed in a state of nature, nor has it been made tidelands by artificial means." My investigation of the facts, however, does not support this conclusion.

1. Tidelands Location No. 221.

As you recognize, the subject property was included within Tidelands Location No. 221 which was patented by the State to R. J. Northam on January 6, 1903. This tidelands patent was based upon a survey of tidelands (including the subject property) made by Los Angeles County Surveyor E. T. Wright in 1885 (This survey was originally filed as Tidelands Survey No. _____ County.) Destiny II obtained title to the subject through series of conveyances which emanated from this tidelands patent. This being the case, and because Destiny II does not,

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have title emanating from any other source, under California law. Destiny II cannot contest the tideland character of the subject property. (Newcomb v. City of Newport Beach (1936) 7 Cal.2d 393, 398; Ord Land Co. v. Alamitos Land Co. (1926) 199 Cal.380, 384.)

You contend that there was "a technical error" made in the "State patenting process" and that the tidelands patent should have been a patent of swamp and overflowed ("S&O") lands. You further contend that the "Curative Acts" of 1872 solve Destiny II's title problem by somehow transforming the tidelands patent into an S&O patent. The bases of these contentions, however, are not clear. First of all, there is no legal basis to suggest that the Curative Acts of 1872 would resolve Destiny II's title problem even if the subject property could have been characterized as swamp and overflowed lands. Furthermore, the evidence strongly suggests that the subject property was not S&O lands but was, in fact, tidelands which the State owned in its sovereign capacity prior to the issuance of Tideland Location No. 221.

Because the subject property has never been identified as swamp and overflowed lands, or patented as such by the Federal Government, legal title could not have passed to Destiny II under the Arkansas Swamp Act. As is provided in Rogers' Locomotive Works v. Immigrant Co. (1896) 164 U.S. 559, referring to the Swamp Act:

"While therefore, as held in many cases the act of 1850 was *in praesenti*, and gave an inchoate title, the lands needed to be identified as lands that passed under the act; which being done, and not before, the title becomes perfect as of the date of the granting act. (*Id.* at p. 570; emphasis added.)

In another case where a claim was made similar to that being made by Destiny II, i.e., that by operation of law title has vested in Destiny II, the United States Supreme Court ruled as follows:

"But it is said on behalf of the levee District that, even though the lands were not included in the patent, they passed to the State under the Swamp-Land Act independently of any patent; and passed thence to the district under the state act of 1893. The contention is not tenable. The lands were never listed as swamp lands and their listing does not appear to have been even requested, doubtless because they were not surveyed. Assuming in fact they were swamp lands, the State's title under the Swamp-Land act was at most inchoate and never was perfected." (Chapman & Dewey v. St. Francis (1913) 232 U.S. 186, 199.)

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Thus, under the Arkansas Swamp Act, lands had to be formally identified as swamp and overflowed lands before title to them could pass. Once that occurred, the lands could be patented by the United States to the State (not to private parties); and the State could issue S&O patents to private parties. (*Id.* at p. 571.) Obviously, this process has not occurred in the present case; therefore, Destiny II has no title based upon the Swamp Act.

2. The 1873 USCGS and Other Relevant Surveys.

You contend that the 1873 USCGS topographic survey, T-1345, depicts the subject property as being salt marsh lying above the ordinary high water mark. (This, in fact, is the principal evidence cited by Mr. Dorsey for his conclusion.)¹ Based upon my investigation, I believe that you are in error on this point.

You cite Shalowitz, Shore and Sea Boundaries, Vol II, as support for your assertion that the "dark line", at the edge of the marsh depicted on the 1873 survey, designates the line of mean high tide. This, however, is not what Shalowitz says. In fact, Shalowitz states:

"Unless there is some evidence on the survey, it must be assumed in the case of marsh that the high water line has not been determined". (*Id.* at p. 176.)

"In surveying such areas, the Bureau has not deemed necessary to determine the actual high water line but rather the outer or seaward edge of the marsh, which to the navigator would be the dividing line between land and water. Therefore, from the topographic survey alone, and in absence of any collaborating collateral information, no conclusion could be drawn as to the exact location of the high water line, nor as to the condition of the marsh area with reference to the tidal plane of high water; that is, whether the ground itself was above water, or whether only the marsh grass was above water and the ground below water at the time of high tide." (*Id.* at p. 177; emphasis added.)

1. Mr. Dorsey's report also cites four aerial photographs (from 1927 and 1939), copies of which are included as exhibits D1, D2, E1 and E2. Would you allow us to examine the actual photographs, as it is impossible to draw any conclusions from the copies due to their poor quality? Also, in this regard, how did Mr. Dorsey determine that the mean high tide line did not reach the subject property at the time of these photographs. Did Mr. Dorsey know the stage of the tide at that time? If so, please also submit that information to us.

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My conclusion regarding the 1873 USGCS survey is confirmed by Moffatt & Nichol, Engineers, in their exhaustive 1971 report entitled, "Historic Tidelands Investigation Bolsa Chica and Anaheim Bays." In this study, Moffatt & Nichol (who was employed by a private owner) examined all of the various surveys and aerial photographs it could obtain. Moffatt & Nichol compared the edge of marsh line shown on the 1873 survey with 1962 marsh profiles in an area within the tidelands patent which was relatively unchanged between 1873 and 1962. This study confirmed Shalowitz's statement regarding marsh surveys and showed that, on the average, the edge of marsh was at an elevation some 2.5 feet below the elevation of mean high water.

