MINUTE ITEM

50

WORK ORDER: W 23745
CALENDAR DATE: 10/28/96
NEGOTIATOR: C. Fossum
A. Scott
M. McKown

SCOUT ISLAND INVESTORS, LLC, A CALIFORNIA LIMITED LIABILITY CORPORATION (APPLICANT)

Calendar Item C50 was pulled from the agenda prior to the meeting.

Item attached

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CALENDAR ITEM

C50

AD 282

10/28/96
W 23745
FOSSUM
A. SCOTT
McKOWN

SCOUT ISLAND INVESTORS, LLC, A California Limited Liability Corporation
(APPLICANT)

ITEM PULLED PRIOR TO COMMISSION MEETING

CALENDAR ITEM
C50

A 25
S 12

10/28/96
W 23745
AD 282

Fossum
A. Scott
McKown

CONSIDER APPROVAL AND EXECUTION OF A COMPROMISE TITLE SETTLEMENT AGREEMENT PURSUANT TO THE KAPILOFF LAND BANK ACT (PUBLIC RESOURCES CODE SECTIONS 8600 ET SEQ.) BETWEEN SCOUT ISLAND INVESTORS, LLC, A CALIFORNIA LIMITED LIABILITY CORPORATION AND THE STATE OF CALIFORNIA, INVOLVING LAND IN AND ADJACENT TO THE BED OF THE SAN JOAQUIN RIVER, COUNTY OF FRESNO

APPLICANT:

Scout Island Investors, LLC, a California Limited Liability Corporation
c/o Jon C. Thomason
7090 North Marks, Suite #102
Fresno, California 93711

The State of California owns the bed of the San Joaquin River between the river's two ordinary low water marks (Civil Code Section 830). The entire river between the ordinary high water marks (OHWM) is subject to a Public Trust Easement as described in State of California v. Superior Court (Fogerty) 29 Cal 3rd 210 (1980). This easement and the fee owned lands in the bed of the San Joaquin River are under the jurisdiction and control of the California State Lands Commission (SLC) pursuant to Public Resources Code Sections 6301 and 6216.

In 1976 the SLC began a comprehensive investigation of the historical factual evidence relating to the San Joaquin River in order to determine the location of the State's sovereign property interests between Friant Dam and Highway 99. Upon completion of that study, this office prepared, printed and distributed the ***San Joaquin River Administrative Maps*** to the Counties, City and other interested parties in April 1992.

Based upon the ***San Joaquin River Administrative Maps,*** the land that is the subject of this proposed title settlement agreement involves lands: 1) within the historic high

water channels as it passes through Scout Island Investors' record title lands and 2) lands above the ordinary high water mark. The legal ownership and precise boundaries of the San Joaquin River involving public and private property interests can only be determined by agreement of the parties or litigation. Rather then go through the expensive, time consuming and unpredictable course of litigation Scout Island Investors has requested that a mutually agreeable title settlement be entered into.

In the area involved in the proposed settlement, the San Joaquin River has been affected by human activities which had a direct impact upon, among other characteristics, the River's location, velocity and volume of flow, seasonal flow patterns, and sediment transport and deposition. An example of the direct artificial influences is the impoundment and diversion of water for agricultural, recreational, and flood control purposes by the construction and operation of Friant Dam. Consequently the pre-artificial conditions and location of the OHWM in this area along or through the subject property no longer is reflected by current flow conditions. These changes have also had an impact on the location and extent of the riparian corridor along the river and the public trust values associated therewith. The property involved in the settlement has for over 50 years been used for agricultural use resulting in the removal of native vegetation.

Uncertainty exists as to the precise factual and legal location of the OHWM of the San Joaquin River before the flows were controlled and artificial influences impacted the river. There is a *bona fide* dispute between the State and Scout Island Investors as to the existence, extent, nature and location of their respective rights, titles and interests in the subject property.

Scout Island Investors has made an offer of settlement for the State's sovereign title claims in the subject property in the amount of $50,000 to be deposited in the Kapiloff Land Bank Fund for acquisition of property interests of greater utility to the public than the claims to be extinguished on the subject property.

