MINUTE ITEM
This Calendar Item No. C25 was approved as Minute Item No. 25 by the California State Lands Commission by a vote of 3 to 0 at its 1-29-99 meeting.

CALENDAR ITEM
C25

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AD 366

01/29/99
W 20758
D. Plummer

CONSIDER APPROVAL OF A COMPROMISE TITLE SETTLEMENT AGREEMENT BETWEEN THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE CALIFORNIA STATE LANDS COMMISSION, AND DEBRA INVESTMENT CORPORATION REGARDING CERTAIN LANDS SITUATED WITHIN THE CITY OF NOVATO, MARIN COUNTY

PARTY:

Charles J. Linthicum
Vice President
Debra Investment Corporation
2880 Cleveland Avenue, Suite 8
Santa Rosa, California 95406

BACKGROUND:

Staff of the Commission has been requested by a representative of Debra Investment Corporation (Debra) to determine the extent of State interest within a parcel of land (Subject Parcel) located within the City of Novato, Marin County. The Subject Parcel is shown on Exhibit A (which is attached and incorporated by reference as a part of this item).

Commission staff has conducted a study of the evidence of title to the Subject Parcel and has drawn a number of factual conclusions, including those summarized below:

1. A portion of the Subject Parcel was sold and purportedly patented by the State as Survey Nos. 8, 17, 62, and 64 Swamp and Overflowed lands, Marin County. Additionally, lands embraced within the perimeter description of Survey No. 63, Swamp and Overflowed lands, were purportedly sold by the State but a patent was never issued.

2. Within the perimeter descriptions of the swamp and overflowed surveys were tidal sloughs that traversed the area, and marshes which may have been subject to tidal action. By their definition, swamp and overflowed lands did not include the tide and submerged lands of the State.

3. A portion of the subject property lies within Rancho de Novato and is not subject to a title interest of the State based upon sovereignty.

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 a portion of the Subject Parcel. The exact extent and nature of the State's interest is, however, subject to uncertainty and dispute.

Debra contends that, in its last natural condition, the Subject Parcel was above the ordinary high water mark, and therefore not tide and submerged lands. Further, Debra contends that any portion of the Subject Parcel which may have been below the ordinary high water mark was conveyed or was intended to be conveyed by the sale and patents of swamp and overflowed lands. The position of Debra is that, if any public trust interests existed in the Subject Parcel, they have been extinguished by the filling of the property, payment of taxes, and curative acts of the Legislature.

Debra and the staff have reached a settlement of this dispute which has been memorialized in a title settlement agreement which is on file with the office of the State Lands Commission. While the agreement sets forth all of the specific terms and conditions of the settlement, the basic terms of the Agreement are as follows:

1. Debra will deed to the State a portion of the Subject Parcel, hereinafter referred to as the EXCHANGE PARCEL. The EXCHANGE PARCEL is shown on Exhibit B (which is attached and incorporated by reference as a part of this item). The EXCHANGE PARCEL will be used for the purposes of habitat protection and open space.

2. The State will quitclaim to Debra any and all of the State's rights by virtue of its sovereignty in the remainder of the Subject Parcel, which is hereinafter referred to as the TRUST TERMINATION PARCEL. The TRUST TERMINATION PARCEL is shown on Exhibit B (which is attached and incorporated by reference as a part of this item).

3. The Agreement provides for an escrow and will be effective upon its recordation. Escrow fees and any title insurance will be without cost to the State.

The staff of the Commission recommends the approval and execution of the proposed Agreement in a form similar to that now on file in the Commission's offices.

STATUTORY AND OTHER REFERENCES:

A. Public Resources Code: Div. 6, Parts 1 and 2; Div. 13.
B. California Code of Regulations: Title 2, Div.3; Title 14, Div. 6.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14 California Code of Regulations section 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: Public Resources Code section 21080.11

EXHIBITS:

A. Parcel Plat of the Subject Parcel
B. Parcel Plat of the Exchange and Trust Termination Parcels

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS SECTION 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTION 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.