Moffatt & Nichol concluded that the 1873 USGCS map did not show the line of mean high tide and further concluded that the last natural location of the mean high water line in the area in which the subject properly is located is best represented by the E. T. Wright tideland survey.

Moffatt & Nichol's conclusions were also based, in part, upon an aerial survey of Anaheim Bay, including the subject property, made in 1960 which shows the subject property to have an elevation of approximately 2 feet below mean high water. In addition, there are other maps which indicate that the subject property was below mean high tide (including a USGS map dated 1935, surveyed in 1932). Moreover, the tidal marsh, which the subject property at one time was a part of, still exists on the south side of the subject property and Warner Avenue. It is my understanding that this marsh is connected to Huntington Harbor, by pipes and that this area fills with water at mean high tide. This is further tangible evidence that the subject property is legally tidelands.

B. 1961 Low Water Boundary Line and Land Exchange Agreements

You assert in your letter that those certain 1960 low water boundary line and land exchange agreements, between the State and Huntington Harbor Corporation, resolved the State's public trust easement claims to the tideland areas within the Huntington Harbor ownership. After reviewing those agreements and the related correspondence and documentation, I have concluded that there is no merit to this assertion.

Clearly the 1960 "Agreement Arbitrating and Stipulating Ordinary Low Water Mark and Interests in Real Property" related only to the State's fee title claims in the submerged lands below the ordinary low water mark. The agreement very simply sets forth the location of that low water mark; it makes no mention of any claims of the State to the tidelands above the agreed upon

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low water mark. Similarly, the 1960 "Agreement for the Exchange of Lands in the Sunset Beach Area, Orange County, California" relates only to the State's fee ownership claims to the submerged lands found to be below the ordinary low water mark as defined by the boundary line agreement. The agreement specifically describes, by metes and bonds, the submerged lands being exchanged and releases the same from the public trust easement for fishery, navigation and commerce. The agreement does not mention or in any way describe the tidelands, and certainly it does not release the tidelands area from the public trust easement. That these agreements on their face relate solely to the State's fee interest in the submerged lands and their boundaries is beyond reasonable doubt. Therefore, these agreements may not be construed to affect the public's interest in the tidelands above the low water mark. (See City of Long Beach v. Daugherty (1977) 75 Cal.App.3d 972, 976-977).

In addition to the 1960 agreements being absolutely clear on their face, the extrinsic evidence relating to the negotiation of these agreements also makes it absolutely clear that they did not involve the tidelands easement. It is true that the attorney for Huntington Harbor Corporation, Robert B. Krueger, originally proposed that the agreements also provide for termination of the easement. In fact Mr. Krueger by letter of November 23, 1960, sent draft agreements to Mr. J. L. Shavelson, of the Attorney General's Office, which if implemented would have had this effect. Mr. Shavelson, however, rejected these proposed agreements and required that all of the language relating to termination of the tidelands easement be deleted. On December 1, 1960, Mr. Krueger wrote Mr. Shavelson a letter which described the changes in the draft agreements which the State requested on this point as follows:

"The patent from the State to Huntington will quitclaim only specifically described submerged lands to which the State now claims title and which would not be in the channel area; it will not quitclaim the State's tidelands easement which may affect the remainder of the Northam lands."

Later in that letter Mr. Krueger argued that Mr. Shavelson should change his mind on this point and agree to recommend that the State terminate the easement; however, the letter also stated that if "you still believe after examining the matter further" that the changes "are necessary, Huntington Harbor will abide with your decision." Mr. Shavelson refused to change his position and on December 5, 1960, Mr. Krueger sent Mr. Shavelson new drafts of the proposed agreements which were revised as required by the State, deleting the easement release. These new drafts became the final agreement and were approved by the Commission later that month. Therefore, there can be no argument that the extrinsic evidence supports any contention

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that the agreements are susceptible to an interpretation that they were intended to terminate the public trust easement.

C. Equitable Estoppel

In your letter of April 18, you also claim that the State of California by its actions over the last 30 years is estopped to assert that the tidelands easement exists over the subject property. My investigation, however, of the facts which you claim would create an estoppel against the State leads me to conclude that such a claim would not prevail if this matter was litigated.

Notwithstanding your claims to the contrary, it has been the long standing position of the State Lands Commission that the lands within Tidelands Location 221, except those which have been involved in title settlements, are subject to the public trust easement for navigation, commerce and fisheries. This position of the Commission and its staff is reflected in numerous correspondence and certain official actions of the Commission itself. I specifically refer you to the 1973 Gulf Oil Corporation Boundary Settlement and Exchange Agreement (BLA 138) which involved another portion of the tidelands patent area which had been owned by Huntington Harbor Corporation. There the State made it quite clear that it believes that the public trust easement encompasses the entire tideland patent area. Both First American and Ticor Title Companies were intimately aware of this agreement and the State's official position; therefore, they may not now claim the benefit of any equitable theory.²¹

I know of no instance where the Commission or its staff has indicated that the tidelands easement does not exist over the tidelands patent area. In fact, most of the correspondence which I have seen expressly states or implies that the easement does exist. (Note, my investigation of this point has not been completed.) For example, in 1980, an attorney wrote and inquired of the State Lands Commission as to whether property included within Tract 4880 (including the subject property) "is subject to the State tidelands trust." In response to that letter, the State Lands staff wrote:

"This is to advise you that the area of concern shown on your map is within tideland location 221 patented by the State on January 6, 1903.

2. We also believe that former SLC employees, Don Davidson and James Dorsey, who now are working with the title companies were quite aware of this.

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"I trust this information answers your questions."

