

WGS  
No. 37 by the State Lands  
Commission by a vote of 3  
0 of its 6-30-92

CALENDAR ITEM

A 70  
S 37

037

06/30/92  
W 503.1718  
Fossum  
Crow

AUTHORIZE FILING A SETTLEMENT AGREEMENT AND  
STIPULATION FOR REVESTMENT IN  
UNITED STATES OF AMERICA v. 86.38 ACRES OF LAND, ET AL.,  
U.S.D.C. CENTRAL DISTRICT, CASE NO. CV-91-3991-IH

The State of California is a party-defendant in the subject condemnation action brought by the United States on behalf of the Army Corps of Engineers. The property involved is located within a confirmed Mexican land grant (Rancho Santiago de Santa Ana).

The lands condemned are to be used for wetlands restoration purposes as mitigation for Corps' impacts on wetlands involving the Santa Ana Mainstem Flood Control Project. Specifically, the project will include creation of environmentally sensitive habitat for the endangered California Least Tern. A portion of the lands condemned include a navigation easement attendant to a tidal slough that is inside the rancho and was acquired by the Commission as part of a Boundary Line Agreement (BLA 260) relating to the adjacent historic bed of the Santa Ana River (aka Oxbow Loop). The navigation easement is the only property interest of the State being condemned

The proposed Settlement Agreement and Stipulation for Revestment (attached as Exhibit "C") involves revesting the State with the navigation easement and the State subordinating its interest in the land to the right of the United States to establish, operate, and maintain the affected area in conjunction with the Santa Ana Mainstem Project. At such time as it is no longer needed for said purpose or upon transfer of title the subordination shall terminate.

EXHIBITS:

- A. Site Map
- B. Location Map
- C. Settlement Agreement and Stipulation

CALENDAR PAGE	500
MINUTE PAGE	

CALENDAR ITEM NO. 037 (CONT'D)

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 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. CODE REGS. 15378.
  
2. AUTHORIZE THE STAFF AND/OR THE ATTORNEY GENERAL TO EXECUTE AND FILE THE SETTLEMENT AGREEMENT AND STIPULATION FOR REVESTMENT, SUBSTANTIALLY IN THE FORM ATTACHED AS EXHIBIT "C" HERETO, AND TAKE ANY AND ALL OTHER ACTIONS NECESSARY TO EFFECTUATE THE AGREEMENT.

CALENDAR PAGE	500.1
MINUTE PAGE	...