2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE THE PROPOSED TITLE SETTLEMENT AGREEMENT IN A FORM SUBSTANTIALLY SIMILAR TO THAT NOW ON FILE IN THE OFFICES OF THE CALIFORNIA STATE LANDS COMMISSION, INCLUDING THE FINDINGS TO TAKE EFFECT UPON RECORDATION OF THE AGREEMENT WHICH WILL RESULT IN A TERMINATION OF SOVEREIGN RIGHTS IN THE TRUST TERMINATION PARCEL.

3. FIND, UPON RECORDATION OF THE PROPOSED TITLE SETTLEMENT AGREEMENT, THAT:

   A. THE AGREEMENT IS IN THE BEST INTERESTS OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION; THE ENHANCEMENT OF THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND THE UPLAND; AND THE PROTECTION, PRESERVATION, AND ENHANCEMENT OF THE TIDELANDS AND SUBMERGED LANDS AND PUBLIC ACCESS THERETO.

   B. THE VALUE OF THE LANDS THE STATE IS TO RECEIVE THROUGH THE AGREEMENT IS OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF SOVEREIGN INTERESTS IN THE PARCEL IN WHICH THE STATE IS TO TERMINATE THE PUBLIC TRUST.

   C. THE PARCEL IN WHICH THE TRUST IS TO BE TERMINATED HAS BEEN IMPROVED, RECLAIMED, AND FILLED; 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 TIDE OR SUBMERGED LANDS IN FACT.

   D. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS WITHIN THE SUBJECT PARCEL.

   E. THE AGREEMENT CONSTITUTES A COMPROMISE OF CONTESTED ISSUES OF LAW AND EVIDENCE UPON WHICH THE DISPUTE IS BASED.

   F. THE AGREEMENT IS ENTERED IN LIEU OF THE COSTS, DELAYS, AND UNCERTAINTIES OF LITIGATION AND IS CONSISTENT WITH AND IS AUTHORIZED BY LAW.

   G. THE TRUST TERMINATION PARCEL IS NO LONGER NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THAT THE PUBLIC TRUST IS TERMINATED IN IT.

4. APPROVE RECORDATION ON BEHALF OF THE COMMISSION OF THE FOLLOWING DOCUMENTS:

   A. THE TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE IN THE OFFICES OF THE COMMISSION.

   B. A PATENT OF THE LANDS DESCRIBED IN THE AGREEMENT AS THE TRUST TERMINATION PARCEL.

   C. A CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDATION FOR THAT PARCEL OF LAND DESCRIBED IN THE SETTLEMENT AGREEMENT AS THE EXCHANGE PARCEL.

5. AUTHORIZE AND DIRECT THE STAFF OF THE CALIFORNIA STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE CALIFORNIA STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS 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.