It is true that the 1985 letter which you cite stated: "Based on information available to us at this time the project does not appear to involve State land. Therefore a permit from the State Lands Commission would not be required." The term "State land", however, refers to State fee-owned land, without reference to the public trust easement. It has not been the practice of the State Lands Commission to issue leases or permits over private fee lands which are subject to the public trust easement. Furthermore, this same letter stated that it was not intended to be a waiver of the State's right, title or interest in any lands owned by or under the jurisdiction of the State. This letter was written by a State employee without any study or formal action by the State Lands Commission.

In May of 1990, the State Lands staff in another letter rescinded the 1985 letter and asserted the public trust exists over the property. It is my understanding that Destiny II became aware of this 1990 letter after ground stabilization work at the property had been commenced but prior to above-ground construction.

Clearly, an employee of the State Lands Commission does not have the ability to estop the State of California, or the Commission, by simply sending a letter to a developer. (Particularly when the letter expressly does not waive any State interest.) Certainly any claims of estoppel must be based on the actions of the Commission, itself, particularly in view of the official action of the Commission in 1973 in conjunction with the Gulf Settlement where the public trust easement was asserted. (See County of Los Angeles v. Berk (1980) 26 Cal 3d 201, 221-222.) To allow the raising of estoppel to defeat the claim of public rights to the tidelands here involved would be manifestly contrary to the clearly enunciated policy in this State in favor of public access to shoreline areas.

Moreover, it is inconceivable that the title companies were unaware of the existence of the public trust easement over the subject property. Given my experience with title companies, I also believe that the Destiny II developer and its predecessors in interest, including Coultrup and Mr. Ahadpour were aware of the easement claims. Therefore, estoppel would not operate against these parties who bought with knowledge. (In order to help resolve this question, it would be helpful if you could send me copies of all of the relevant title insurance policies and all

3. Notes made by SLC staff in the file containing these letters also state: "Parcel is subject to public trust"

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related correspondence involving Destiny II, Coultrup, Ahadpour, the title companies and their agents.)

You argue that because residential development has been allowed to proceed in the Huntington Harbor area outside of the subject property, the State would be estoppel to assert the public trust easement over the subject property. I know of no legal theory by which alleged equities of other parties in other properties are automatically transferred to adjoining property owners.

You cite City of Long Beach v. Mansell (1970) 3 Cal.3d 462, as supporting your position. In that case the court found that an estoppel operated against the State's public trust claims to the "section 2(a) lands" which had been the subject of residential development for some 45 years. You should note, however, the court in Mansell did not find an estoppel operating against the State as to the "section 2(b) lands". (3 Cal.3d at p. 486.) These "2(b) lands", which were filled but undeveloped, were owned by developers who had entered into the McGrath-Macco Boundary Settlement and Exchange Agreement with the State so that they could clear title and then proceed with residential development. (3 Cal.2d at pp. 476-477.)

Destiny II's position in this case is much closer to the position of the owners of the "2(b) lands" in Mansell. The subject property had never been developed for residential purposes prior to the summer of 1990. Prior to 1963, it was completely undeveloped. In 1963 the property was filled and bulk-headed. According to the original subdivision map (Tract 4880, dated November 1962) any structures on the subject property were to be used for "aquatic, recreational, fishing, boating, marina or harbor purposes" which were to be supportive of the adjoining public marina. And, in fact, between 1963 and 1990, the property was used for these purposes and principally as parking for the marina. Therefore, contrary to your assertions, there has never been a time prior to the summer of 1990 when the subject property has been subjected to uses which are violative of the State's rights under the public trust easement. Therefore, I do not believe that an estoppel argument under Mansell can be successfully sustained by your clients.

D. Exchange Value

Given the above factors, I do not believe that the proposed agreement can be justified under Public Resource Code section 6307 and the Kapiloff Land Bank Act. The idea of Kapiloff is to allow land exchanges under section 6307 when an exchange parcel is not immediately available. Implicit in applying Kapiloff is the notion that the exchange value could be objectively ascertained so that a relatively equivalent parcel could later

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be purchased. This, however, is not what it proposed in this case. Here the State has been offered some \$60,000 which is approximately 1% of the appraised vacant land value of the subject property. I do not believe that there is any property which would be equivalent in its public trust utility which could be obtained in the immediate vicinity of the subject property for \$60,000. Given the additional recently discovered information, discussed above, it also seems that the public trust easement has a value substantially greater than \$60,000.

Finally, by this letter I do not mean to foreclose the possibility of recommending approval of an appropriate title settlement. It would seem that if an agreement cannot be reached as to the precise value of the public easement, perhaps an equivalent parcel (of at least an equal amount of acreage) could be found and exchanged in order to meet the requirements of section 6307.

It is my understanding that Curtis Fossum and I are scheduled to meet with you at my office on September 19 or 20, at 1:30 p.m. At that time we will show you some of the materials referred to above which support the position taken in this letter. I look forward to meeting you.