Staff has conducted an evaluation of the State's easement claims in the subject area, 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 claims in their mapped location, and recommends terminating any remaining title claims in the area described in Exhibit A-1.

A judicial resolution of the parties' rights, titles and interests in the subject property could require costly, protracted, and vigorously disputed litigation with uncertain results if the controversy could not be resolved by settlement. The parties consider it expedient and necessary and in the best interests of the State, the public, and Scout Island Investors to resolve this title dispute by compromise settlement, thereby avoiding the anticipated substantial costs, time requirements, and uncertainties of such litigation.

The proposed Title Settlement Agreement provides, among other things, for (1) the deposit of $50,000 by Scout Island Investors into the Kapiloff Land Bank Fund; (2) terminating any sovereign public trust property interests of the State within the subject property.

The State, acting by and through the SLC and as Trustees of the Kapiloff Land Bank Fund, is authorized under Division 6 and 7 of the Public Resources Code, and specifically pursuant to Sections 8600, et seq. to settle title disputes by agreement including payment of funds into the Kapiloff Land Bank Fund.

Pursuant to Government Code Section 66412(e), provisions of the Subdivision Map Act do not apply to title settlement agreements to which the SLC is a party.

STATUTORY AND OTHER REFERENCES:

A. Public Resources Code: Div. 6 and 7
B. Cal. Code Regs.: Title 2, Div. 3; Title 14, Div. 6.

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 settlement of title or boundary disputes.

   Authority: Public Resources Code Section 21080.11.

EXHIBITS:

A. Land Description of Subject Property
B. Site Map
C. Location 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 PUBLIC RESOURCES CODE SECTION 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.

2. FIND THAT, WITH RESPECT TO THE PROPOSED TITLE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST WITHIN THE AREA DESCRIBED IN EXHIBIT A OF THIS CALENDAR ITEM FOR FUNDS WITH WHICH TO BUY AN EXCHANGE PARCEL:

   A. THE AGREEMENT IS IN THE BEST INTERESTS OF THE STATE AND CONSISTENT WITH PUBLIC TRUST NEEDS.

   B. THAT THE $50,000 TO BE PLACED IN THE KAPILOFF LAND BANK FUND IS EQUAL TO, OR GREATER THAN, THE VALUE OF THE INTEREST IN THE LANDS BEING RELINQUISHED BY THE STATE.

   C. THE AREA OF INTERESTS IN LANDS BEING CLAIMED BY THE STATE TO BE RELINQUISHED , WHICH IS A RELATIVELY SMALL AREA (APPROXIMATELY 15.48 ACRES OF EASEMENT CLAIM) HAS, PURSUANT TO A PROJECT FOR DEVELOPMENT OF WATER RESOURCES, IMPROVEMENT OF NAVIGATION, RECREATION, AND FLOOD CONTROL, BEEN EXCLUDED FROM THE PUBLIC CHANNELS, AND IS NO LONGER AVAILABLE OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING AND IS NO LONGER IN FACT SUBMERGED LANDS IN THE PRESENT BED OF THE SAN JOAQUIN RIVER.

   D THE CONVEYANCES PROPOSED BY THE AGREEMENT WILL NOT INTERFERE WITH THE PUBLIC'S RIGHTS OF FISHING AND NAVIGATING IN THE SAN JOAQUIN RIVER.

E. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS AND CLAIMS WITHIN THE AGREEMENT AREA.

F. THE PROPOSED SETTLEMENT AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND FACT UPON WHICH THE DISPUTE IS BASED.

G. 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.

H. ON THE EFFECTIVE DATE OF THE TITLE SETTLEMENT AGREEMENT AND CONSISTENT WITH ITS TERMS, THE SUBJECT PROPERTY WILL BE FOUND TO NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THE PUBLIC TRUST EASEMENT WILL BE TERMINATED.

3. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGMENT, AND RECORDATION ON BEHALF OF THE STATE LANDS COMMISSION OF THE SCOUT ISLAND INVESTORS 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, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AND PAYMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE 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"

A parcel of land situate in the City of Fresno, County of Fresno, State of California and being a portion of the East ½ of Section 25 and the Northeast ¼ of Section 36 both in T12S, R19E, MDB&M, described as follows:

All that real property described in those certain deeds recorded May 4, 1995 as Instrument Number 95054176 and April 15, 1996 as Instrument Number 96047805; both Offiicial Records of Fresno County, California .

END OF DESCRIPTION

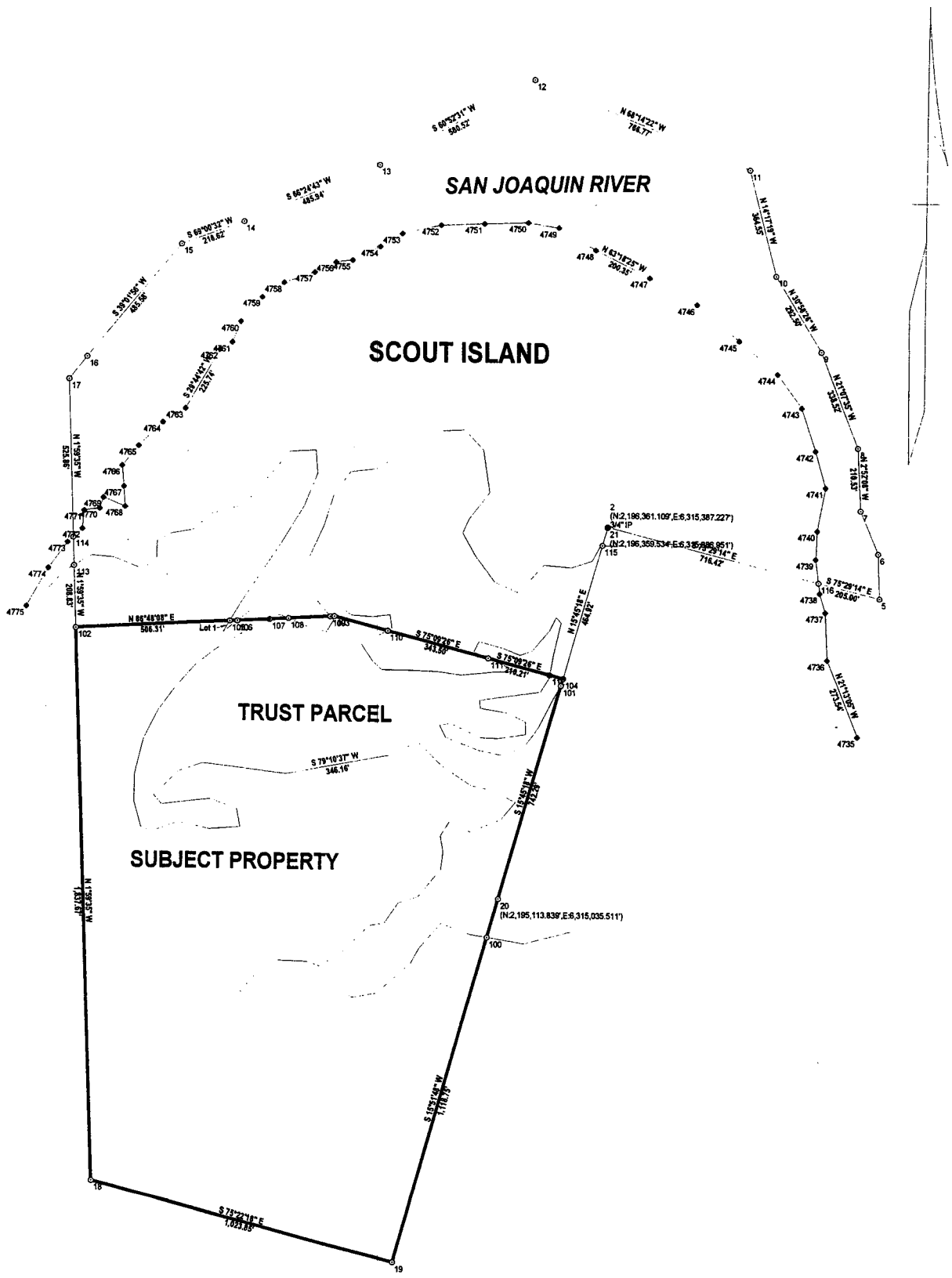

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EXHIBIT "B"