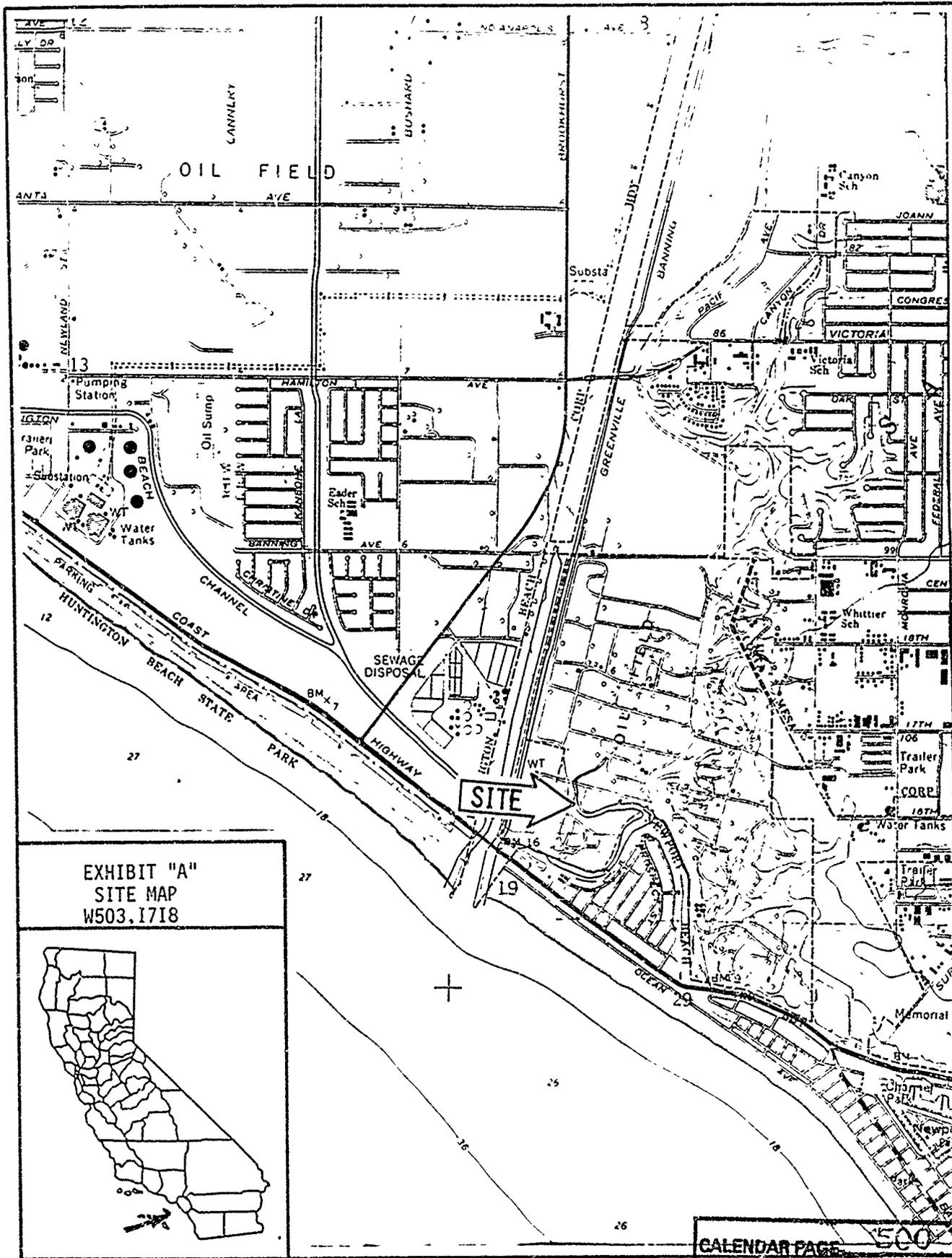


EXHIBIT "A"  
 SITE MAP  
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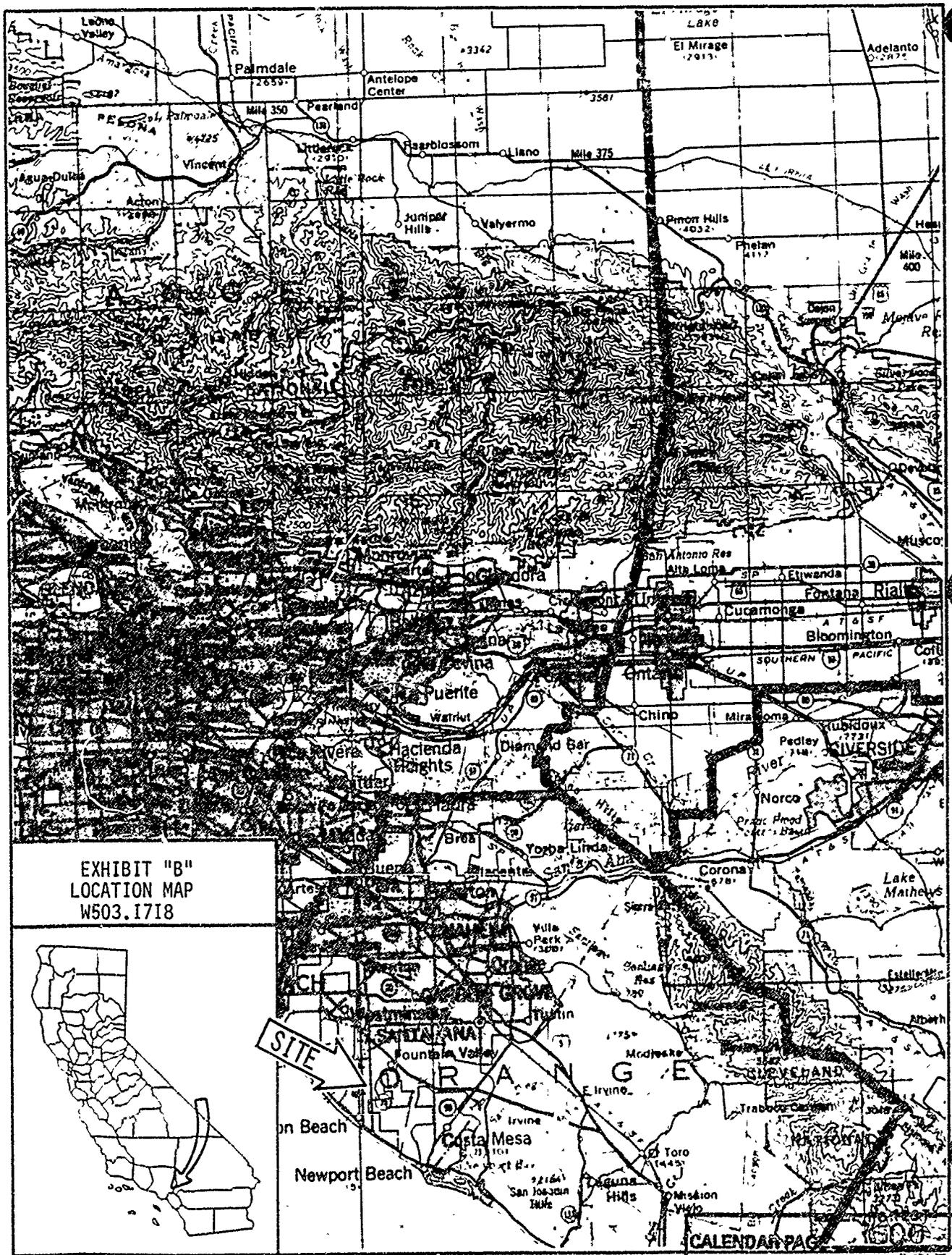


EXHIBIT "B"  
LOCATION MAP  
W503.1718



EXHIBIT "C"

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiffs,

v.