Sincerely,

Robert G. Collins / rll
ROBERT G. COLLINS
Deputy Attorney General

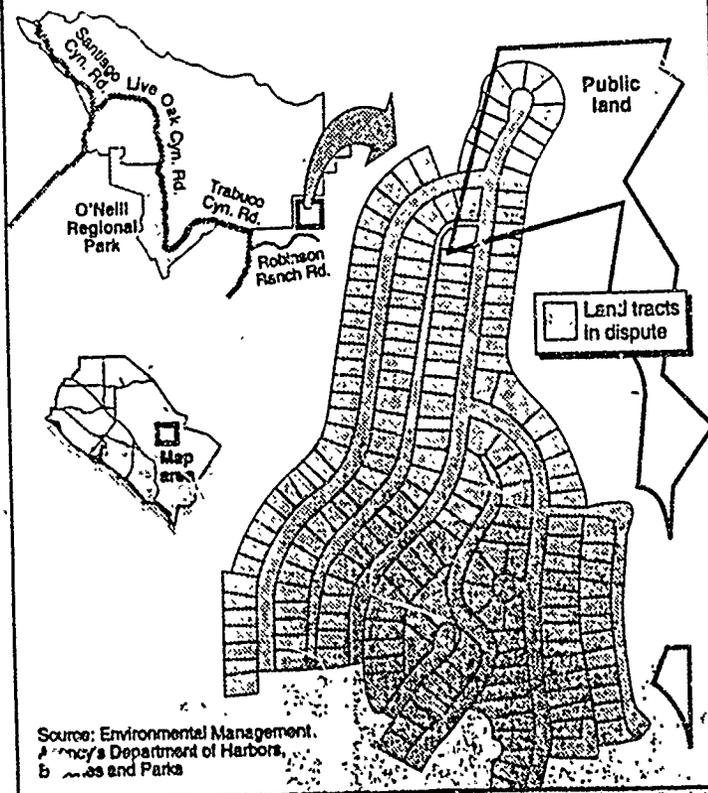
RGC:mh

cc: Curtis Fossum

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Homes on public land

Twenty-one houses worth up to \$260,000 apiece have been built on land designated as public land. County staff members will recommend the Board of Supervisors hand over the land to the developer, who they think has made an honest mistake. The developer, the William Lyon Co., calls the snafu merely "dotting the i's and crossing the t's." Meanwhile, people who have bought the homes do not have clear title to the property.



Source: Environmental Management Agency's Department of Harbors, Beaches and Parks

The Orange County Register

ENVIRONMENT

OC planners willing to give protected land to developer

By Danielle Herubin
The Orange County Register

Orange County planners will recommend to the Board of Supervisors on Tuesday that 3.35 acres of protected land be handed over to a developer who has built 21 homes on the property.

Fourteen of the Robinson Ranch homes have been sold, but because the Trabuco Canyon land was set aside as public domain five years ago, none of the new homeowners has clear title to the land.

"The i's weren't dotted and the t's weren't crossed," said Richard M. Sherman, counsel and senior vice president for the William Lyon Co., the developer.

County officials and the developer point the finger at the Chicago Title Insurance Co., which was to ensure that all property was free from other claims as the final maps were drawn up. In this case, the county's claim wasn't discovered. A spokesman for Chicago Title could not be reached for comment.

And in light of a similar case in Laguna Niguel that sparked several lawsuits, county planners are going out of their way to portray the developer as only human.

"The big difference in this case is we are taking great care to ensure the Board of Supervisors is fully informed of all the circumstances," said Bob Hamilton, manager of the county's Harbors, Beaches and Parks Department.

Public lands are areas designated as parks or wilderness. At least 50 percent of any new residential development must be made public land. And because Robinson Ranch has more than met the 50 percent rule — 345 acres are developed and 478 acres are open land — county officials are willing to hand over the property.

Even without such a drastic move, the 14 homeowners are in limbo until the mess is sorted out.

"I'm sure those people are dying," said Ronda Macy, a homeowner who lives down the street from the homes in question. "It would be aggravating if I owned one of those houses."

11/2/91

NOTICE OF INTENTION (COMMON INTEREST)

RE 624 Part III (Rev. 3/90)

- Submit this package and one photocopy of page 1 hereof
 - Attach filing fee to photocopy of page 1 hereof

I A. This application is for a: [check box(es)]

- Final Public Report
- Preliminary Public Report
- Overall Preliminary Public Multi-phase map projects only)

B. Type of Subdivision [check box(es)]

- Condominium
- Conversion
- Mobile Home
- Planned Development
- Land Project
- Community Apartment

C. Was a Preliminary Public Report issued for this filing?

- NO If NO, submit basic filing fee, lot fee, two fee cards and 20 address labels.
- YES If YES, enter assigned file number and as applicable submit:

067324LA-S00 [Assigned File Number]

1. If an overall preliminary public report was issued covering all lots in the subdivision, submit basic filing fee (except first phase), two fee cards and 20 address labels. If overall was a "short form", also submit RE 603F and G completed and executed OR
2. RE 603F and G and 20 address labels, if a "short form" preliminary public report was issued covering only the lots in this application.

Note: Any difference between originally paid lot fees and the current fees, plus a basic filing fee must be paid for each filing in a phased project (see RE 605).

D. Is this application being submitted as a master file? (Phase One filing only) YES NO

E. Subdivision Identification and Location

NAME OF SUBDIVISION
N/A

TRACT NUMBER
11881

NAME TO BE USED IN ADVERTISING
"HUNTINGTON HARBOUR BAY CLUB"

SUBDIVISION LOCATION (ADDRESS/MAIN ACCESS ROADS/CROSS STREETS)
NEAR WARNER AND EDGEWATER LANE

CITY HUNTINGTON BEACH	COUNTY ORANGE
NEAREST TOWN/CITY	W/RES DIRECTION FROM TOWN/CITY
WITHIN CITY LIMITS	WITHIN CITY LIMITS
MASTER ONE FILE NO. (IF ANY)	MASTER TRACT NUMBER
N/A	N/A