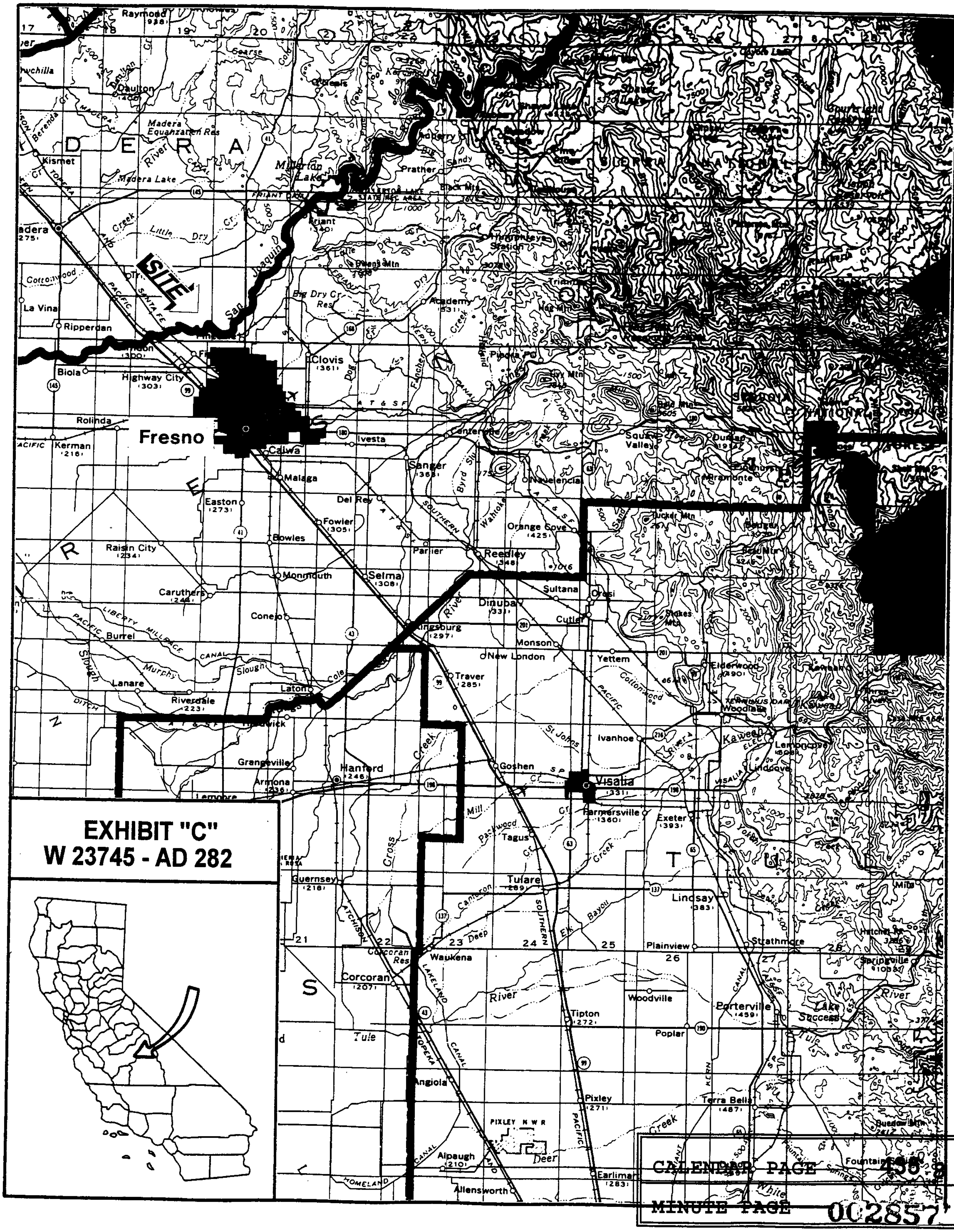

EXHIBIT "C"

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