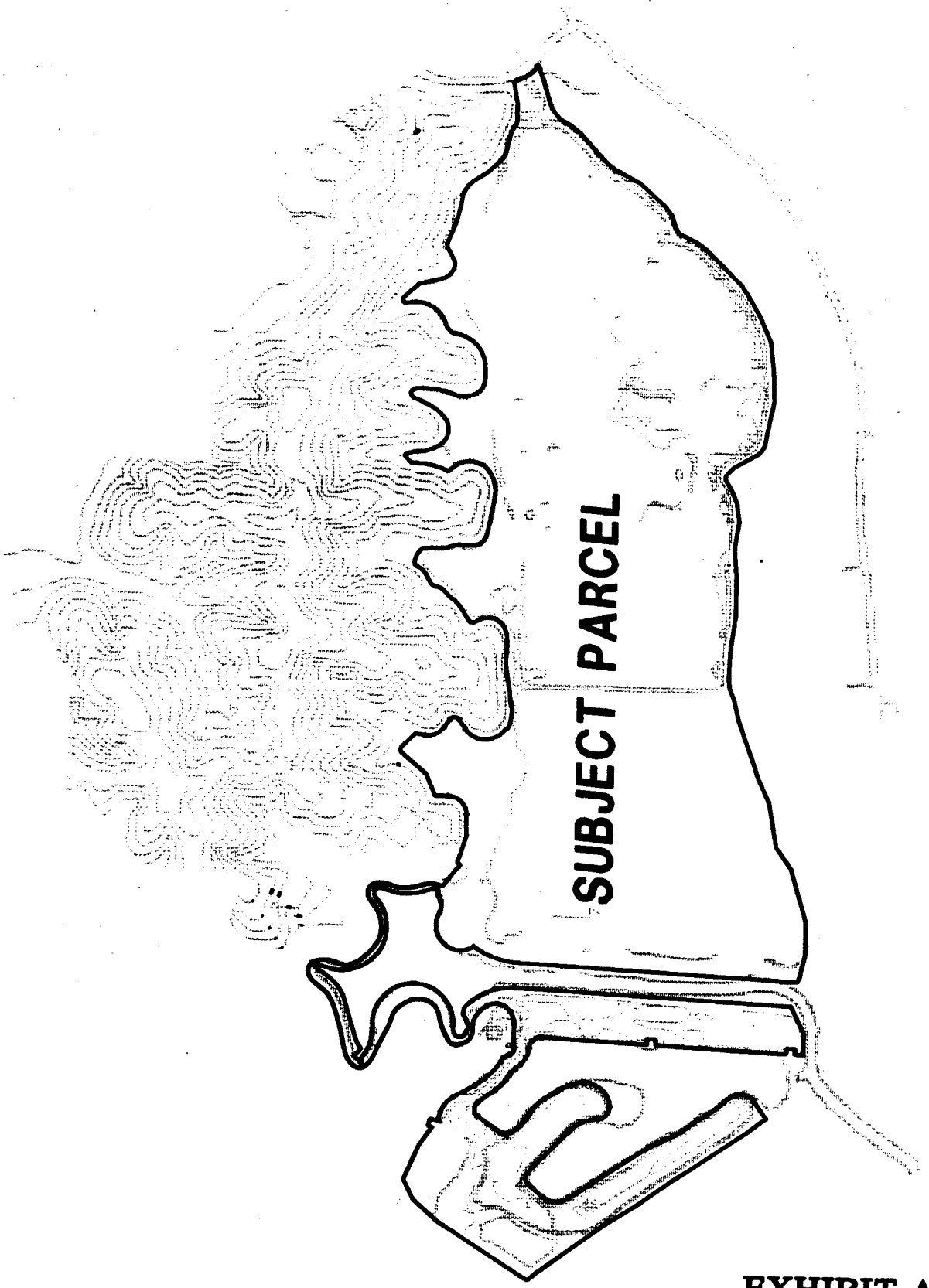

EXHIBIT A

CSW
[St]2
CSW/STUBER-STROEH
ENGINEERING GROUP, INC.
CONSULTING ENGINEERS
790 DeLong Ave., Novato, CA. 94945-3246
(415) 892-4763 FAX (415) 892-4502
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SCALE: 1"=1200'
01/22/99