DEPUTY ASSIGNED TO MASTER FILE
N/A

F. Size Of This Filing

NUMBER OF RESIDENTIAL LOTS/UNITS (do not count common area lots)
36 UNITS

NUMBER OF COMMON AREA LOTS	NUMBER OF ACRES IN THIS FILING
5 LOTS	1.72

LIST COMMON AREA LOT NUMBERS/LETTERS
LOTS 2, 3, 4, 5 and D

For Office Use Only

FILE NUMBER
RECEIVED
REAL ESTATE MANAGER/SPECIALIST OF THE STATE OF CALIFORNIA, HAVE COMPARED THE RECORDED COPY WITH THE ORIGINAL RECORD AND DO HEREBY CERTIFY THAT IT IS A TRUE AND CORRECT COPY OF THE ORIGINAL RECORD

AMOUNT REQUIRED \$

AMOUNT RECEIVED \$

REFUND AMOUNT \$

WITNESS MY HAND AND SEAL OF THE REAL ESTATE COMMISSIONER OF THE STATE OF CALIFORNIA THIS

Real Estate Manager - 7/15/91

FROM FILE # of the State of California

Check appropriate box(es)

Lots/Units to be: Sold Leased

- All residential lots to be sold vacant
- All residential lots to be sold with completed residential structures. Indicate type of structure:
 - Conventional
 - Manufactured
 - Factory-built
- Residential lots will be sold both vacant and improved with residential structures.
 - Number of lots with housing
 - Number of vacant lots
- Vacant lots to be sold under agreement obligating buyer to enter into construction contract with seller or seller controlled entity.

G. Subdivider Information

NAME DESTINY II, a California general partnership

ATTENTION

NICOLINA CUZZACREA

ADDRESS

13001 SEAL BEACH BOULEVARD, SUITE 300

CITY SEAL BEACH

STATE CA ZIP CODE 90840

TELEPHONE NUMBER (INCLUDE AREA CODE) 714/ 430-8118

H. Single Responsible Party (SRP)

NAME CHICAGO TITLE COMPANY

ATTENTION INITIAL

PAMELA KNUDSEN

ADDRESS 825 N. BROADWAY

CITY SANTA ANA

STATE CA ZIP CODE 92701

TELEPHONE NUMBER (INCLUDE AREA CODE) 714/547-7251

When Public Report is ready:

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EX. 4

D. Check applicable box

There will be no f

Some lots have or

All lots have or w

13.0 GEOLOGIC HAZARD

A. Is the subdivision (or Studies Zone as defin

If YES,

1) List all lots/parcel

Please note: Hazard zone - original declaration amended 500 - when in fact the Newport Inglewood fault angles across the property.

Declaration amended when J. Lehrer (driver) brought the fault to the attention of the Dept. of Real Estate.

2) If vacant lots are to be offered, list what special requirements, if any, lot purchasers must satisfy to obtain a building permit within the Geologic Hazards Special Studies Zone. (You may obtain this information from local government planning and building authorities.)

CERTIFIED COPY

ROBERT CUMMINGS

REAL ESTATE MANAGER/SPECIALIST OF THE STATE OF CALIFORNIA, HAVE COMPARED THE ABOVE COPY WITH THE ORIGINAL RECORD OF FILE WITH THE DEPARTMENT OF REAL ESTATE AND DO HEREBY CERTIFY THAT IT IS A WHOLE, TRUE AND CORRECT COPY OF THE ORIGINAL RECORD.

WITNESSED BY HAND AND SEAL OF THE REAL ESTATE COMMISSIONER OF THE STATE OF CALIFORNIA THIS

Robert Cummings
Real Estate Manager/Specialist of the State of California

RE (original)

14.0 WATER SUPPLIER [Master File Item]

(If WELLS, answer NA to questions 14.0A-14.0D and go on to 14.0E.)

A. State name and address of water supplier:

SUPPLIER NAME
CITY OF HUNTINGTON BEACH
ADDRESS
2000 MAIN STREET, HUNTINGTON BEACH, CA 92648

B. Water supplier:

1) Is water supplier one of the following? Yes No NA

If YES, check appropriate box.

municipality county water district
 community service district

irrigation district
 state water district

D. Check applicable box:

- There will be no fill in excess of 2 feet.
- Some lots have or will have fill in excess of 2 feet.
- All lots have or will have fill in excess of 2 feet.

13.0 GEOLOGIC HAZARDS SPECIAL STUDIES ZONE (Master File Item)

A. Is the subdivision (or any part of it) located within a Geologic Hazards Special Studies Zone as defined by the Alquist-Priolo Act? Yes No

If YES,

1) List all lots/parcels affected: _____

All lots within this tract 11881

2) If vacant lots are to be offered, list what special requirements, if any, lot purchasers must satisfy to obtain a building permit within the Geologic Hazards Special Studies Zone. (You may obtain this information from local government planning and building authorities.)

INITIAL

(JC)

CERTIFIED COPY

ROBERT CUMMINGS

REAL ESTATE MANAGER/SPECIALIST OF THE STATE OF CALIFORNIA, HAVE COMPARED THE ABOVE NOTED COPY WITH THE ORIGINAL RECORDS OF THE FILE WITH THE DEPARTMENT OF PLANNING AND DO HEREBY CERTIFY THAT IT IS A TRUE, TRUE AND CORRECT COPY OF THE ORIGINAL (SECTION).

WITNESS MY HAND AND SEAL OF THE REAL ESTATE COMMISSIONER OF THE STATE OF CALIFORNIA THIS

Robert Cummings
Real Estate Manager, Specialist
of the State of California

(Corrected Amendment)

14.0 WATER SUPPLIER (Master File Item)

(If WELLS, answer NA to questions 14.0A-14.0D and go on to 14.0E.)