86.38 ACRES OF LAND, MORE OR  
LESS, SITUATED IN ORANGE COUNTY,  
STATE OF CALIFORNIA, et al.,

Defendants.

No. 91-3991-IH

SETTLEMENT AGREEMENT  
and STIPULATION FOR  
REVESTMENT

THIS SETTLEMENT AGREEMENT AND STIPULATION FOR  
REVESTMENT is made by and between the United States of America, plaintiff  
herein, and the State of California, a defendant herein.

WHEREAS, the plaintiff, United States of America, on July 24, 1991,  
filed a Complaint in Condemnation and a Declaration of Taking in the United States  
District Court, Central District of California, Case No. CV-91-3991-IH, to condemn a  
fee simple interest in 86.38 acres of land, more or less, situated in Orange County,  
State of California, which property and interest is described as Tracts 100, 103, 106 and  
108 in Schedules B to the Complaint and Declaration of Taking (hereinafter referred  
to as "86.38 acres of land"); and

WHEREAS, the 86.38 acres of land were selected by Plaintiff for  
acquisition for uses in connection with the construction and establishment of the Santa

1 Ana River Mainstem Project; and

2 WHEREAS, the State of California, hereinafter California, as a named  
3 Defendant in the condemnation action, claims, by way of Answer filed September 11,  
4 1991, that it is the owner of an easement for public navigation over a portion of tract  
5 100 known as "Bohn-Mack" Slough by virtue of its sovereignty as a State, the Act of  
6 Admission of California into the Union (9 Stat. 452), and California law. Defendant  
7 further claims that the "Bohn-Mack" slough is a navigable tidal tributary of the Santa  
8 Ana River described in Document No. 89-466419 recorded on August 30, 1989, in the  
9 official records of Orange County, California shown as Exhibit A attached hereto and  
10 incorporated herein by reference.

11 WHEREAS, by reason of the filing of the Declaration of Taking and the  
12 depositing of a sum of money as estimated just compensation, fee simple title to the  
13 subject 86.38 acres of land vested in plaintiff on July 24, 1991; and

14 WHEREAS, defendant desires to retain its easement in "Bohn-Mack"  
15 slough but is willing to subordinate that easement to the project needs of the United  
16 States, and the United States is agreeable to such accommodation:

17 NOW, THEREFORE, in consideration of the foregoing, and subject to  
18 final approval and order of the Court, IT IS STIPULATED AND AGREED BY AND  
19 BETWEEN THE UNITED STATES OF AMERICA, PLAINTIFF, AND THE STATE  
20 OF CALIFORNIA, DEFENDANT, as follows:

21 1. The plaintiff hereby consents to the entry of an order by the Court  
22 revesting in the State of California, and the State of California agrees to accept  
23 revestment of, all of California's interest in the 86.38 acres of land which was acquired  
24 by the plaintiff in this action, subject however, to a subordination of all of California's  
25 interest in the 86.38 acres of land to the right of the Plaintiff to establish, operate, and  
26 maintain the Santa Ana River mainstem Project, said subordination to continue until  
27 the property is no longer needed for the purpose for which it was originally acquired

1 herein, as determined by the plaintiff. By agreeing to subordination of its interest,  
2 California agrees that it shall have no right, by ownership or otherwise, to interfere  
3 with the Plaintiff's use or control of the 85.38 acres of land. The subordination shall  
4 terminate, and the right to enforce said easement shall spring back to California, upon  
5 any transfer of fee simple title to any person or entity other than the United States of  
6 America.

7           2. California hereby withdraws its objections to the taking of the interest  
8 condemned, and shall not oppose or condemn the condemnation.

9           3. California hereby *waives disclaims* any right to compensation that  
10 otherwise might be due for the original taking as described in the complaint and  
11 declaration of taking and for the subordination resulting from this agreement and  
12 stipulation.

13           4. California acknowledges that the property is being condemned for the  
14 Santa Ana River Mainstem Project, which will create a sensitive environmental habitat  
15 for the Least Tern.

16           5. Judgment shall be entered pursuant hereto in accordance with the  
17 terms and conditions in this stipulation. *Plaintiffs shall submit any proposed final*  
18 *judgment in this action to California for its review and approval, only with regard to*  
19 *California's claimed easement interest, prior to final execution and entry of judgment by the*  
20 *Court. The final judgment shall be recorded in the Official Records of Orange County.*

21           Wherefore, the parties hereto pray for judgment as appropriate to  
22 effectuate this stipulation.

23  
24 DATED: \_\_\_\_\_

Lourdes G. Baird  
United States Attorney

25  
26 Leon W. Weidman  
Assistant U.S. Attorney  
27 Chief, Civil Division

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916 327-7856

It is so ordered.

Dated: \_\_\_\_\_

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Irving Hill  
U.S. District judge