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BAHIA PROJECT

SUBJECT PARCEL

NOVATO MARIN COUNTY CALIFORNIA

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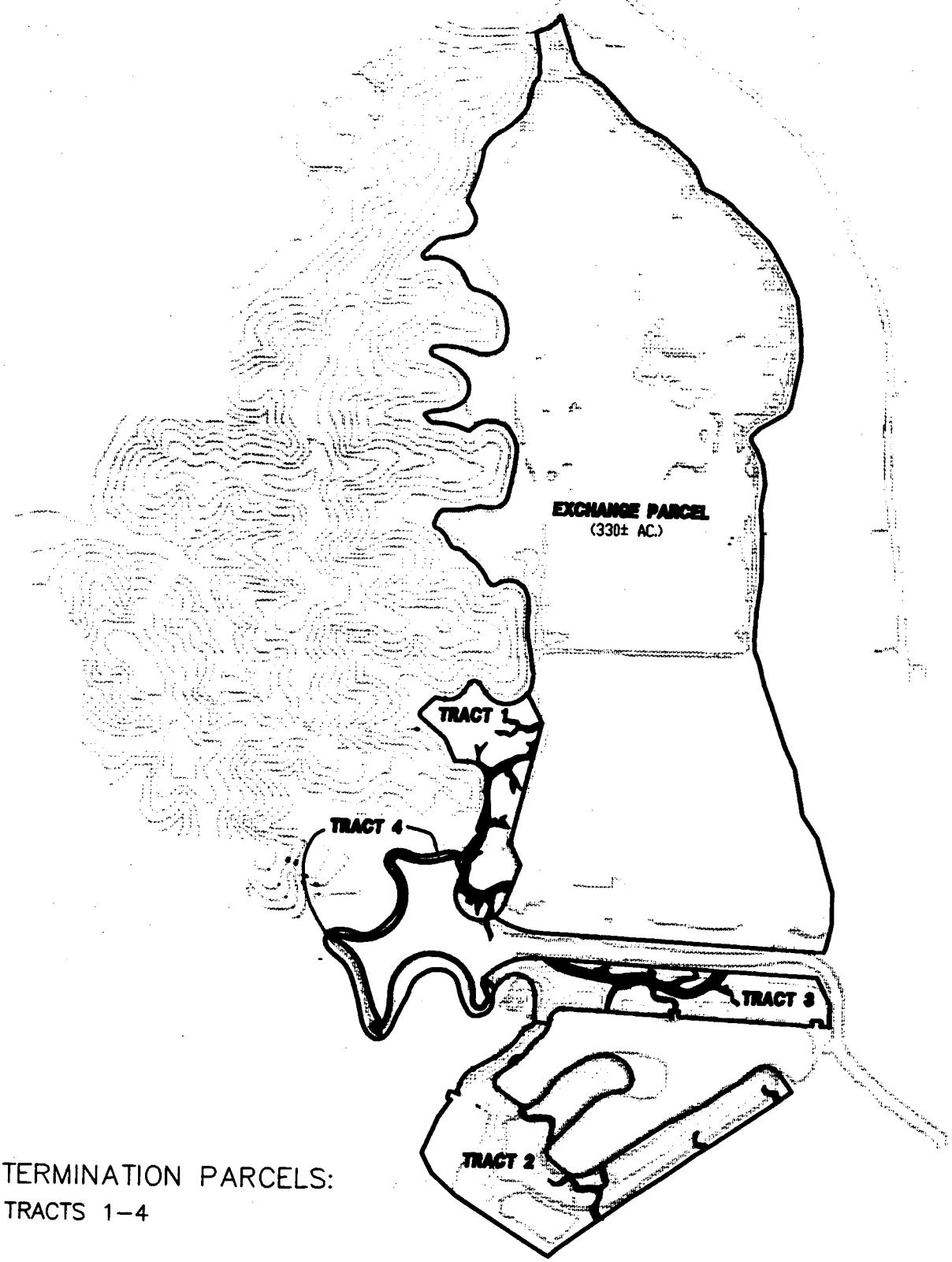

TERMINATION PARCELS:
TRACTS 1–4

EXHIBIT B

CSW
[St]2
CSW/STUBER-STROEH
ENGINEERING GROUP, INC.
CONSULTING ENGINEERS
790 DeLong Ave., Novato, CA. 94945-3246
(415) 892-4763 FAX (415) 892-4502

SCALE: 1"=1200'
01/22/99

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BAHIA PROJECT

EXCHANGE & TRUST TERMINATION PARCELS

NOVATO MARIN COUNTY CALIFORNIA

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