A. State name and address of water supplier:

SUPPLIER NAME	CITY OF HUNTINGTON BEACH
ADDRESS	2000 MAIN STREET, HUNTINGTON BEACH, CA 92648

B. Water supplier:

1) Is water supplier one of the following? Yes No NA

If YES, check appropriate box.

- municipality county water district irrigation district
- community service district state water district

CALENDAR PAGE _____
MINUTE PAGE _____

CERTIFICATION

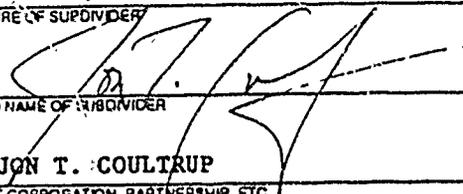
I/We hereby certify under penalty of perjury that the information contained in Parts II and III of this form constitutes my/our Notice of Intention to sell or lease subdivision lands, and that the information, together with any documents submitted herewith are full, true, complete and correct; and that I/we am/are the owner(s) of the lots, units or parcels herein described, or will be the owner(s) at the time lots or parcels, improved or otherwise, are offered for sale or lease to the general public - or that I am the agent authorized by such person(s) to complete this statement.

- Certification signed outside the State of California must be acknowledged by a Notary Public.
- Prior to signing, review all answers submitted. Errors or omissions must be corrected and initialed by the subdivider(s).
- If the subdivider is a corporation, partnership, etc., the individual(s) signing the certification must stipulate the capacity (e.g., president, general partner, etc.) of the signer and an authorization to sign (e.g., a corporate resolution, partnership statement, etc.) must be submitted. [Master File Item]
- If an agent will be submitting documents to Department of Real Estate on behalf of the subdivider, the subdivider must provide written authorization to that effect. [Master File Item]

SIGNATURE OF SUBDIVIDER	DATE

PRINTED NAME OF SUBDIVIDER	CAPACITY

NAME OF CORPORATION, PARTNERSHIP, ETC.

SIGNATURE OF SUPPLIER	DATE
	8-30-90

PRINTED NAME OF SUBDIVIDER	CAPACITY
JON T. COULTRUP	PRESIDENT

NAME OF CORPORATION, PARTNERSHIP, ETC.
 DESTINY II, a California general partnership
 BY: COULTRUP DEVELOPMENT COMPANY, a California Corporation, general partner

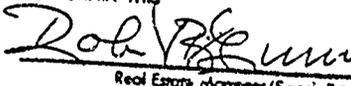
BUSINESS ADDRESS
 13001 SEAL BEACH BOULEVARD, SUITE 300

CITY OR TOWN	COUNTY	STATE
SEAL BEACH	ORANGE	CALIFORNIA

CERTIFIED COPY

ROBERT CUMMING
 A REAL ESTATE MANAGER/SPECIALIST OF THE STATE OF CALIFORNIA, HAVE COMPARED THE INDEXED COPY WITH THE ORIGINAL RECORD ON FILE WITH THE DEPARTMENT OF REAL ESTATE AND DO HEREBY CERTIFY THAT IT IS A WHOLE, TRUE AND CORRECT COPY OF THE ORIGINAL RECORD.

WITNESS MY HAND AND SEAL OF THE REAL ESTATE COMMISSIONER OF THE STATE OF CALIFORNIA THIS

 CALENDAR PAGE _____
 MINUTE PAGE _____

585

MINUTE ITEM

This Calendar Item No. 24
was approved as Minute Item
No. 24 by the State Lands
Commission by a vote of 3
0 at its 2/5/92
meeting.

CALENDAR ITEM

A 58
S 37

24

02/05/92
W 24642
AD 162
Fossum
Saggese

APPROVE A COMPROMISE TITLE SETTLEMENT AGREEMENT
REGARDING CERTAIN REAL PROPERTY IN THE
CITY OF HUNTINGTON BEACH, ORANGE COUNTY,
PURSUANT TO THE KAPILOFF LAND BANK ACT

PARTY:

Destiny II
13001 Seal Beach Boulevard, Suite 300
Seal Beach, California 90740

A title dispute exists between the State acting by and through the State Lands Commission ("State") and Destiny II, a California general partnership, concerning ownership of approximately 1.7 acres of real property within the City of Huntington Beach in Orange County ("Subject Property").

Commission staff has conducted a study of the evidence of title to the Subject Property and has drawn a number of factual and legal conclusions, including, but not limited to, those summarized below:

1. Destiny II is the record owner of the Subject Property.
2. The Subject Property is located within the meander survey for Tideland Location 221 (TLL 221). The State of California sold the Subject Property to R. J. Northam in 1901 and issued a patent for the tidelands on January 6, 1903. The State does not contend that it owns the fee title to the Subject Property.
3. At least a portion, and possibly all, of the Subject Property was in a natural state, as evidenced by historical data (including, but not limited to, the 1873 United States Coast Survey Topographic sheet T - 1345), covered by the ordinary tides of tidal sloughs, the precise extent of

coverage being subject to dispute. To the extent the Subject Property was tidelands in its natural condition, it is owned by Destiny II, subject to the Public Trust Easement for commerce, navigation, and fisheries.

4. The Subject Property is a relatively small parcel which has been improved, bulkheaded, filled, and reclaimed for the improvement of navigation and enhancement of the shoreline, and is no longer, in fact, tide and submerged lands.
5. Boundary Line Agreement 18 (BLA 18) (PRC 2686.1[A]), dated December 22, 1960, by and between the State Lands Commission and Huntington Harbour Corporation, predecessor-in-interest to the present owner of the Subject Property, established, pursuant to P.R.C. Section 6357, the ordinary low-water mark of certain portions of Anaheim Bay. That agreement established the boundary between the lands sold by the State, pursuant to TLL 221, which were at the time owned by Huntington Harbour Corporation, and the unsold submerged lands located within the perimeter description of TLL 221 .
6. Sovereign Land Location 34 (SLL 34) (PRC 2686.1(B)), dated December 22, 1960 as amended by the agreement dated November 22, 1961, by and between the State Lands Commission and Huntington Harbour Corporation exchanged, pursuant to P.R.C. Section 6307, 17.91 acres of submerged lands of the State for 66.47 acres of tidelands patented under TLL 221 and owned by Huntington Harbour Corp. The exchange agreement did not terminate the Public Trust Easement, except as to the 17.91 acres conveyed pursuant to the agreement.
7. Destiny II, through its attorneys and its title insurance company, dispute the effect to be given the boundary line and exchange agreements described in paragraphs 5 and 6 above (BLA 18 and SLL 34), respectively. Their conclusion is that the State terminated the Public Trust Easement over the entire area encompassed within TLL 221, including the Subject Property, not just the 17.91 acres conveyed by the State.
8. Destiny II further contends that the Subject Property was never, in fact, tidelands. Finally, they argue the State is guilty of laches and should be estopped from asserting any interest in the Subject Property, based upon its actions and inactions relative to the development of Huntington Harbour over the last 30 years, and specifically its actions relating to the Subject Property.

9. The Subject Property is currently improved with 36 condominium units completed in 1991 at a reported cost in excess of \$10,000,000, not including land value.

The staff is of the opinion that the title evidence and the applicable legal principles lead to the conclusion that the State, in its sovereign capacity, is the owner of some public trust right, title, or interest in the Subject Property. indeed, staff believes that the Public Trust Easement potentially exists over substantial portions of this relatively small parcel.

However, the Subject Property has been filled and reclaimed since the 1960s and is currently occupied by two condominium buildings which include a total of 36 units. If the State were to exercise the Public Trust Easement, pursuant to P.R.C. Section 6312, the State would be required to compensate the fee owner of the property for the fair market value of his improvements.

Moreover, the exact extent and nature of the State's interest in the Subject Property is subject to uncertainty and continued vigorous dispute. Litigation to resolve the uncertainty and dispute would be lengthy and expensive. In the end, if the State prevailed on all the issues, it would have confirmed its ownership of a Public Trust Easement over property only recently improved with substantial residential development.

Staff has, therefore, conducted an evaluation of the easement, taking into account the factual uncertainties, the legal disputes, as well as the present and foreseeable future utility to the public in asserting, exercising, or preserving the easement in its preset location, and recommends terminating any remaining interest in the Subject Property in order to acquire lands of value and utility to the Public Trust. The Kapiloff Land Bank provides the mechanism for pooling funds and acquiring parcels with public trust values and utility which are then held by the State as public trust assets.

Destiny II has offered to resolve the existing title dispute by entering into a compromise title settlement that would advance the public interest in acquiring land with public trust values and utility through the use of the Kapiloff Land Bank. The staff of the State Lands Commission recommends approval of the settlement in substantially the form of the 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 some of the

principal terms and conditions of the settlement is set forth below. It should be noted that, between the lots on which the condominiums are located and the waters of Huntington Harbour, there exists a lot (Lot D, as shown on Exhibit "B"), owned in fee by Destiny II, but which has been dedicated as a public accessway. The proposed agreement does not terminate the State's claim of a Public Trust Easement over any portions of Lot D.

1. Destiny II will deposit the sum of \$110,000 into the Kapiloff Land Bank Fund which is administered by the State Lands Commission as trustee pursuant to P.R.C. 8600 et seq.
2. The State Lands Commission, as Land Bank Trustee, will hold the funds in trust and expend them only for interests in land which provide a public trust benefit (wetlands protection, public access, etc.).
3. In exchange for the above transfer of funds by Destiny II to the State, the State will convey to Destiny II all its right, title, and interest, and will terminate any public trust interest in the Subject Property.
4. The agreement provides for an escrow period and is to be effective upon its recordation. The State will not incur any costs associated with escrow fees and title insurance.

Staff has appraised the Subject Property, has evaluated the law and evidence bearing on the title dispute, and is of the opinion that the sum of \$110,000 is equal to or greater than the value of the State's interest in the Subject Property.

The agreement is in lieu of the costs, delays, and uncertainties of title litigation, is consistent with, and is authorized by the requirements of law.

AB 884:
N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutorily exempt project. The project is exempt because it involves settlements of title and boundary problems.

Authority: P.R.C. 21080.11.

2. In taking action on this staff recommendation the Commission is acting as the trustee of the Kapiloff Land Bank Fund created by P.R.C. 8610.

EXHIBITS:

- A. Description of Subject Property.
- B. Site Map

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY 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. 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. FIND THAT, WITH RESPECT TO THE PROPOSED COMPROMISE TITLE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST IN THE SUBJECT PROPERTY FOR FUNDS WITH WHICH TO BUY AN EXCHANGE PARCEL:
 - A. THE AGREEMENT IS IN THE BEST INTEREST OF THE STATE AND CONSISTENT WITH PUBLIC TRUST NEEDS.
 - B. THAT THE MONIES RECEIVED BY THE STATE ARE OF A VALUE EQUAL TO, OR GREATER THAN, THE VALUE OF THE INTEREST IN THE SUBJECT PROPERTY BEING RELINQUISHED BY THE STATE.
 - C. THE SUBJECT PROPERTY, WHICH IS A RELATIVELY SMALL PARCEL (APPROXIMATELY 1.7 ACRES), HAS BEEN IMPROVED, RECLAIMED, AND FILLED FOR THE IMPROVEMENT OF NAVIGATION AND ENHANCEMENT OF THE CONFIGURATION OF THE SHORELINE, HAS BEEN EXCLUDED FROM THE PUBLIC CHANNELS, AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING AND IS NO LONGER, IN FACT, TIDE OR SUBMERGED LAND.
 - D. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS AND CLAIMS 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 THE REQUIREMENTS OF LAW.
- G. ON THE EFFECTIVE DATE OF THE AGREEMENT AND CONSISTENT WITH ITS TERMS, THE SUBJECT PROPERTY WILL NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THE PUBLIC TRUST INTEREST MAY BE TERMINATED.
3. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGEMENT, AND RECORDATION ON BEHALF OF THE COMMISSION OF THE COMPROMISE TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION.
4. 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.

EXHIBIT "A"

AD 162

LAND DESCRIPTION

A parcel of land in the City of Huntington Beach, Orange County, State of California, more directly described as follows:

Lots 2, 3, 4, and 5, of Tract No. 11881, Miscellaneous Maps Book 542, pages 20 through 23 inclusive, filed in the Office of the Orange County Recorder.

END OF DESCRIPTION

CALENDAR PAGE	169
MINUTE PAGE	532

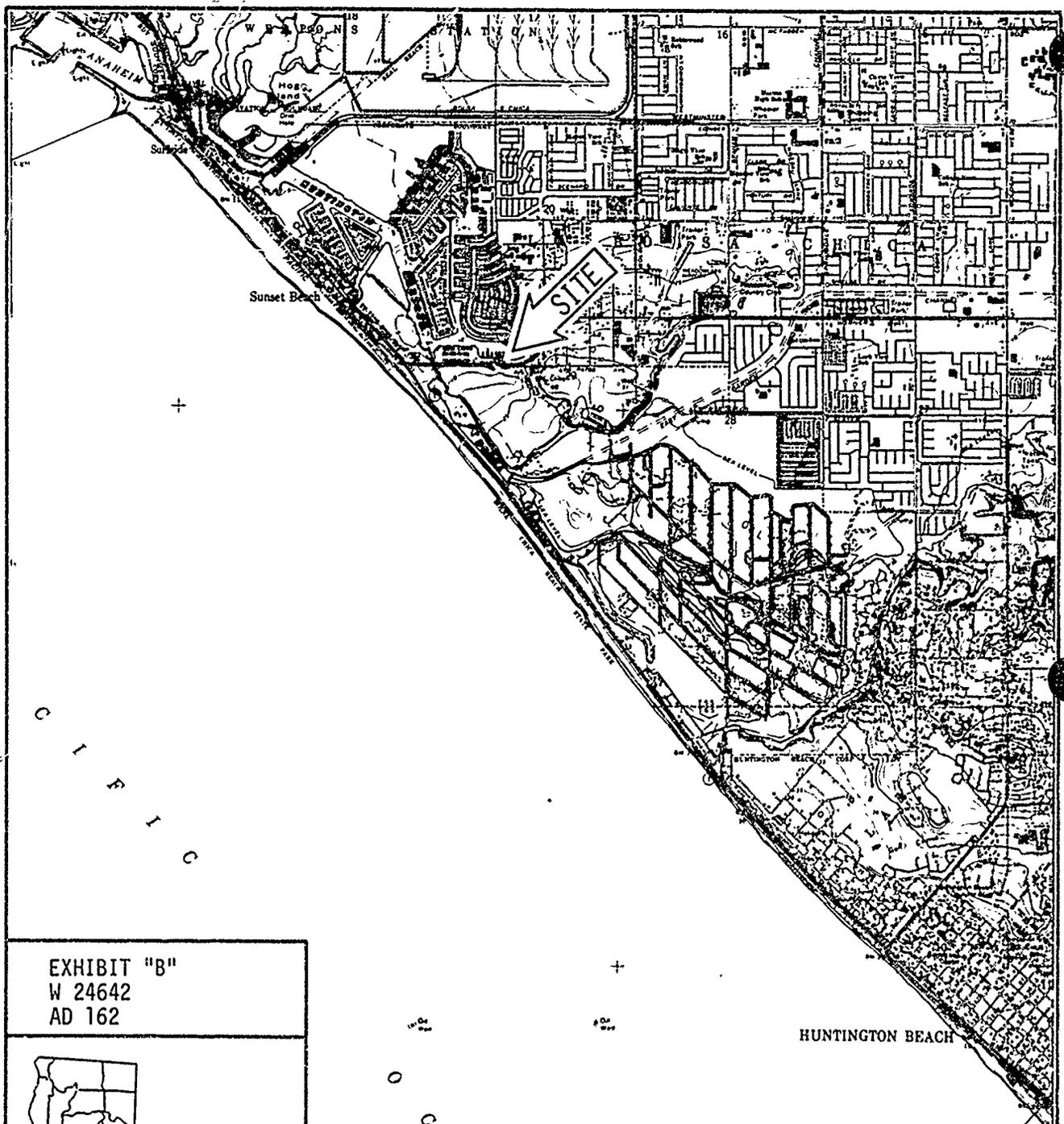


EXHIBIT "B"
 W 24642
 AD 162



CALENDAR PAGE 176
 MINUTE PAGE 233